Legislative Scrutiny Committee
Legislative Assembly of the Northern Territory
GPO Box 3721
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Via email: LA.Committees@nt.gov.au

1 April 2025

RE: DOMESTIC AND FAMILY VIOLENCE AND VICTIMS LEGISLATION AMENDMENT BILL 2025

Dear Legislative Scrutiny Committee,

Our organisations, the Central Australian Aboriginal Family Legal Unit (CAAFLU) and the North Australian Aboriginal Family Legal Service (NAAFLS) are both Aboriginal Community Controlled Organisations (ACCOs) providing specialist, culturally safe, trauma informed, legal support services exclusively to Aboriginal and Torres Strait Islander victim-survivors of domestic, family, and sexual violence (DFSV) across the Northern Territory (NT).

CAAFLU operates across Central Australia and the Barkly region, covering more than 872,354 km², while NAAFLS provides services across the Top End, including the Big Rivers region, Katherine, the Tiwi Islands and Nhulunbuy, servicing more than 350,000 km². Together, our services reach 90% of the NT's landmass, delivering culturally safe legal support to some of the most remote and underserved Aboriginal communities in Australia. We are on the ground, walking with Aboriginal women and families every day to create safety, justice, and healing.

As ACCO-led DFSV legal services who have served our Aboriginal communities for 25 years, our solutions are specialist and community-led. We have a deep understanding of the unique barriers Aboriginal victim-survivors face when accessing justice and safety. Under the National Agreement on Closing the Gap, all governments have acknowledged that ACCOs are better for, and best placed to deliver services to, Aboriginal people. Access to our Aboriginal-led, specialist DFSV organisations is key to achieving Target 13: By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%.

We wish to express our disappointment regarding the lack of meaningful consultation and the limited timeframe provided to respond to the Domestic and Family Violence and Victims Legislation Amendment Bill 2025 ('the Bill'). We are particularly concerned that the Bill fails to adequately include or reflect the voices of Aboriginal women, their families, communities, or ACCOs working in the DFSV sector. In line with the National Agreement on Closing the Gap, we urge the NT Government to recognise that any effective and culturally safe response to DFSV must be led by Aboriginal people, communities, and DFSV specialist ACCOs.

Mandatory Sentencing

We submit that the safety of Aboriginal victim-survivors of DFSV must be a paramount consideration in any legislative reform. This requires a careful, culturally informed approach that centres the voices and experiences of Aboriginal women and communities, particularly as Aboriginal women are disproportionately impacted by violence and are significantly more likely to be killed by a current or former partner than non-Indigenous women.

While the criminal justice system plays a role in managing DFSV, it is only one part of the response. Incarceration rates in the Northern Territory are among the highest in the world and 5.7 times the national average at 1,182 prisoners per 100,000 people[1] with Aboriginal people making up 88% of the prison population. Yet rates of DFSV in the Northern Territory are also far higher than in any other jurisdiction, in particular:

- rates of domestic and family violence related assault were three times the national average; and
- the rate of domestic and family violence-related homicide are seven times higher than the national average.[2]

The data clearly shows that punitive responses, alone, do not act as a deterrent or keep people safe from DFSV.

Any meaningful, long-term reduction in DFSV requires investment in specialist, culturally safe, Aboriginal-led responses that prioritise healing, self-determination, prevention, and community-driven solutions. Strengthening these approaches, rather than expanding punitive responses, is key to achieving safety and justice for Aboriginal women and their families.

We hold significant concerns regarding the introduction of mandatory sentencing for breaches of Domestic Violence Orders (DVOs) as proposed in the Bill.

Introducing mandatory sentencing removes judicial discretion, undermining the ability of Courts to consider cultural, historical, and systemic factors that contribute to the criminalisation of Aboriginal people. This is particularly concerning given the demonstrated patterns of misidentification of victims as perpetrators and the lack of trauma-informed responses within the justice system.

The NT Law Reform Committee's 2021 Report on *Mandatory Sentencing and Community Based Sentencing Options* found that mandatory sentencing provisions are 'unprincipled, unfair and unjust.'[3] The primary goal or objective of mandatory sentencing is to deter people from committing criminal offences, however the Australian Law Reform Commission's *Pathways to Justice* Report found that, 'evidence suggests that mandatory sentencing increases incarceration, is costly and is not effective as a crime deterrent'.[4] In fact, recidivism rates highlight that incarceration contributes to the problem. In the Northern Territory, 60% of released prisoners return to prison with a new sentence within two years, this is significantly higher than the national rate of 43%.[5]

[1] Australian Bureau of Statistics (2024) Prisoners in Australia.
[2] The Equality Institute, "Evidence Snapshot: what we know about domestic, family, and sexual violence in the Northern Territory – and what we don't," (2023), 6.
[3] NT Mandatory Sentencing page 37
[4] Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report 133, 2017
[5] Productivity Commission, "Report on Government Services" (2025), Table CA.4.

This demonstrates that mandatory sentencing is ineffective in reducing DFSV recidivism rates and is not a deterrent for offending. Instead, we need rehabilitative approaches and community-driven solutions.[6]

The impulsive decision of the NT Government to reinstate mandatory sentences also disregards cultural practices and sensitivities, particularly regarding risk and/or threat of violent retribution or 'payback' by the perpetrator or the perpetrator's family against the victim or their family and friends. This risk is considerable and acutely felt by victims, as can be seen from it being one the most cited reasons why Aboriginal women refrained from reporting victimisation in a survey conducted by Matthew Willis in 2010.[7] Of particular relevance to mandatory reporting, Matthew Willis' research found that Aboriginal women feel the burden of having a duty to protect perpetrators from prison due to overrepresentation in the justice system but also that the mere arrest of a perpetrator enlivens a fear of 'payback' from the perpetrators family.[8] Mandatory sentencing is not a response that addresses the complexities of DFSV and lacks a culturally appropriate and tailored solution for Aboriginal communities.

We implore the Legislative Scrutiny Committee to consider the recommendations of the NT Coronial Inquest into four domestic violence deaths as alternate approaches to keeping victims safe. The coroner highlighted the devastating consequences of systemic failures in responding to DFSV and the critical need for culturally appropriate services that address the underlying causes of violence. Implementing mandatory sentencing without addressing these systemic issues will likely compound existing harms and increase over-incarceration rates among Aboriginal people. In support of these recommendations, the NT Government's DFSV Reduction Framework emphasises the importance of holistic, community-led approaches to reducing violence. Mandatory sentencing runs counter to these principles by prioritising punitive measures over prevention and rehabilitation.

For the reasons outlined above, we do not recommend implementation of mandatory sentencing and support retention of judicial discretion to allow Courts to account for individual circumstances and the introduction of culturally appropriate diversion programs as an alternative to punitive measures. These programs should focus on healing, rehabilitation, and community accountability to reduce recidivism and support positive change.

Victims of Crime

The amendments to the *Victims of Crime Assistance Act 2006* (the Act) fail to adequately address the barriers faced by Aboriginal victim-survivors when seeking compensation. Complex application processes, combined with a lack of culturally safe support services, mean that many Aboriginal people are unable to access the assistance to which they are entitled. Research has consistently shown that victim-survivors from Aboriginal communities often experience significant challenges navigating bureaucratic processes due to language barriers, lack of culturally appropriate information, and distrust of legal institutions.[9]

[6] Northern Territory Department of Attorney-General and Justice, "Northern Territory Correctional Services Annual Statistics 2022-2023," (2023), 42.
[7] Matthew Willis, 'Non-disclosure of violence in Australian Indigenous communities' (2011) as accessible at https://www.aic.gov.au/publications/tandi/tandi405.
[8] Ibid.
[9] Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (Report 133, 2017

Removal of legal qualification requirements (Section 24)

We are concerned the proposed amendment to Section 24 of the Act substantially alters the qualifications required for assessors under the financial assistance scheme. By allowing the Director to appoint any person as an assessor without specifying minimum qualifications, the amendment creates a situation where individuals without legal training may be making complex determinations about victim compensation. This represents a significant departure from the current requirement that assessors must have legal expertise, either through their role as a legal practitioner or through specific authorisation under the *Law Officers Act 1978*.

The Australian Law Reform Commission has previously emphasised the importance of specialised expertise in legal decision-making affecting Aboriginal people, noting that 'specialisation creates conditions whereby decision-makers can acquire relevant cultural and social awareness.'[10] The potential appointment of non-legally qualified assessors raises serious concerns about the assessment quality in that victim compensation applications often involve complex legal issues including causation, quantum of damages, and interpretation of statutory provisions including the 'three or more' rule which requires a nuanced understanding of DFSV. Staff without legal qualifications may lack the expertise necessary to properly evaluate these matters and without a strong understanding of legal principles and precedent, there is a significant risk of inconsistent decision-making across different assessors.

With these risks in mind, victims may have their entitlements incorrectly assessed in the absence of proper legal analysis of their claims and this in turn may lead to an increased volume of review of decisions, only further delaying the victim's access to compensation. Further, there is potential for assessments to become administrative processes rather than legal determinations, diminishing the rights-based nature of the scheme. We understand this change is being explored to reduce waiting times; however, research demonstrates that specialised legal knowledge significantly improves outcomes in compensation assessments.[11]

We strongly recommend the minimum legal qualifications for all assessors are retained, to ensure decisions are properly informed by legal principles. If expanding the assessor-pool is necessary, that all determinations made by non-legally qualified assessors include legal oversight. Furthermore, we recommend the inclusion of cultural competency requirements for assessors and the inclusion of Aboriginal Liaison Officers to support the assessment process and communications with victims.

Notification of Electronic Monitoring Breaches (New Regulation 5)

The introduction of Regulation 5, mandating notification of electronic monitoring breaches, raises several significant concerns for our Aboriginal clients. While increased transparency is generally positive, it is essential to ensure that notifications about offender monitoring breaches are delivered with cultural sensitivity and an awareness of the complex family and community dynamics prevalent in Aboriginal communities.[12] Failing to do so could inadvertently cause harm and heighten existing tensions for victims.

Furthermore, notifications that are delivered without appropriate support can risk retraumatising victims. There is currently no provision to ensure that notifications are delivered within a trauma-

[10] Australian Law Reform Commission, "Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples," ALRC Report 133 (2018), para 10.24.

[11] Productivity Commission, "Access to Justice Arrangements," Inquiry Report No. 72 (2014), 124-127.

[12] Northern Territory Government, "Aboriginal Justice Agreement 2021-2025," (2021), 32.

informed framework or with culturally appropriate support measures in place. This oversight can have severe implications for victims who are already navigating the complexities of DFSV and related trauma.

In addition, effective community safety planning is critical, particularly in remote Aboriginal communities where knowledge of an offender's monitoring breach requires culturally specific approaches. Our remote communities often face limited access to police, alternative accommodation, and other vital support services. Notification processes must therefore be developed with a thorough understanding of these challenges to avoid placing victims at further risk.

Application Forms (Section 8 Replacement)

The amendment to Section 8 of the Act, which replaces detailed application requirements with an undefined "approved form," raises considerable concerns. The lack of clear, specific requirements risks creating new barriers for Aboriginal victims, particularly those with limited English literacy or who face challenges with digital access.[13]

Equally concerning is the absence of provisions to ensure that the approved forms are culturally appropriate. There is no guarantee that these forms will be developed with consideration for cultural factors relevant to victimisation and appropriate compensation. Without culturally responsive design, there is a risk that significant cultural elements may be overlooked, excluding critical aspects of Aboriginal experiences and perspectives.

Language barriers pose an additional challenge, as many Aboriginal clients in the Northern Territory speak English as a second, third, or even fourth language. Data from the 2021 Census indicates that in some remote NT communities, over 60% of residents speak an Aboriginal language as their primary language at home.[14] The amendment fails to address the need for forms to be available in Aboriginal languages or for translation support to be readily available. This omission may result in further exclusion from vital support and assistance, as evidenced in 2022 by NT Legal Aid Commission who identified form complexity as a primary barrier to accessing legal services for Aboriginal people.[15]

The complexity and accessibility of forms are also key concerns. There is no provision in the amendment to ensure that new approved forms will be designed to accommodate people with varying literacy levels and diverse cultural backgrounds. This lack of consideration is particularly problematic given that our client base often encounters significant obstacles when interacting with bureaucratic systems. Ensuring that forms are user-friendly, culturally safe, and linguistically accessible is essential to promoting equitable access to justice and support.

While we understand the intent may be to streamline processes, victim compensation is fundamentally about justice and requires appropriate legal expertise and cultural competency. The proposed amendments risk undermining the quality and fairness of the compensation scheme, with disproportionate impacts on Aboriginal victims of crime.

[13] The Australian Bureau of Statistics reports that in remote NT communities, only 34% of Aboriginal households have regular internet access. Australian Bureau of Statistics, "Household Use of Information Technology, Australia," (2021).
[14] Australian Bureau of Statistics, "Census of Population and Housing," (2021).
[15] Northern Territory Legal Aid Commission, "Barriers to Justice in the Northern Territory," (2022), 17-19.

Closing the Gap

The National Agreement on Closing the Gap (CtG) represents a commitment made by all Australian governments to work in genuine partnership with Aboriginal and Torres Strait Islander peoples address systemic inequities and improve outcomes in health, safety, justice, and wellbeing. A core principle of the CtG Agreement is that ACCOs are better for Aboriginal people, achieve better results, employ more Aboriginal people and are often preferred over mainstream services.

Under Priority Reform Two – Building the Community-Controlled Sector, the CtG Agreement recognises the vital role of ACCOs in delivering community-led solutions based on local needs, culture, and connection to Country. CAAFLU and NAAFLS are both ACCO-led, specialist legal services supporting Aboriginal and Torres Strait Islander victim-survivors of DFSV across more than 90% of the Northern Territory. Despite this, this Bill has proceeded without genuine engagement with our organisations. We urge the NT Government to meaningfully engage with our services and the communities we represent.

Our services directly contribute to the Closing the Gap **Target 13**:

> *By 2031, reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50%, as progress towards zero.*

The interconnected nature of DFSV and systemic disadvantage means that our services also contribute to the progress of three other Closing the Gap targets:

- **Target 12** – Reduce the over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45%
- **Target 11** – Reduce the rate of Aboriginal and Torres Strait Islander young people in detention by at least 30%
- **Target 10** – Reduce the incarceration rate of Aboriginal and Torres Strait Islander adults by at least 15%

However, the Bill relies on punitive measures such as mandatory sentencing **which actively undermines the CtG Agreement Targets.** As Justice Judith Blokland of the NT Supreme Court recently stated:

> ***"Instead of it being a deterrent, it appears to drive repeat offending…If prison alone was the solution, the Territory would already be the safest place in the country."***[16]

The NT has the second highest imprisonment rate in the world.[17] **The NT imprisonment rate is more than double any other Australian jurisdiction.** These figures are a direct result of policy failure, not community failure. Increasing incarceration, particularly through mandatory sentencing, does not create safety. It entrenches harm, over-polices Aboriginal communities, and widens the gap the CtG Agreement seeks to close.

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[16] Laetitia Lemke, 'Judge Urges Radical Rethink of NT's Growing Crime and Prison Problem' *ABC News* (online, 15 March 2025) https://www.abc.net.au/news/2025-03-15/nt-judge-urges-rethink-on-how-to-reduce-crime/105015740.

[17] Joseph Hathaway-Wilson, 'Data Shows the NT's Prison Population Has Surged to a New High' *ABC News* (online, 14 March 2025) https://www.abc.net.au/news/2025-03-14/nt-prison-population-hits-new-record-high/your-article-id-here.

To honour the commitments made under the National Agreement on Closing the Gap, the NT Government must;

- Invest in Aboriginal-led, community-based legal and support services
- Shift away from punishment and toward prevention, healing, and early intervention
- Listen to Aboriginal organisations that have been doing this work for decades

Only by working in genuine partnership with ACCOs can we achieve justice, safety, and healing for Aboriginal women, families, and communities. To truly close the gap, the NT Government must shift investment away from systems that punish and toward systems that heal – led by specialist legal services supporting Aboriginal and Torres Strait Islander victim-survivors of DFSV.

To truly meet the commitments of the CtG Agreement, it is not enough to merely consult with Aboriginal-led organisations - they must also be resourced and empowered to lead. Introducing this Bill without Aboriginal consultation or oversight risks deepening the very gaps the CtG Agreement seeks to close.

CAAFLU and NAAFLS reiterate that any DFSV law reform must be aligned with the Closing the Gap targets and guided by the voices, expertise, and leadership of Aboriginal women, families, and ACCOs.

Conclusion

NAAFLS and CAAFLU call on the NT Government to engage in genuine consultation with Aboriginal Community Controlled Family Violence Prevention Legal Services to ensure that DFSV law reform reflect the needs and lived experiences of Aboriginal people. Without culturally appropriate solutions, these amendments will do more harm than good.

Thank you for your consideration.

Yours sincerely,

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