

NATIONAL FAMILY VIOLENCE PREVENTION
LEGAL SERVICES

WORKING TO ACHIEVE IMPROVED JUSTICE OUTCOMES FOR ABORIGINAL AND TORRES STRAIT ISLANDER
VICTIMS/SURVIVORS OF FAMILY VIOLENCE AND SEXUAL ASSAULT

Closing the Gap Refresh

Submission to the Department of Prime
Minister and Cabinet

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1 Introduction

The National Aboriginal Family Violence Prevention Legal Services Forum (**'National FVPLS Forum'**) welcomes the opportunity to provide input into the Closing the Gap Refresh commissioned by Prime Minister and Cabinet. To enable effective and sustainable solutions to be developed from this significant reform opportunity, it is vital that Aboriginal and Torres Strait Islander leaders, communities and organisations drive the process.

Aboriginal and Torres Strait Islander victim/survivors of family violence face multiple, intersecting forms of disadvantage which compound and impact life outcomes. Family violence experienced by Aboriginal and Torres Strait Islander people (overwhelmingly women) is a national crisis. In comparison with other Australian women, Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised as a result of family violence,¹ and 10 times more likely to be killed as a result of violent assault.² Aboriginal and Torres Strait Islander people are disproportionately over-represented in contact with the Australian legal system, and Aboriginal and Torres Strait Islander women have been found to be the most legally disadvantaged group in Australia.³

Family Violence Prevention Legal Services (**'FVPLSs'**) provide culturally safe and specialised legal and non-legal assistance to Aboriginal and Torres Strait Islander victim/survivors of family violence through our holistic, wrap-around service model. Our legal services operate primarily in areas of family violence, family law, child protection and victim's assistance. Nationally, more than 90% of our clients are women.

The following submission seeks to respond to the questions contained within the Department of Prime Minister and Cabinet's Closing the Gap Refresh Discussion Paper. This submission also urges Prime Minister and Cabinet to consider a number of items of importance to Aboriginal and Torres Strait Islander victims/survivors of family violence, predominantly women and their children. In summary, those items are:

- The need for **self-determination**, that the Closing the Gap Refresh is led by Aboriginal and Torres Strait Islander organisations, communities and individuals, as well as **resourcing of Aboriginal and Torres Strait Islander community controlled organisations**.
- Concerns that **prosperity indicators** are insufficient to meaningfully address family violence and/or may have unintended adverse impacts for Aboriginal and Torres Strait Islander victim survivors of family violence;
- The critical importance of adopting **justice targets to reduce rates of family violence and imprisonment** to ensure family violence and incarceration affecting Aboriginal and Torres Strait Islander people is adequately measured, and that victim/survivors of family violence can understand and access their legal rights and achieve safety;
- Closing the Gap should also adopt **targets for housing** and to **reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care**;

¹ The Australian Productivity Commission (2016), *Overcoming Indigenous Disadvantage - Key Indicators 2016*, page 4.98, table 4A.12.13 available at <http://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016/report-documents/oid-2016-overcoming-indigenous-disadvantage-key-indicators-2016-report.pdf>.

² Australian Institute of Health and Welfare, *Family Violence among Aboriginal and Torres Strait Islander people*, 2006, page 66 available at <http://www.aihw.gov.au/publication-detail/?id=6442467912>.

³ Senate Report on Legal Aid and Access to Justice, 2004. Aboriginal and Torres Strait Islander Commission (ATSIC), Submission to the Senate Legal and Constitutional References Committee Inquiry into Legal Aid and Access to Justice, ATSIC Canberra, 13 November 2003, page 4.

- Crucial cross-cutting principles should be embedded in all target areas, specifically a **holistic approach**, adequate investment in culturally safe and specialist **early intervention and prevention** programs, and an **intersectional analysis**, with particular attention to the experiences of Aboriginal and Torres Strait Islander women, people with a disability and the differential impacts and approaches needed across different cohorts (i.e. women, men children etc.)
- The need to develop mechanisms to **monitor and evaluate** progress in an independent way led by Aboriginal and Torres Strait Islander experts.

In response to these questions and additional points the National FVPLS Forum makes a number of recommendations, which are also detailed at the end of each section of this submission.

2 Recommendations

Recommendation 1: Self-determination be embedded in the design, implementation and monitoring and evaluation of the Closing the Gap Refresh process.

Recommendation 2: Government commitment at all levels to adequately resourcing Aboriginal and Torres Strait Islander Community Controlled organisations to engage in the design, development, implementation and evaluation of the framework.

Recommendation 3: The Commonwealth Government commit to ensuring adequate, sustainable funding for Aboriginal and Torres Strait Islander organisations, specifically:

Ensuring CPI increases are included in funding for programs under the Indigenous Advancement Strategy;

Reinstating the National FVPLS Program with direct allocation of funding.

Recommendation 4: Prosperity as the overall indicator for the Closing the Gap process, and the lens through which all targets are seen, be replaced with self-determination.

Recommendation 5: COAG prioritise funding Aboriginal and Torres Strait Islander community controlled organisations to deliver culturally safe services as a key financial commitment of the Closing the Gap Refresh process.

Recommendation 6: All levels of government adopt justice targets to:

Cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander people to close the gap by 2040; with interim targets designed by or in genuine partnership with Aboriginal and Torres Strait Islander community controlled organisations; and

Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people by 2040, with an interim target of halving the gap by 2030.

Recommendation 7:

All levels of government adopt targets to increase culturally appropriate and affordable housing;

All levels of government adopt targets to reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care.

Recommendation 8: All levels of government incorporate the cross-cutting principle of adequate investment of culturally safe and specialist early intervention and prevention programs in target areas of Closing the Gap.

Recommendation 9: Action taken and progress achieved across all target areas be measured across different cohorts (i.e. women, men and children; as well as people with a disability).

Recommendation 10: Closing the Gap targets should be periodically evaluated through a continuous improvement framework rather than periodic reviews upon expiry of targets.

Discussion paper question: How can governments, Aboriginal and Torres Strait Islander Peoples, and businesses work more effectively together? What is needed to change the relationship between government and community?

3 Self-determination and resourcing of Aboriginal and Torres Strait Islander community controlled organisations

Principles of self-determination

The Closing the Gap Refresh process must adopt and promote the principles of self-determination of Aboriginal and Torres Strait Islander peoples in order to be effective and to realise its aims. To do so, Closing the Gap Refresh should to adopt a rights-based framework. The United Nations *Declaration on the Rights of Indigenous Peoples* recognises the right of Indigenous peoples to self-determination, defined as the right to freely determine one's own political status and freely pursue one's own economic, social and cultural development.⁴ The manifestation of self-determination requires recognised decision-making authority and adequate resourcing. Aboriginal and Torres Strait Islander-led solutions have been well articulated, including by the Redfern Statement Alliance, a group of Aboriginal and Torres Strait Islander peak body leaders. As the [Redfern Statement](#) identifies, Aboriginal and Torres Strait Islander people and organisations have the solutions, expertise, experience and understanding to address the complex systemic disadvantage experienced by Aboriginal and Torres Strait Islander peoples.⁵ The Closing the Gap Refresh process is a key opportunity to promote self-determination for Aboriginal and Torres Strait Islander peoples in Australia through Aboriginal and Torres Strait Islander-led decision making to collectively address the disproportionate levels of disadvantage experienced by Aboriginal and Torres Strait Islander peoples. For this process, self-determination requires Aboriginal and Torres Strait Islander individuals, communities and organisations and experts, to lead decision-making over all levels and stages of the Closing the Gap Refresh process.

Self-determination in the Closing the Gap process

To be effective and meaningful, self-determination needs to be embedded at the beginning of a process. Experience to date has seen lengthy negotiations with State and Territory governments over the initial framework and discussion paper, at the exclusion of Aboriginal

⁴ Article 3, UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples: resolution / adopted by the General Assembly, 2 October 2007, A/RES/61/295*, available at: <http://www.refworld.org/docid/471355a82.html>

⁵ The Redfern Statement (2016), available at: <http://nationalcongress.com.au/redfern-statement/>

and Torres Strait Islander people and leaders. For this reason, the initial framework should not preclude prioritising other areas of focus as outlined by Aboriginal and Torres Strait Islander community controlled organisations. We welcome the Aboriginal and Torres Strait Islander peak body roundtables consultation, noting that it was convened at a late stage in the process, and the input it provided must impact the refresh process. We look forward to engagement in the 'testing' phase, noting that engagement must be broader than this to meaningfully constitute self-determination.

Self-determination also extends beyond consultation and co-design into initial concept phase, implementation and service delivery, and monitoring and evaluation. Aboriginal and Torres Strait Islander community controlled organisations must be adequately resourced to meaningfully participate in each of these stages of the Closing the Gap process.

In the design phase, manifestation of self-determination requires Aboriginal and Torres Strait Islander-led identification of over-arching frameworks, targets, sub-targets and the design of other overarching processes relevant to Closing the Gap.

For implementation, Aboriginal and Torres Strait Islander Organisations must lead implementation strategies and service provision. Aboriginal and Torres Strait Islander Community Controlled Organisations understand and are responsive to the particular needs and requirements of Aboriginal and Torres Strait Islander peoples and are, therefore, the preferred provider of culturally safe services and supports for the majority of Aboriginal and Torres Strait Islander people. More flexible funding models should be established to enable Aboriginal and Torres Strait Islander Community Controlled Organisations to deliver holistic wrap-around services that are responsive to community needs, prioritise community-led solutions, and ensure the collaboration of unique expertise across sectors.

For monitoring and evaluation, Aboriginal and Torres Strait Islander Community Controlled Organisations must be resourced to engage in progressive monitoring and evaluation of targets in line with a continual improvement framework. For many Aboriginal and Torres Strait Islander Community Controlled Organisations this also entails resourcing to build data and evaluation capacity and enable sophisticated data collection, analysis and reporting. Monitoring and evaluation principles will be outlined in further detail in section 8.

Throughout all stages, Aboriginal and Torres Strait Islander Community Controlled Organisations need specific resourcing to undertake policy and advocacy work to ensure frontline expertise is able to influence decision making and systemic change. This is a key element of self-determination, enabling effective engagement in the Closing the Gap process. Particularly if Closing the Gap targets are designed, implemented, reported against and evaluated at various levels of government, community controlled organisations such as FVPLSs will require specific funding to meaningfully engage in the design and evaluation of targets.

Resourcing of Aboriginal and Torres Strait Islander community controlled organisations

The extremely high rates of family violence against Aboriginal and Torres Strait Islander women across Australia mean that our FVPLS services are consistently working beyond their capacity. Existing resources are stretched, and there is considerable unmet need amongst Aboriginal and Torres Strait Islander communities, particularly for areas that are currently not serviced by FVPLSs. Some FVPLSs report that up to 30-40% of Aboriginal and Torres Strait Islander women contacting their service seeking assistance are turned away because there is insufficient capacity to support them. All Aboriginal and Torres Strait victim/survivors of family violence should be able to access to FVPLSs' specialised and culturally safe legal and non-legal supports, regardless of their geographic location. Currently FVPLSs are not resourced to provide national coverage, FVPLSs collectively service an area that currently only covers approximately half of the Aboriginal and Torres Strait Islander population. Much

of this coverage in remote areas is extremely limited and often consists of only one or two days per month.⁶ Additionally, FVPLS funding levels are currently frozen at 2013-14 levels until 2020. The absence of CPI increases over this period results in a cumulative loss of approximately \$9.7 million dollars. The lack of CPI increases across programs funded under the Indigenous Advancement Strategy has significant implications for the operation of Aboriginal and Torres Strait Islander community controlled organisations such as FVPLS, including challenges in meeting increasing in operational costs such as rent and preventing our organisations from being competitive with salaries for the employment and retention of staff to keep people in the sector. To ensure sustainable and adequate resourcing, reinstating the National FVPLS Program with a direct allocation of funding will demonstrate a strong commitment from the Commonwealth Government to the value and importance of the FVPLS model and provide greater transparency and certainty of funding for the FVPLSs into the future.

Recommendation 1: Self-determination be embedded in the design, implementation and monitoring and evaluation of the Closing the Gap Refresh process.

Recommendation 2: Government commit to adequately resourcing Aboriginal and Torres Strait Islander Community Controlled organisations to engage in the design, development, implementation and evaluation of the framework.

Recommendation 3: The Commonwealth Government commit to ensuring adequate, sustainable funding for Aboriginal and Torres Strait Islander organisations, specifically:

Ensuring CPI increases are included in funding for programs under the Indigenous Advancement Strategy;

Reinstating the National FVPLS Program with direct allocation of funding.

Discussion paper question: What indicators should governments focus on to best support the needs and aspirations of Aboriginal and Torres Strait Islander Peoples? Should governments focus on indicators such as prosperity, wellbeing or other areas?

4 Prosperity indicators

The National FVPLS Forum understands that the intention behind the prosperity framework is to shift Closing the Gap towards a strengths-based framework, in response to criticism that the existing targets were modelled on a deficit discourse. However, we do not believe it fully achieves this intention due to its predominantly economic focus, and failure to highlight strengths as conceptualised and identified by Aboriginal and Torres Strait Islander people and communities. Furthermore, a focus on prosperity is likely to have the following unintended adverse impacts:

- De-centring the priorities of Aboriginal and Torres Strait Islander communities which may be expressed in varied ways, and generalising these priorities into one framework. Prosperity, even delineated into four domains - individual, economic, community and environmental - is a broad term with multiple meanings. Government's conception of prosperity is not necessarily compatible with Aboriginal and Torres Strait Islander

⁶ Nous Group, *Family Violence Prevention Legal Services – Research and Needs Analysis Report* (2013), p 5.

peoples' diverse considerations of what prosperity means for themselves, families and communities;

- Removing a focus on Aboriginal and Torres Strait Islander people who are experiencing the greatest degree of vulnerability, and whose needs the Closing the Gap framework should be most responsive to;
- Obscuring a focus on structural inequality and system responses, which have significant impact on target areas, and thus diluting accountability of governments to change systems and policies that compound disadvantage, whilst creating a greater onus on Aboriginal and Torres Strait Islander people to themselves address target areas. In the context of family violence, this could potentially risk blaming victim/survivors for the violence they experience as well as reducing the impact of Closing the Gap targets as a key accountability mechanism;
- Obscuring attention on barriers to prosperity and the drivers of disadvantage, such as violence and discrimination and specific barriers experienced by Aboriginal and Torres Strait Islander women. Sidelining a focus on areas such as family violence, child protection, housing and justice;
- Obscuring consideration of intersectionality, for example the additional barriers faced by Aboriginal and Torres Strait Islander women and people with a disability, through an inbuilt assumption that increased prosperity for communities will equally benefit all members within that community. In this way, a focus on prosperity risks further silencing Aboriginal and Torres Strait Islander women, who have been recognised as one of the most legally disadvantaged groups in Australia and at heightened risk family violence;
- Risk funding being siloed within government, limiting an integrated, whole of government response that embeds self-determination and commitment to Closing the Gap targets across all Departments;
- Risk that funding will be re-framed and that programs addressing a range of different areas will be required to contribute to prosperity in order to receive grants or funding, placing additional administrative and reporting burdens on community organisations.

Additionally, there must be sufficient coordination and translation between a strengths-based monitoring framework, when the current funding framework is deficit-based.

We further support the points made by *Change the Record* in their submission regarding the importance of giving adequate focus to the underlying drivers of disadvantage in a process which aims to have intergenerational impact.⁷

If, despite our concerns, the prosperity framework is adopted across all target areas, family violence will need to be given full consideration as addressing family violence is necessary to not only all areas of prosperity defined in the discussion paper, but also to the successful achievement of multiple targets in areas across the Closing the Gap framework (as discussed further below).

Recommendation 4: Prosperity as the overall indicator for the Closing the Gap process, and the lens through which all targets are seen, be replaced with self-determination.

Discussion paper question: Should Aboriginal and Torres Strait Islander culture be incorporated in the Closing the Gap framework? How?

⁷ See p 20

5 Aboriginal and Torres Strait Islander cultures and Closing the Gap

Aboriginal and Torres Strait Islander cultures are defined, owned and practiced by Aboriginal and Torres Strait Islander peoples and communities. Culture is not an area to be measured or assessed, particularly by a government framework. Feeling strong in one's culture and identity as an Aboriginal or Torres Strait Islander person is however a strength, protective factor and key contributor to social and emotional health. As such, promoting Aboriginal and Torres Strait Islander culture and self-determination is an important step in Closing the Gap in life outcomes for Aboriginal and Torres Strait Islander people, as is supporting programs and services that support Aboriginal and Torres Strait Islander people to celebrate and engage to the fullest extent possible with their culture, identity and community.

Accordingly, Closing the Gap should embed self-determination and adequately and sustainably resource Aboriginal and Torres Strait Islander community controlled organisations that already do significant work in promoting cultural strength and working in culturally safe ways.

Recommendation 5: COAG prioritise funding Aboriginal and Torres Strait Islander community controlled organisations to deliver culturally safe services as a key financial commitment of the Closing the Gap Refresh process.

Discussion paper question: What do you think are the key targets or commitments that should be measured in a refreshed Closing the Gap agenda?

6 Justice Targets to reduce rates of family violence and imprisonment

Justice targets include a number of focal points and should be interpreted broadly to include a focus on imprisonment and family violence. Justice targets are required to both reduce the over-imprisonment of Aboriginal and Torres Strait Islander people and the rates of family violence experienced by Aboriginal and Torres Strait Islander people. This dual focus is necessary as family violence is a leading contributor to the removal of Aboriginal and Torres Strait Islander children from their families, communities and culture, which in turn starts a trajectory towards youth detention and adult incarceration. Reducing the rates of family violence experienced by Aboriginal and Torres Strait Islander people is necessary to improve access to justice and justice outcomes as well as reduce the rate of Aboriginal and Torres Strait Islander people in contact with the justice system.

Justice targets with a specific focus on family violence

Family violence is now recognised as a national crisis, causing profound harm to women and children and the broader Australian community socially, politically and economically. The extreme and long-lasting harm to Aboriginal and Torres Strait Islander people (predominantly women and children) who experience family violence at vastly disproportionate rates should be at the forefront of government response. Economically, the impacts of family violence against Aboriginal and Torres Strait Islander women create a significant cost burden for all Australian governments. It is estimated that the national annual cost of violence against

Aboriginal and Torres Strait Islander women will reach \$2.2 billion by 2021-22. This does not include the costs of flow-on impacts on their children, which are substantial.⁸

There are numerous complex and diverse factors contributing to the high levels of family violence against Aboriginal and Torres Strait Islander women. The causes of this violence do not derive from Aboriginal and Torres Strait Islander cultures and Aboriginal and Torres Strait Islander women experience violence at the hands of men from multiple backgrounds. However, the disadvantage, dispossession and attempted destruction of Aboriginal and Torres Strait Islander cultures since colonisation has meant that family violence has been allowed to proliferate in Aboriginal and Torres Strait Islander communities, with Aboriginal and Torres Strait Islander women and their children at most risk. Due to this history of colonisation and contemporary experiences of discrimination, Aboriginal and Torres Strait Islander women have deeply ingrained distrust of Government related services. This is perpetuated by poor and discriminatory system responses to Aboriginal and Torres Strait Islander people experiencing family violence, for example by police, child protection agencies and mainstream services.

The continual absence of a specific family violence focus within the Closing the Gap Refresh neglects the intersectional, compounding and far-reaching impact of family violence. Family violence must be recognised both as a standalone issue and key contributor to existing targets and other identified areas of disadvantage. Family violence is a key barrier to other target areas of health, education and employment and Closing the Gap targets are unlikely to be effective in these areas without targets specific to family violence also being adopted.

Justice targets with a specific focus on family violence are essential to fighting the crisis levels of violence against Aboriginal and Torres Strait Islander women and the removal of Aboriginal and Torres Strait Islander children from their families. Justice targets will provide a clear, long term, achievable goal for law makers, policy makers and decision makers in federal, state and territory governments. Justice targets have been cited by a range of recent reports as a key recommendation to measure the impact of policy and legislative change and hold decision-makers accountable.⁹

Introducing a specific family violence target will ensure the true extent of the problem is measured and understood, particularly in the context of family violence experienced by Aboriginal and Torres Strait Islander women being significantly underreported. Indeed, research suggests as much as 90% of violence experienced by Aboriginal and Torres Strait Islander people goes unreported.¹⁰

The need for national leadership

Family violence is a complex area that requires Federal, State and Territory governments to commit to the development, implementation and monitoring of these targets in genuine partnership with Aboriginal and Torres Strait Islander people and communities and peak

⁸ The National Council to Reduce Violence Against Women and their Children, 2009, *The Cost of Violence Against Women and their Children*, pp.9. Available at:

https://www.dss.gov.au/sites/default/files/documents/05_2012/vawc_economic_report.pdf

⁹ See Australian Law Reform Commission (2018) *Pathways to Justice-An Inquiry into the Incarceration rate of Aboriginal and Torres Strait Islander Peoples: Final Report*, No. 133, Canberra; *Children's Rights Report 2017* (released by the Australian Human Rights Commission on 27 February 2018).

¹⁰ The Australian Productivity Commission, *Overcoming Indigenous Disadvantage - Key Indicators 2014* (2014) 4.91 available at: <http://www.pc.gov.au/research/recurring/overcoming-indigenous-disadvantage/key-indicators-2014/key-indicators-2014-report.pdf> and Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities', *Trends & issues in crime and criminal justice No. 405* (2011) Australian Institute of Criminology available at <http://www.aic.gov.au/publications/current%20series/tandi/401-420/tandi405.html>

organisations, such as Family Violence Prevention Legal Services (FVPLS), as decision-makers and experts in all stages of the Closing the Gap refresh.

Whilst some responsibility for implementation of justice targets falls within the jurisdiction of state and territory governments, there is a clear need for the Federal Government to play a leadership role through COAG. Indeed, national leadership will be crucial to the successful implementation of justice targets, with significant partnership with the peak bodies of Aboriginal and Torres Strait Islander community controlled organisations. Moreover, national leadership and a whole of government response will enable the Closing the Gap framework to be aligned with other significant pieces of work, such as the National Plan of Action to Reduce Violence Against Women and their Children.

Content of justice targets with a specific focus on family violence

The adoption of a specific family violence target should be underpinned by an indicator or focus of family violence developed by cross evaluating data from across areas such as justice, health, education, housing.

The Productivity Commission's Overcoming Indigenous Disadvantage framework identifies a number of indicators which, following guidance from or in genuine partnership with specialised Aboriginal and Torres Strait Islander Community Controlled Organisations such as FVPLSs, could be built on to develop a family violence target. Family violence indicators could include the analysis of:

- Hospitalisation rates;
- Referrals to family violence services, including specialist Aboriginal and Torres Strait Islander Community Controlled Organisations;
- The number of police call outs;
- The number of domestic violence orders;
- The number of perpetrators convicted for family violence related offences;
- Homicide rates;
- Rates of family violence related housing issues and homelessness;
- Rates of working days lost due to family violence related leave;
- The number of child protection notifications where family violence is identified;
- Changes in community attitudes (as measured by mechanisms such as the National Community Attitudes to Violence Against Women ('NCAS') Survey¹¹ that now includes specific questions on Aboriginal and Torres Strait Islander peoples)

Justice targets to reduce the over-imprisonment of Aboriginal and Torres Strait Islander people

The over-imprisonment of Aboriginal and Torres Strait Islander people is a national crisis, with rates of imprisonment since the Royal Commission into Aboriginal Deaths in Custody skyrocketing, and continuing to get worse. Aboriginal and Torres Strait Islander women represent the fastest growing prison population. Family violence is a leading contributor to the imprisonment of Aboriginal and Torres Strait Islander women and 80% of incarcerated Aboriginal and Torres Strait Islander women are mothers. The disproportionate rates of imprisonment are also dire for Aboriginal and Torres Strait Islander young people,¹² and the recent report of the Northern Territory Royal Commission highlighted the systemic abuse

¹¹ See <https://anrows.org.au/research-program/ncas>

¹² PricewaterhouseCoopers, PwC Indigenous Consulting, Korin Gamadji Institute, Richmond FC & Change the Record (2017) *Indigenous Incarceration: Unlock the Facts*, Melbourne, p17.

experienced by young people in detention.¹³ We are losing too many of our people to the prison system, and this is causing severe, long term and compounding impacts on our families and communities. Family violence is also a leading contributor to the removal of Aboriginal and Torres Strait Islander children from their families, communities and culture, which in turn starts a trajectory towards youth detention and adult incarceration.

To achieve justice targets, Aboriginal and Torres Strait Islander-led solutions must be prioritised. Self-determination in adopting mechanisms to achieve targets or expose system issues necessary to understand target areas identified by Aboriginal and Torres Strait Islander communities and organisations are crucial, such as the National Taskforce to investigate the contact of Aboriginal and Torres Strait Islander women with the justice system that we are calling for through the Redfern Statement Alliance.¹⁴

Both the rates of family violence experienced by Aboriginal and Torres Strait Islander people (predominantly women and children) and the over-imprisonment of Aboriginal and Torres Strait Islander people have reached crisis levels across Australia. Adopting justice targets through the Closing the Gap refresh to both cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander people, and close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people is a crucial opportunity not to be missed. These targets have been identified as a priority by a number of Aboriginal and Torres Strait Islander community controlled and mainstream human rights and community organisations that comprise the Change the Record coalition.

Recommendation 6: All levels of government adopt justice targets to:

Cut the disproportionate rates of family violence against Aboriginal and Torres Strait Islander people to close the gap by 2040; with interim targets designed by or in genuine partnership with Aboriginal and Torres Strait Islander community controlled organisations; and

Close the gap in the rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people by 2040, with an interim target of halving the gap by 2030.

7 Targets to increase culturally appropriate and affordable housing and reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care

In addition to new justice targets, the National FVPLS Forum proposes additional targets be inserted into the Closing the Gap Framework in relation to housing and child protection. Targets to increase culturally appropriate and affordable housing and reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care are critically important as stand-alone measures, and as key aspects of addressing family violence against Aboriginal and Torres Strait Islander people.

Housing

¹³ Margaret White and Michael Gooda, *Report of the Royal Commission into the Protection and Detention of Children in the Northern Territory* 'Volume 2A' [online document] at <https://childdetentionnt.royalcommission.gov.au/Documents/Royal-Commission-NT-Final-Report-Volume-2A.pdf>.

¹⁴ Redfern Statement Alliance, National Family Violence Prevention and Legal Services Forum, National Aboriginal and Torres Strait Islander Legal Services, National Congress of Australia's First Peoples (2017) *Redfern Statement Joint Communiqué: Preventing Violence and Justice Workshop*, 27 June.

Tenancy issues can create significant challenges for Aboriginal and Torres Strait Islander victim/survivors of family violence. In many states and territories there are unacceptably lengthy waiting lists for crisis accommodation, as well as a lack of availability of culturally appropriate public housing. These issues create significant barriers to Aboriginal and Torres Strait Islander victim/survivors of family violence and their children disclosing and fleeing violence. Family, domestic and sexual violence is the leading cause of homelessness and housing instability in Australia. In 2015-16, 38% of people seeking assistance from specialist homelessness services had experienced family violence and 92% of these were women and children.¹⁵ This has increased from 33% in 2011-12.¹⁶

Child removal

Aboriginal and Torres Strait Islander children are 9 times as likely as non-Indigenous children to be in out of home care.¹⁷ Family violence is a primary driver of the removal of Aboriginal and Torres Strait Islander children from their families.¹⁸ One of the biggest deterrents preventing Aboriginal and Torres Strait Islander women from reporting family violence is the fear of child protection intervention and losing one's children. Family violence is a primary driver of the disproportionate and escalating rates of Aboriginal and Torres Strait Islander child removal. However, FVPLS clients frequently report being discouraged by child protection workers (either implicitly or overtly) from seeking legal advice. Additionally, FVPLS clients frequently experience inappropriately punitive responses from child protection workers which, in effect, punish or blame Aboriginal and Torres Strait Islander women for the actions of those who perpetrate violence against them, instead of supporting women to safely maintain the care of their children in a home free from violence.

To achieve these targets, Aboriginal and Torres Strait Islander-led solutions must be prioritised. Specifically, to achieve a target to reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care, the proposals in the Family Matters roadmap are vital. Another key mechanism would be the creation of a nationally consistent mandatory notification and referral system (akin to the Custody Notification System) to be established to refer Aboriginal and Torres Strait Islander families in contact with the child protection system to culturally safe legal services at the earliest possible stage, especially where family violence is a factor in potential child removal. Mechanisms such as these, advocated for by Aboriginal and Torres Strait Islander people are key ways that targets can be progressed and achieved, and that resourcing from Closing the Gap can have the greatest impact.

Recommendation 7:

All levels of government adopt targets to increase culturally appropriate and affordable housing;

All levels of government adopt targets to reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care.

¹⁵ Australian Institute of Health and Welfare, *Australia's Welfare in brief – 2017*, p27 at <https://www.aihw.gov.au/getmedia/5c7b48ba-f5a2-46a6-96bd-2bbae02a5139/AIHW-AUS215-AW17-inbrief.pdf.aspx?inline=true>.

¹⁶ Ibid.

¹⁷ Australian Institute of Health and Welfare, *Child Protection Australia 2014-15*, 2016, page 43 available at <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554973>.

¹⁸ The Victorian Commissioner for Aboriginal Children and Young People reported that "[f]amily violence is one of the largest drivers of children and young people to out-of-home care". See Commission for Children and Young People, *Annual Report 2013-14*, Victorian Government, Sept 2014, page 36 available at <http://www.ccyp.vic.gov.au/downloads/annual-reports/ccyp-annual-report-2014.pdf>

8 Cross-cutting principles

The National FVPLS Forum recommends that a number of cross-cutting principles be embedded in each target area. These principles are a holistic approach, a focus on, and investment in, early intervention and prevention programs, and paying particular attention to the experiences of Aboriginal and Torres Strait Islander women, people with a disability and the differential impacts and approaches needed across different cohorts (i.e. women, men children etc.).

Holistic approach

The interrelated and complex nature of many target areas in the Closing the Gap framework means a holistic approach should be adopted. All targets adopted by should also be informed by underlying drivers of disadvantage. For example, family violence has a significant impact on a range of targets under the current Closing the Gap framework. Therefore, core elements of the Closing the Gap Refresh need to be determined by the perspectives and experiences of Aboriginal and Torres Strait Islander victim/survivors of family violence. It is critical that family violence is visible, and community-led, holistic legal support and early intervention and prevention programs are adequately funded. Particularly, Aboriginal and Torres Strait Islander women's particular experiences have been invisible to policy makers for a number of years, and it is crucial that the strength, needs and voices of Aboriginal and Torres Strait Islander women are visible.

Early intervention and prevention

An emphasis on early intervention and prevention should be a principle and key implementation strategy of Closing the Gap. Adequate funding and ongoing investment in culturally safe and specialist early intervention and prevention work will be especially important to achieve justice targets, including in relation to family violence. Governments must shift away from punitive and law enforcement focused approaches, and towards approaches that prioritise prevention, early intervention and diversion from the criminal justice system and other systems that harm the health of our people – while also ensuring the safety of Aboriginal and Torres Strait Islander people at risk of family violence. Embedding early intervention and prevention is a key mechanism to strike this important balance and reduce rates of both imprisonment and violence over future generations.

Recommendation 8: All levels of government incorporate the cross-cutting principle of adequate investment of culturally safe and specialist early intervention and prevention programs in target areas of Closing the Gap.

Intersectionality

In identifying and progressing targets, the Closing the Gap Refresh process needs to adopt a lens of intersectionality, considering how elements such as gender and disability interact and compound experiences of disadvantage. For this reason, action taken and progress achieved across all target areas needs to be measured across different cohorts (i.e. women, men and children; as well as people with a disability). This is important to understand the impacts of intersectional disadvantage.

Aboriginal and Torres Strait Islander women have distinct and diverse experiences, and face complex and unique barriers. However, many watershed reports such as the Royal Commission into Aboriginal Deaths in Custody have been largely silent on Aboriginal and Torres Strait Islander women's experiences, rendering these distinct experiences invisible to possible makers.

The Federal Government has this year recognised the significance of hearing from Aboriginal and Torres Strait Islander women by providing funding to Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar's *Wiyi Yani U Thangani – Women's Voices* project. This project is the first national initiative to specifically hear from Aboriginal and Torres Strait Islander Women since the *Women's Business* report in 1986.

Targets will need to have a particular focus on Aboriginal and Torres Strait Islander women's experiences and needs throughout the design, implementation and evaluation phases. Aboriginal and Torres Strait Islander's women's specific needs, experiences and voices have long been invisible to policy makers. There is a real opportunity to create systemic change with intergenerational impact by listening and amplifying Aboriginal and Torres Strait Islander women's voices, making sure their experiences are visible and understanding the complex and unique barriers they face, particularly Aboriginal and Torres Strait Islander women who are also victim/survivors of family violence. Measurement of the experiences of Aboriginal and Torres Strait Islander women for each target ensures appropriate measurement of impact as Aboriginal and Torres Strait Islander women are disproportionately impacted by family violence.

It would be a missed opportunity to not embed a specific focus Aboriginal and Torres Strait Islander women's experiences through this refresh of Closing the Gap. Adopting a gendered focus in the form of a principle and focus for each target is a chance to make Aboriginal and Torres Strait Islander women's specific needs and priorities visible to policy makers. This is a significant opportunity to create systemic change with intergenerational impact. Such a sub-indicator would be most effective if included for all phases of Closing the Gap – design, implementation and evaluation of each target.

An intersectional analysis carries particular importance for the adoption of justice targets. Section 5 highlighted that family violence against Aboriginal and Torres Strait Islander women has reached epidemic levels and that Aboriginal and Torres Strait Islander women are also disproportionately incarcerated. Establishing justice targets specifically focusing on these two areas without including an intersectional analysis will not adequately understand, measure or address these national crises. It is critical that this opportunity is not missed.

Recommendation 9: Action taken and progress achieved across all target areas be measured across different cohorts (i.e. women, men and children; as well as people with a disability).

Discussion paper question: How could the Closing the Gap targets better measure what is working and what is not?

9 Monitoring and Evaluation

It is vital that independent monitoring and evaluation, led by or in genuine partnership with Aboriginal and Torres Strait Islander community controlled organisations, is embedded throughout Closing the Gap at periodic stages rather than upon expiry of targets. Aboriginal and Torres Strait Islander community controlled organisations have the expertise necessary to recommend relevant changes to the framework to ensure it meets targets and goals and need to be resourced to adequately guide monitoring and evaluation. Monitoring and evaluation should occur against targets but also against key principles outlined above: self-determination, early intervention and prevention and an intersectional focus.

There is currently a gap in being able to accurately record the impact that Aboriginal and Torres Strait Islander community controlled organisations have: our solutions are the most

effective, but the least recorded. Monitoring and evaluation through Closing the Gap is an opportunity to capture this data and develop an evidence base of best practice initiatives.¹⁹

Through the Redfern Statement Alliance, we are calling for the establishment of an independent Aboriginal and Torres Strait Islander community controlled evidence intermediary to articulate and share insights and evidence of the solutions we have and contribute to self-determination and data sovereignty. Aboriginal and Torres Strait Islander-led solutions such as this are critical to the successful achievement of targets under Closing the Gap.

Recommendation 10: Closing the Gap targets should be periodically evaluated through a continuous improvement framework rather than periodic reviews upon expiry of targets.

10 Conclusion

Family violence experienced by Aboriginal and Torres Strait Islander people (overwhelmingly women) is a national crisis. To have generational impact, this significant reform opportunity must be led by Aboriginal and Torres Strait Islander peoples and Aboriginal and Torres Strait Islander community controlled organisations must be adequately resourced at all stages of the process.

We have outlined a number of items of importance to Aboriginal and Torres Strait Islander victims/survivors of family violence:

- The need for self-determination, that the Closing the Gap Refresh is led by Aboriginal and Torres Strait Islander organisations, communities and individuals, as well as resourcing of Aboriginal and Torres Strait Islander community controlled organisations.
- Concerns that prosperity indicators are insufficient to meaningfully address family violence and/or may have unintended adverse impacts for Aboriginal and Torres Strait Islander victim survivors of family violence;
- The critical importance of adopting justice targets with a specific focus on family violence to ensure family violence and incarceration affecting Aboriginal and Torres Strait Islander people is adequately measured, and that victim/survivors of family violence can understand and access their legal rights and achieve safety;
- Closing the Gap should also adopt targets for housing and to reduce the disproportionate number of Aboriginal and Torres Strait Islander children and young people in out of home care;
- Crucial cross-cutting principles should be embedded in all target areas, specifically a holistic approach, adequate investment in culturally safe and specialist early intervention and prevention programs, and an intersectional analysis, with particular attention to the experiences of Aboriginal and Torres Strait Islander women, people with a disability and the differential impacts and approaches needed across different cohorts (i.e. women, men children etc.)
- The need to develop mechanisms to monitor and evaluate progress in an independent way led by Aboriginal and Torres Strait Islander experts.

The National FVPLS Forum looks forward to further involvement in this momentous process.

¹⁹ See Australian Institute of Health and Welfare, (2018), *Closing the Gap targets: 2017 analysis of progress and key drivers of change*, Cat. no. IHW 193, Canberra: AIHW, Op. Cit., p. 14.

Appendix 1: Membership and a brief history of National Family Violence Prevention Legal Services Forum

The National FVPLS Forum is comprised of 14 Family Violence Prevention Legal Services (FVPLSs) member organisations across the country that provide culturally safe legal assistance and non-legal support to Aboriginal and Torres Strait Islander victim/survivors of family violence – predominantly women and children. The Forum was established in May 2012 and aims to work in collaboration across its member FVPLS services to increase access to justice for Aboriginal and Torres Strait Islander victims/survivors of family violence.

FVPLSs were established in recognition of:

- the gap in access to legal services for Aboriginal and Torres Strait Islander victims/survivors of family violence and sexual assault;
- the high number of legal conflicts within Aboriginal and Torres Strait Islander Legal Services (ATSILS); and
- high rates of family violence in Aboriginal and Torres Strait Islander communities.

The primary function of FVPLSs is to provide legal assistance, casework, counselling and court support to Aboriginal and Torres Strait Islander adults and children who are victims/survivors of family violence. The legal services are provided to victims/survivors in matters related to:

- family and domestic violence orders;
- victims of crime compensation;
- family law; and
- child protection.

FVPLSs also deliver essential community legal education and early intervention and prevention programs. FVPLSs have adopted a holistic, wrap-around service delivery model that prioritises legal service delivery while recognising and addressing the multitude of interrelated issues that our clients face. Nationally 90% of our clients are Aboriginal and Torres Strait Islander women and children.

National FVPLS Forum Members:

- Aboriginal Family Law Service Western Australia (Perth HO, Broome, Carnarvon, Kununnura, Geraldton, Kalgoorlie, Port Hedland)
- Aboriginal Family Legal Service Southern Queensland (Roma)
- Binaal Billa Family Violence Prevention Legal Service (Forbes)
- Central Australian Aboriginal Family Legal Unit (Alice Springs HO, Tennant Creek)
- Djirra - formerly Aboriginal Family Violence Prevention Legal Service Victoria (Melbourne HO, Mildura, Gippsland, Barwon South West)
- Family Violence Legal Service Aboriginal Corporation (Port Augusta HO, Ceduna, Pt Lincoln)
- Many Rivers Family Violence Prevention Legal Service (Kempsey)
- Marninwarnitkura Family Violence Prevention Unit WA (Fitzroy Crossing)
- North Australian Aboriginal Family Legal Service (Darwin, Katherine, Top End)
- Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council Domestic and Family Violence Service (Alice Springs, NPY Tri-state Region)
- Queensland Indigenous Family Violence Legal Service (Cairns HO, Townsville, Rockhampton, Mount Isa, Brisbane)
- Southern Aboriginal Corporation Family Violence Prevention Legal Service (Albany, WA)

- Thiyama-li Family Violence Service Inc. NSW (Moree HO, Bourke, Walgett)
- Warra-Warra Family Violence Prevention Legal Service (Broken Hill)

Appendix 2: Previous submissions made by the National FVPLS Forum

Submission to the Special Rapporteur on Indigenous Peoples

http://www.nationalfvpls.org/images/files/National_FVPLS_Submission_to_the_Special_Rapporteur_on_the_Rights_of_Indigenous_Peoples_-_Final_version_23032017.pdf

Submission to the Special Rapporteur on Violence against Women

http://www.nationalfvpls.org/images/files/National_FVPLS_Submission_to_the_Special_Rapporteur_on_Violence_against_Women_-_...pdf

Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

http://www.nationalfvpls.org/images/files/National_FVPLS_Forum_-_Submission_to_the_Royal_Commission_into_the_Protection_and_Detention_of_Children_in_the_Northern_Territory_-_Response_to_Interim_Report.pdf

Submission to the Australian Law Reform Commission Inquiry into Indigenous Incarceration –

http://www.nationalfvpls.org/images/files/FINAL_NFVPLS_Submission_-_ALRC_Inquiry_into_Indigenous_Incarceration_-_final.pdf

Joint policy paper with SNAIIC – National Voice for our Children and the National Aboriginal and Torres Strait Islander Legal Service: Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families

http://www.nationalfvpls.org/images/files/SNAICC-NATSILS-NFVPLS_Strong_Families_Safe_Kids-Sep_2017.pdf