

5 October, 2011

ALRC Inquiry into Family Violence and Commonwealth Laws
Submission from the Indigenous Law Centre (ILC)

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Background to Indigenous specific issues identified from ALRC Discussion Paper 76

Indigenous Australians are over-represented as both victims and perpetrators of all forms of violent crime in Australia.¹ In NSW in 2008, the rates of reported victims of domestic violence were 6 times higher for Aboriginal females than non-Aboriginal females.² Nationally, 1 in 5 Indigenous adults reported being a victim of physical or threatened violence in the 12 months prior to the most recent National Aboriginal and Torres Strait Islander Social Survey (NATSISS).³

The true extent of the incidence and prevalence of family violence for Indigenous women and children is largely hidden.⁴ Factors contributing to this situation include under-reporting, inconsistent approaches to screening by service providers and incomplete data relating to the Indigenous status of victims.⁵

A further issue that impacts significantly on reporting is consideration of the consequences of reporting for victims and their families. There is considerable evidence that Indigenous women refuse to report for fear of reprisals from the perpetrator and his family. They also fail to report on the basis that systems designed to help can often impose further restrictions on their movements and associations, thereby isolating and challenging their belief systems and support networks.⁶ The diagram below adapted from the Education Centre Against Violence resource materials conceptualises in a visual format the social context that influences Indigenous women's decision making when they are considering reporting violence.⁷

¹ Dr Kerry Carrington, Domestic Violence in Australia—an Overview of the Issues. E-Brief: Online Only issued 7 August 2003, updated by Janet Phillips, September 2006. http://www.aph.gov.au/library/intguide/sp/Dom_violence.htm.

² NSW Department of Health (2011) NSW Health Aboriginal Family Health Strategy, Centre for Aboriginal Health. Sydney.

³ AIHW 2011. The health and welfare of Australia's Aboriginal and Torres Strait Islander people: an overview 2011. Cat. no. IHW 42. Canberra: AIHW.

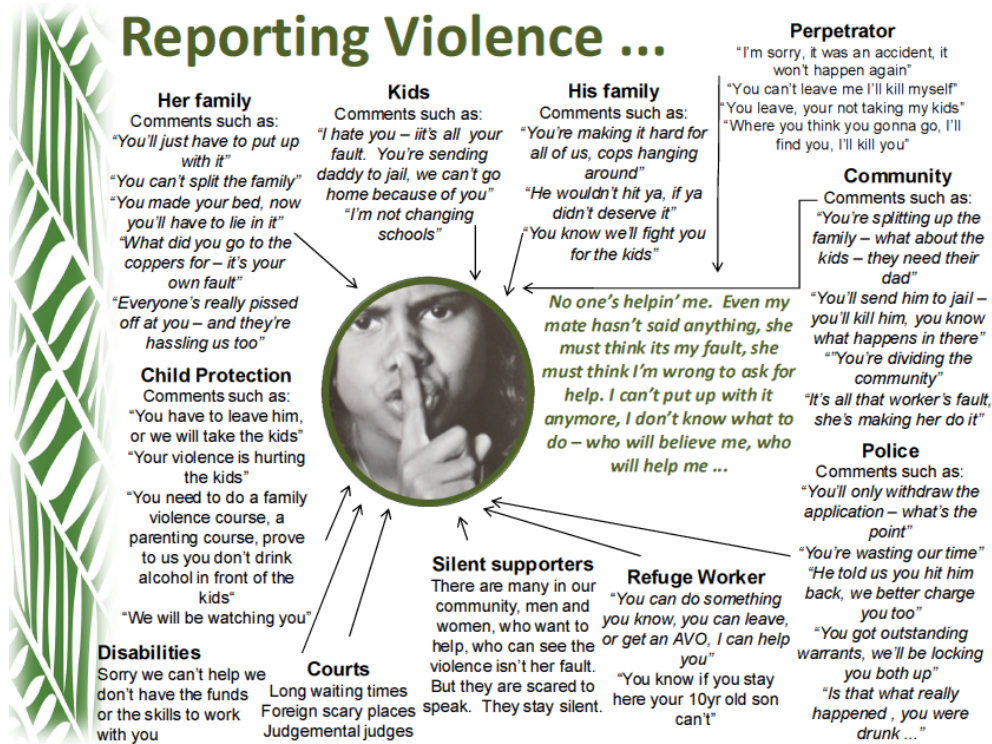
⁴ AIHW: Al-Yaman F, Van Doeland M & Wallis M 2006. Family violence among Aboriginal and Torres Strait Islander peoples. Cat. no. IHW 17. Canberra: AIHW.

⁵ Editors, 'Aboriginal and Torres Strait Islander Women's Task Force on Violence Report – Digest' (2000) 5(2) Australian Indigenous Law Reporter 91.

⁶ Keel M (2004) Family violence and sexual assault in Indigenous communities. Australian Centre for the Study of Sexual Assault, Briefing No. 4, September 2004.

⁷ Kyllie Cripps, 'Indigenous family violence: It's not black or white, it's complex' (Paper presented at Failing to Protect: Moving Beyond Gendered Responses, International Workshop, University of Victoria, Victoria, Canada, April 2010).

Reporting Violence ...



This context is essential information for those organisations considering screening policies and processes and in particular, the effect that such changes may have on Indigenous victims of violence.

Screening, Information Sharing and Privacy (Part A Chapt 4)

This section of the discussion paper examined how family violence information is disclosed to Commonwealth agencies (Human Services Portfolio) and how this information is then utilised. The proposals considered included routine screening for family violence by officers employed by the Child Support Agency (CSA), Family Assistance Office (FAO) and Centrelink and appropriate notation on client electronic files when family violence is identified. Privacy safeguards were also considered when such information is shared amongst the above named agencies.

The Indigenous Law Centre (ILC) is in principle supportive of early screening measures for family violence provided that appropriate strategies and supports for engaging the victim post disclosure are immediately available. It takes significant courage for a victim of violence to disclose their experience whether that be by ticking a box on a form or disclosing it verbally in an interview. Such a disclosure requires a response that acknowledges the victim's experience and offers information and options, thereby allowing the client to make informed decisions about their present and future circumstances. The current discussion paper does not outline a process for managing disclosures or the obligations of staff to undertake risk assessments. These are essential elements to any policy that seeks to screen for family violence.

We urge that there be careful consideration of ‘who’ is administering the screening tool and at what time. Whilst the discussion paper proposes that “CSA and FAO staff, Centrelink customer service advisers and social workers, Indigenous service officers and multicultural service officers” should do routine screening we would argue that this broad approach is problematic. It is our understanding that the skill and experience base of such officers varies greatly and significant training would be required for such staff (excluding social workers) to feel competent in undertaking this task. This training would need to include:

<ul style="list-style-type: none"> • Definitions 	<ul style="list-style-type: none"> • Mandatory reporting requirements and processes (jurisdiction specific)
<ul style="list-style-type: none"> • Incidence and prevalence statistics 	<ul style="list-style-type: none"> • Interviewing and counselling skills
<ul style="list-style-type: none"> • Family violence in cultural contexts 	<ul style="list-style-type: none"> • Identifying and managing conflicts of interest
<ul style="list-style-type: none"> • Screening tools and their usage 	<ul style="list-style-type: none"> • Ethics and informed consent
<ul style="list-style-type: none"> • Data management 	<ul style="list-style-type: none"> • Working collaboratively with other services
<ul style="list-style-type: none"> • Staff police checks (ensuring staff working with family violence clients have not themselves been perpetrators of violence) 	<ul style="list-style-type: none"> • Referral pathways
<ul style="list-style-type: none"> • Managing disclosures 	<ul style="list-style-type: none"> • Client follow-up

This type of training would need to be competency based to ensure that staff are competent to engage clients in a safe and appropriate manner. Ideally this training would also be accredited.

Careful consideration as to which specialist officers are engaged in screening for family violence is also needed. For example, given the connectedness of Indigenous communities it may be inappropriate to call in an Indigenous service officer to screen or interview an Indigenous client when family violence is suspected, particularly, if a kinship connection to the client or the client’s partner exists which could present as a conflict of interest. This connection may not be immediately apparent to the worker dealing with the case but may well be known to the client. In this instance the officer interviewing the client would need to seek the client’s permission to involve another person.

As to when screening should take place, we agree with most stakeholders to the inquiry that Centrelink, CSA and FAO application forms, correspondence and telephone prompts should directly seek information about family violence. In this way clients become accustomed to seeing the question(s) and answering them as appropriate. We would recommend screening include a question, or series of questions about family violence. We have included a copy of the questions relating to violence that were used on the most recent NATSISS as an example of the types of questions that Indigenous community members are familiar with and are able to answer (refer to Appendix 1).

Other recommended trigger points for screening include:

- when clients attend the office with visible injuries;
- when clients attend the office with their partner and the client appears frightened or intimidated;
- if officers witness an event whether that be at work or in the community that suggests the client may be a victim of family violence.

We also recommend careful consideration as to screening processes for people with disabilities. Research indicates that women identified as having a 'disability' experience violence and abuse at a much greater rate than the rest of the population. It is also widely recognised that Indigenous women with disabilities face additional barriers to disclosure and to seeking help. This multi-layered approach to disadvantage increases risk factors for exposure to violence and can make access to services even more difficult for victims. A recent study conducted in Victoria found that help is often unavailable or inappropriate in meeting the needs of Indigenous women and children with disabilities experiencing violence.⁸

In respect of the proposals advocating for a "safety concern flag" specific to family violence being placed on a customer's file and triggering information sharing between agencies, the ILC has concerns that the scope and implication of the "safety concern flag" is not adequately covered in the discussion paper. The privacy issues relating to who would have access to this information and under what conditions needs careful consideration because of the broader implications for clients. As was previously noted, given the interconnectedness of Indigenous families and communities, the sharing of such information and the involvement of Indigenous Services Officers raises a potential conflict of interest when cases of family violence are flagged as in many instances the officers will have strong community ties to both the victim and perpetrator.

Developing a culture of trust and respect with family violence victims will be very important to progress the proposals outlined in the discussion paper. A screening tool alone will not create an environment of trust and Indigenous clients have genuine concerns about how Centrelink in particular engages with them. For example, in a recent study conducted in the Northern Territory, the majority of women surveyed admitted that they felt Centrelink staff perceive them to be incompetent parents and people who are unable to manage money.⁹ It is also concerning to note that an overwhelming majority (85%) said they do not feel respected when they talk to Centrelink and as a consequence do not want to share their problems with Centrelink. These perspectives are important in that they may significantly impact the successful implementation of the screening proposals recommended in the ALRC discussion paper.

⁸ Cripps K, Miller L and Saxton-Barney J. 'Too Hard to Handle': Indigenous Victims of Violence with Disabilities [online]. *Indigenous Law Bulletin*, Vol. 7, No. 21, Nov/Dec 2010: 3-6.

⁹ Equality Rights Alliance (2011) Documenting Women's Experience of Income Management in the Northern Territory pp6. www.equalityrightsalliance.org.au.

Monitoring and evaluation will be critical to ensure that the processes being employed are working effectively for all stakeholders. The proposals do not currently outline a timeframe for monitoring and in the initial phase, we would recommend three-monthly evaluation and reporting involving all stakeholders including the service providers and clients for the purpose of identifying problem areas, gaps in training, supervision or referral pathways. As initial problems are ironed out monitoring and evaluation mechanisms could be conducted six-monthly.

Income management (Part D Chapt 13)

This section of the discussion paper discussed how family violence is treated under the voluntary and compulsory measures of the income management regimen. The proposals identified that there is increasing evidence to support an end to compulsory quarantining of welfare payments and consider voluntary income management as an alternative approach, for example the Cape York Welfare Reform Model. The main difference between the Cape York Welfare Reform model and the *Social Security (Administration) Act* is that the Cape York policy does not impose blanket quarantining of welfare payments. It has been described as a 'conditional income management' regimen. It is designed to adapt income management measures to meet the needs of individuals and their communities.

The ILC is supportive of an alternative approach to income management as this may be beneficial to Indigenous women experiencing domestic violence as a mandatory income management regimen may discourage reporting. The recent qualitative study conducted in the Northern Territory highlights some of the disadvantages associated with compulsory income management¹⁰. Most of the women surveyed stated that they do not understand the rules that trigger income management referral, or the exemption process. The most disturbing finding was that 70% of women reported that they did not feel safer since the introduction of income management. Additionally, women raised concerns about the appropriateness of Centrelink as an agency to assist them in exiting abusive relationships given that Centrelink may impose restrictions (eg income management) on their access to benefits that may make family tensions worse.

Another concern with compulsory income management is that the BasicCard may inhibit the ability of women in a violent relationship to leave the situation due to restrictions on funds to purchase petrol or to cover other expenses necessary to escape violent situations including funds for temporary accommodation particularly on weekends. Over half of the respondents said that it is often difficult to shop with the BasicsCard and almost three-quarters indicated that the BasicCard does not make it easier to look after their family.

¹⁰ Equality Rights Alliance (2011) Documenting Women's Experience of Income Management in the Northern Territory pp. 40. www.equalityrightsalliance.org.au.

Appendix 1 – National Aboriginal and Torres Strait Islander Social Survey (NATISS) 2008.

VICTIM OF ASSAULT

Q01VIC

(The next few questions are about crimes that may have happened to you.)

If non-remote insert:

In the last 12 months, did anyone, including people you know, use physical force or violence against you?

If remote insert:

In the last year, did anyone start a fight with you or beat you up?

Ctrl R may be entered here if necessary.

Yes 1 GO TO Q02VIC
No 5 GO TO Q03VIC
Ctrl R GO TO Q03VIC

Q02VIC

Did you report this to the police?

If more than one occurrence, response is for whether the most recent incident was reported to the police.

Yes 1
No 5 GO TO Q02AVIC

Q02AVIC

At the time of the (most recent) incident, did you know any of the offenders?

Ctrl K may be used here if necessary

Ctrl R may be used here if necessary

Yes 1 GO TO Q02BVIC
No 5 GO TO Q02DVIC
Ctrl K GO TO Q02DVIC
Ctrl R GO TO Q02DVIC

Q02BVIC

How did you know them?

More than one response is allowed (when more than one offender). Press space bar between responses.

Ctrl R may be used here if necessary

Current partner (defacto/husband/wife) 10
Previous partner (defacto/husband/wife) 11
Boyfriend, girlfriend or date 12
Ex-boyfriend or ex-girlfriend 13
Parent 14
Child 15
Sibling 16
Other family member 17
Friend 18
Work colleague/fellow school student 19
Neighbour 20
Known by sight only 21
Other known person 22
Ctrl R

GO TO Q02DVIC

Q02DVIC

(I would now like to ask you about any physical injuries you may have received in this (most recent) incident. This includes bruises.)

Were you physically injured, harmed or hurt in this (most recent) incident?

Ctrl R may be used here if necessary

Yes 1 **GO TO Q02EVIC**
No 5 **GO TO Q03VIC**
Ctrl R **GO TO Q03VIC**

Q02EVIC

What were your injuries?

More than one response is allowed. Press space bar between responses.

Ctrl R may be used here if necessary

Scratches 1
Bruises 2
Cuts 3
Fractures or broken bones 4
Broken teeth 5
Penetrative injury/stab/gun shot 6
<If female insert: Miscarriage> 7
Other 8
Ctrl R

GO TO Q02GVIC

Q02GVIC

Did you visit a health clinic, see a doctor or see any other health professional about these injuries?

Ctrl R may be used here if necessary

Yes 1
No 5
Ctrl R **GO TO Q03VIC**

Q03VIC

If non-remote insert:
In the last 12 months, did anyone, including people you know, try to use or threaten to use physical force or violence against you?

If remote insert:
In the last year, did anybody try to or say they were going to hit you or fight with you (ie. did anyone threaten you)?

Ctrl R may be entered here if necessary.

Yes 1 **GO TO SG1**
No 5 **GO TO TRANSPORT MODULE**
Ctrl R **GO TO TRANSPORT MODULE**

SG1

If non-remote 1 **GO TO Q04VIC**
Otherwise 2 **GO TO Q05VIC**

Q04VIC

Were any of those threats made in person?

Ctrl R may be used here if necessary

Yes 1
No 5
Ctrl R

GO TO Q05VIC

Q05VIC

Did you report this to the police?

If more than one occurrence, response is for whether most recent incident was reported to the police.

Yes 1
No 5