

11 September 2019

Australian Human Rights Commission
Level 3, 175 Pitt Street
SYDNEY NSW 2000
GPO Box 5218
SYDNEY NSW 2001



84 Hartley Street
PO Box 2109
Alice Springs NT 0871

ABN 98 302 021 142
ACN 302 021 142
ICN No. 4760

Dear Sir/Madam

FREECALL: 1800 088 884

Phone: 08 8953 6355

Fax: 08 8953 6749

Email: caaflu@caaflu.com.au

SUBMISSION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION

The Central Australian Aboriginal Family Legal Unit (CAAFLU) is grateful for the opportunity to respond to the Australian Human Rights Commission Issues Paper titled 'An Australian Conversation on Human Rights' dated April 2019.

CAAFLU is a community legal centre that provides free culturally appropriate legal advice and support services to Aboriginal and Torres Strait Islander people who have experienced (or are experiencing) family violence or sexual assault in Central Australia and the Barkly Region. CAAFLU has offices in Alice Springs and Tennant Creek, allowing us to provide support to Ntaria, Yuendumu, Papunya and Elliott. CAAFLU was established in 2000 and is one of around 14 Family Violence Prevention Legal Services across Australia.

Our work involves advising and representing clients on domestic violence order applications, safety planning, victims of crime compensation claims, child protection, family law, housing and assisting clients with talking to police and understanding the court process. We also provide legal advice and other support services to victims of sexual assault. In addition to this, CAAFLU develops and delivers community legal education to a range of government agencies, non-government organisations, schools and other community stakeholders and contributes to specific law reform measures both locally and nationally.

CAAFLU responds to questions 1, 3, 9 and 12 put forward by the AHRC.

1. What human rights matter to you?

CAAFLU's primary human rights concerns lie with the barriers that Indigenous women face in leaving abusive relationships and reporting sexual violence. In particular, CAAFLU works tirelessly to uphold the rights of these victims to:

- live in freedom and safety¹;
- access an adequate standard of living, including food, clothing, housing, medical care and social services²;

¹ Article 3 of the *Universal Declaration of Human Rights*

² Article 25 of the *Universal Declaration of Human Rights* and Article 11 of the *International Covenant on Economic, Social and Cultural Rights*



- protect their family as a fundamental unit of society³;
- be treated with compassion and respect for their dignity⁴; and
- have police, justice, health, social service and other personnel receive training to sensitise them to the needs of victims and ensure that they receive proper and prompt aid.⁵

3. What are the barriers to the protection of human rights in Australia?

The key barriers that CAAFLU faces in supporting Aboriginal and Torres Strait Islander people who have experienced (or are experiencing) family violence or sexual assault are:

- a lack of emergency financial assistance for victims leaving situations of domestic violence;
- a lack of accessible, trauma-informed and culturally sensitive police guidelines on interviewing victims; and
- out-dated and harmful understandings of sexual violence, which are perpetuated through language used by police officers and the judiciary.
- a lack of transitional accommodation and housing for women who wish to leave an abusive situation but remain in their community;
- Harmful community attitudes including victim-blaming and normalisation of violence;

These barriers and potential remedies are discussed below.

9. What actions are needed to ensure that the government meets its obligation to fulfil human rights – for example, in addressing longstanding inequalities in the community?

Legislative and other reforms to emergency financial assistance

CAAFLU submits that the *Victims of Crime Assistance Act 2006 (NT)* (**the Act**) requires reform to better support the rights of family violence and sexual assault victims to live safely and access an adequate standard of living. Immediate payments of financial assistance is located in Division 2 of the Act. Section 27(5) states that the maximum amount of immediate financial assistance is \$5,000. CAAFLU believes this to be an extremely insufficient amount for victims of sexual violence to utilise in the short term, especially considering the number of immediate costs that a victim leaving a situation of violence must account for, such as:

- (a) assistance with medical costs;
- (b) the replacement of a mobile phone;
- (c) assistance buying or repairing a car;

³ Articles 10 and 11 of the *International Covenant on Economic, Social and Cultural Rights*

⁴ Article 4 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Adopted by General Assembly Resolution 40/34 of 29 November 1985

⁵ Article 16 of the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*, Adopted by General Assembly Resolution 40/34 of 29 November 1985



- (d) assistance with bond or rent money;
- (e) assistance with other relocation expenses such as bus tickets or flights;
- (f) payments of outstanding bills that may affect access to safe housing; and
- (g) removal and/or replacement of personal property such as clothing or furniture.

Further, the legislation fails to provide additional funding for women who leave abusive relationships with their families. This undermines the right of many Indigenous women to protect their families, placing them in an impossible position in which both leaving and remaining in an abusive relationship may result in separation from their children. For example, without sufficient funds to find their own accommodation, many Indigenous women in Central Australia are often only able to secure accommodation in domestic violence shelters that do not permit older male children to stay. This results in older male children (often 12 and over) being separated from their carer (becoming homeless/couch surfing, staying in an unsafe environment, or staying with friends or relatives). However, the alternative of remaining in abusive relationships for these women also exposes their children to harm and the potential of being removed by authorities into out of home care. Indeed Indigenous children are 10 times more likely to be living in out of home care when compared to non-Indigenous children (13.6 per 1000 Indigenous children compared to 1.4 per 1000 non-Indigenous children in 2016-2017)⁶. To meet its human rights obligations to victims and their families, CAAFLU submits that the Northern Territory Government must advocate for the reform of ss 26 & 27 of the *Victims of Crime Assistance Act 2006* (NT) to ensure that the needs of both women and their children are covered under immediate payments of financial assistance. CAAFLU also submits that the limit for these payments should be increased to \$10,000 in order to more adequately support the varying circumstances of victims and recognise that this may be their only source of income for an indefinite period. Additionally, the time that it takes to secure the funds through this type of financial assistance application can be up to 28 days. Such a delay fails to consider the urgency of a victim's situation.

In addition to monetary relief, CAAFLU recommends that the rights of victims be supported in other ways. For example, vouchers to buy food, supplies and public transportation costs are possible means through which the government could provide practical support. This could significantly help reduce the stress that victims face in determining how much money they need to set aside for basic goods. Indeed, it is important to consider that the commonwealth government Centrelink scheme only provides emergency payments up to the level of 1 fortnightly payment, which equates to \$400-500. This amount is expected to capture the costs listed in items (a)-(g), which again is a failure to recognise the practical costs of escaping violence.

Separately, despite the Royal Commission into Banking and the key findings that have been handed down, only the Commonwealth Bank of Australia offers an emergency Domestic Violence package, which is valued at \$2,000. This funding is available for customers only and is usually provided by way of vouchers, food or petrol to assist with immediate evacuation costs. CAAFLU submits that greater and more readily accessible financial emergency relief is necessary to enable victims of family violence and sexual assault to live freely, safely and adequately. The availability of such relief, whether through direct payments or vouchers, could mean the difference between life and death in some situations.

Transparent, trauma-informed police response

CAAFLU has also found that a key impediment to protecting the rights of victims to be treated with compassion and respect has been a lack of information about how police investigate incidents of

⁶ ABC Fact Check, 'Have Removal Rates of Indigenous Children Increased 400 Percent since 2008?' (21 December 2018) <<https://www.abc.net.au/news/2018-12-12/fact-check-removal-rates-of-indigenous-children/10566014>>.



family violence and sexual assault. For example, guidelines such as the *General Order on Sexual Assault Response and Investigation (2014) (the General Order)* and *NTPF - Domestic and Family Violence Strategy 2012-2014* and *NTPF - Investigation Management Guidelines*, are not easily publicly available. CAAFLU submits that it is imperative that such guidelines are made easily publicly available in order to enable victims to understand their rights when reporting incidents to police. Ensuring that key guidelines such as the General Order are publicly available will also assist organisations such as CAAFLU to support victims who are traversing police processes.

CAAFLU further submits that family violence and sexual assault victims should be better supported by police officers who come from a trauma-informed perspective and take a victim-centric approach. We note that the "Victim Management" section of the General Order lacks the necessary detail to appropriately instruct police officers who are investigating sexual assault incidents. For example, clause 39 of NT's General Order simply states, "*Investigative interviewing techniques are designed to elicit the best information from victims of serious crime such as sexual assault and these techniques are highly recommended*", without detailing what the techniques involve or how sexual assault victims will be treated. In contrast, Victoria's 48-page equivalent police guide titled *Code of Practice for the Investigation of Sexual Crime (2016)* stipulates that "*victims can sometimes feel they are to blame so it is important for attending police to reassure the victim that they are not to blame themselves for the incident and demonstrate empathy and concern about the events*" (Guideline 7.2) and "*every effort should be made by the investigators to build rapport and gain confidence of the victim*" (Guideline 7.4.1).

CAAFLU also submits that two essential guidelines are notably absent in the NT's General Order, including the requirement that victims are interviewed by police officers of the same sex and that victims are interviewed through a historically and culturally sensitive approach. Given that the Indigenous victimisation rate for sexual assault was recorded as more than twice that of the non-Indigenous population in the Northern Territory in 2018,⁷ it is imperative that there are specific guidelines for interviewing Indigenous people who have experienced sexual violence. The NT General Order should take guidance from the Victorian Code of Practice, which provides that "*police are to have regard to the complex set of barriers faced by victims within the Aboriginal community*" and outlines how a tailored response can be rendered by police in Guideline 6.1.1, including the involvement of a Victoria Police Aboriginal Community Liaison Officer, where available.

Improved language and understanding of sexual violence

Our organisation is also concerned about how police interviewing standards in Australia are infringing the right of victims of sexual violence to be treated with compassion and respect for their dignity. There continues to be out-dated and harmful understandings of sexual violence throughout Central Australian communities, which is perpetuated through language used by police officers and the judiciary.

The systems that respond to sexual violence can only be strengthened by reshaping the language used by police, which in turn will adjust antiquated attitudes around sexual violence across the Northern Territory. For example, questions such as "*what were you wearing that night?*" or "*were you enjoying it?*" can be extremely harmful to people who have experienced sexual violence and provide no evidentiary value. Examples of this language being used have occurred as recently in the last 12 months in Central Australia, which demonstrates that police as an investigative fraternity are still not fully equipped to uphold the rights of victims to be treated with compassion and respect. Investigating

⁷ Australian Bureau of Statistics, *Recorded Crime - Victims, Australia 2018* (27 June 2019) <<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4510.02018?OpenDocument>>.

officers must avoid framing questions in a way that directly or indirectly blames victims for incidents or attempts to infer consent from asking survivors whether they “enjoyed” specific acts.

Language used in police interviews is paramount. There needs to be detailed guidelines for front line responders to ensure that questions are asked in a manner that is sensitive to victims' experiences and do not discourage them from reporting incidents to police. The principles of trauma-informed practice should be embedded in these guidelines to ensure that victims are adequately supported at the outset, including, “consistent emphasis on safety, trustworthiness, choice, collaboration and empowerment” and “consistent emphasis on what may have happened to a client, rather than what is wrong with a client/s”.⁸ For example, some interviewees may not use the word ‘rape’ as they may feel uncomfortable with speaking directly about sexual violence. It is important for officers to gauge how interviewees identify themselves and their experiences and adjust their language accordingly. Questions that can be answered with “yes” or “no” should be avoided and replaced with ones that prompt the interviewee to express their experience in their own words. These can include “please describe your experience”, or “can you tell me about...” which remain non-leading, but still illicit the information required to establish if an offence has been committed.

Training and toolkits for police

CAAFLU takes seriously the rights of victims to have police, justice, health, social service and other personnel receive training to sensitise them to the needs of victims and ensure that they receive proper and prompt aid. In particular, CAAFLU submits that police officers should receive specialised training in the nature and dynamics of sexual assault, and information about the social, psychological and cultural circumstances that influence the behaviour of people who have experienced sexual violence.

Police Forces across the country should consider developing innovative interview and response strategies to encourage victims to disclose the details of incidents in their own manner. For example, we have seen diagrams and maps creatively employed in interviews which have allowed victims to clearly indicate where specific acts have occurred or the location of their movements on the day of the incident/s. A toolkit for police officers and supporting organisations should also be developed to promote a trauma-informed and victim-centric approach. Due to the complexities of this area, CAAFLU believes that more guidelines must be provided to police in dealing with sexual assault victims. There are several resources that can be used in order to develop a toolkit for police officers. These should include drawing on best practice trauma-informed interview techniques, providing hypothetical sexual assault scenarios for police officer training, and utilising other resources to develop actionable tips in order to create and maintain a safe space for discussion and effective dialogue.⁹

Lastly, the systems that respond to sexual violence (the Police Force, criminal justice system, counselling, sexual assault referral centres and other support services) should coordinate to reduce the need for people who have experienced sexual violence to provide multiple recounts to different people and relive traumatic experiences. As a guide, the NSW Government's *Safer Pathway* program provides a “streamlined and integrated approach to safety assessment, referrals and service

⁸ Cathy A Kezelman and Pam Stavropoulos, Blue Knot Foundation, *Trauma and the Law: Applying Trauma-informed Practice to Legal and Judicial Contexts* (2016) pp. 5-6.

⁹ For some current examples of trauma-informed best practice guides to deal with sexual assault victims, see: Dart Center, *Trauma-Informed Victim Interviewing* < <https://www.ovcttac.gov/taskforceguide/eguide/5-building-strong-cases/53-victim-interview-preparation/trauma-informed-victim-interviewing/>> and Blue Knot, *Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts* <<https://www.blueknot.org.au/Portals/2/Reports%20and%20Docs/Legal%20and%20Justice%20Background%20Paper%20with%20Abstract%20FINAL.pdf>>

coordination for victims of domestic violence".¹⁰ This program employs a Domestic Violence Safety Assessment Tool to consistently and accurately assess the level of threat for victims, a Central Referral Point that manages case referrals, and a network of Local Coordination Points throughout NSW to arrange local responses and coordinate cases and support for victims, including Safety Action Meeting for victims identified as being at serious threat of self-harm. CAAFLU believes that if governments encourage Police Forces to reform the systems that respond to people who have experienced sexual violence, Police will gain more trust from the community, which will ensure that people (especially in Aboriginal communities) feel safe enough to report their incident/s.

Advocating for Female Only Police Stations

As an effective means of responding to and preventing gendered violence, CAAFLU would support the implementation of female only police stations in Australia. Female only police stations are emerging in many countries including India, Brazil and Argentina. They create a safe environment for women to report violence where they are provided with food, clothing, housing, childcare and connected with other services including counselling, health, legal, financial and social support.

In 2018, a research project to measure the effectiveness of female police stations in Argentina was funded by the Australian Research Council and led by Professor Kerry Carrington from the School of Justice Faculty of Law at Queensland University of Technology (QUT).¹¹ The initial report from this project outlines the shortcomings of current police responses to sexual and domestic violence as a result of pervasive masculine police cultures including:

- *ambivalence and lack of empathy toward the victims of domestic and sexual violence*
- *failure to provide women with adequate information or follow up about the process*
- *lack of referral to appropriate support services in emergency and non-emergency situations*
- *not taking threats and harassment seriously*
- *victim blaming*
- *reluctance to believe or take victims' complaints seriously*
- *'siding with the perpetrator' and regarding victim's complaints as 'too trivial and a waste of police resources'*

The Report advises that women are more likely to report family violence and seek help in a female only police station, which is more likely to lead to a conviction and intervention in the cycle of violence. As the report details:

'Women's police stations provide a unique framework for policing gender violence as they strategically navigate the distance between women as victims of gender violence and an array of government and judicial agencies. Women police are insiders situated within close proximity to community, they belong to the same gender as the women who report to them, and this sense of connection enhances women's willingness to confide in them. However, by also being outsiders with state power to enforce laws that criminalise gender violence, women's police stations are situated in the unique position of being able to challenge local norms that underpin gender violence, and take action against perpetrators. They are both regulators of the social order but also 'engines for change'. This unique regulatory framework

¹⁰ Women NSW, *Safer Pathway Fact Sheet* (November 2017) <<https://www.women.nsw.gov.au/download?file=637600>>.

¹¹ Carrington, K. Sozzo, M. Puyol, M. V. Gamboa, M. Guala, N. y Zysman, D. (2019) *The Role of Women's Police Stations in Preventing Gender Violence: Buenos Aires, Argentina: Stage 1 Report ARC Project. School of Justice, Faculty of Law, Queensland University of Technology: Brisbane.*

enhances the capacity of women's police stations in policing gender violence, consistent with the United Nation goals of promoting gender equality, empowering women, providing access to justice, and the elimination of violence against women (UN 2016).' P23

Other useful quotes from the report:

'Given the systemic shortcomings of traditional policing responses to victims of domestic and sexual violence, the case for sex segregation in policing is strong. There is a growing body of evidence showing that women's police stations or units, alongside increasing the number of women in law enforcement more generally, will reduce some of the systemic problems with current male dominated models of policing violence against women.' P2

Women can come at any time of day or night with their children, because the women's police stations provide childcare and are family friendly, very much unlike general police stations (Photos C, D and E). When women come to the station with nothing they are provided with clothing, food and support... p8

Prevention work: 'prevention took many forms, but can be divided into three principle strategies. The first is work with women to prevent re-victimisation, the second is by working collaboratively with other organisations (co-ordinated by local boards), and the third is work with the community to prevent violence from occurring by transforming the cultures and norms that sustain violence against women.' P10

'Empirical studies of women's police stations have consistently shown that women are more comfortable reporting to women police in a family friendly environment (Jubb et al. 2010; Miller and Segal 2018; Natarajan 2005, 91). This is why women's police stations are effective in enhancing women's willingness to report, which then increases the likelihood of conviction, and enlarges access to a range of other services such as counselling, health, legal, financial and social support (Jubb et al. 2010; Santos 2005, 50; Perova and Reynolds 2017). Our research on women's police stations in the province of Buenos Aires supports these conclusions. While they vary in appearance and have minimal resources, women's police stations are one of the most important entry points for accessing justice and enhancing the visibility of violence against women.' P22

'The presence and proximity of women's police stations not only increases reporting, but it sends a message to the local barrio that violence against women will not be tolerated, that it is a crime and that perpetrators will be held accountable. Beyond that women's police stations are especially effective in strategically placing themselves deep within the local community, through varied and 23 innovative forms of engagement, to turn around the norms that sustain violence against women and therefore prevent violence from occurring into the future.' P22-23

12. Are there other issues on which you wish to comment?

Australian Bill of Rights

CAAFLU also supports the introduction of a national Bill of Rights in order to implement some of Australia's international human rights obligations into domestic law. In particular, CAAFLU stresses the necessity of a Bill such as the Australian Bill of Rights Bill 2017, which includes the rights of Indigenous people and children.¹² Greater recognition of these rights at a federal level is essential for

¹² See Article 10 of the Australian Bill of Rights Bill 2017 <<https://www.legislation.gov.au/Details/C2017B00161>>.

creating a stronger platform to monitor and defend the rights of Indigenous victims of family violence and sexual assault. For example, CAAFLU submits that the legal recognition of the rights of Indigenous persons to independence and reasonable financial and technical assistance from the Government would significantly improve its capacity to challenge the insufficient and inequitable provision of emergency financial assistance to victims. Similarly, legislating a right of Indigenous victims to be treated with compassion and respect would empower CAAFLU and comparable organisations to help victims respond to offensive and harmful understandings of sexual violence as human rights breaches, and not simply a failure to abide by best practice procedures.

Constitutionally enshrined Indigenous voice

In addition, CAAFLU endorses the Uluru Statement From The Heart, which advocates for a constitutionally enshrined First Nations voice in the Australian legislative process. Our submission is that a constitutionally guaranteed First Nations voice in Federal Parliament is vital to enable Indigenous persons to meaningfully shape laws and policies that affect their human rights. CAAFLU also supports the establishment of a Makarrata Commission, which would supervise a process of agreement-making between Australian Governments and First Nations and truth-telling about Australia's history of colonisation. The best assurance of lasting and comprehensive Indigenous rights recognition is law reform in the context of a deeper national understanding of the past and present harms inflicted on Indigenous people and the importance of a fair, truthful and reconciled Australia.

Please let us know if you have any questions or require further information about our work.

Yours faithfully

CAAFLU

Aboriginal Corporation



Kim Margaret Raine
Principal Legal Officer