



Victorian  
Aboriginal  
Legal Service



26 July 2024

Legislative Assembly Legal and Social Issues Committee

By email: [JSCATSIA@aph.gov.au](mailto:JSCATSIA@aph.gov.au)

To the Committee Members,

**Re: Inquiry into perpetrators of family violence**

Thank you for the opportunity to present at the upcoming panel, with Victoria Legal Aid (VLA), the Law Institute of Victoria (LIV) and the Federation of Community Legal Services (FCLC) on August 6<sup>th</sup>. I am writing to provide written feedback on the Committee's inquiry into capturing data on family violence perpetrators in Victoria in advance of this hearing to support the Committee in its considerations.

**Overall Feedback on the scope and intent of the inquiry**

We understand the purpose of this inquiry is to better understand “the mechanisms for capturing data on the profile and volume of perpetrators of family violence [people using family violence] in Victoria and barriers to achieving a full understanding of this cohort”<sup>1</sup> We are concerned however that there may be unintended consequences due to the narrow scope of inquiry but also the manner in which the findings from this inquiry may lead to over-policing and criminalising people rather than addressing the underlying causes of violence towards women.

For this inquiry to only focus on data relating to people who use violence, misses the nuance and complexity of family violence. There needs to be a holistic lens and approach to understanding and addressing family violence, including how we capture data, otherwise it risks further criminalising women and young people who have been misidentified as the users of violence.

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<sup>1</sup>Inquiry into capturing data on family violence perpetrators in Victoria, [Terms of Reference](#).

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## Misidentification

VALS remains deeply concerned regarding the misidentification of Aboriginal women and young people, especially those living with disability and who are LGBTIQ+SB, as the users of violence in family violence situations by Victoria Police. We refer to our previous advocacy on this issue<sup>2</sup>, and reiterate our concerns that this is part of the systemic discrimination, ongoing colonial violence and injustice experienced by Aboriginal women. Aboriginal women represent the fastest growing prison population in Victoria,<sup>3</sup> and we know a vast majority have dependent children. Victoria Police have trialled programs to address misidentification, and Family Violence Command are working on guidelines to address where misidentification occurs, but more still needs to be done to stop misidentification in the first place.

The impacts of misidentification are profound and can include separation from children, criminalisation, and lack of access to necessary supports, trauma and the continuation of violence in the home. Criminalisation of affected family members replicates the trauma and abuse they have already suffered. An indication as to the level of misidentification is that in 2020, 79.4 per cent of Aboriginal women listed as the respondent had previously been recorded as a victim, and there'd been a 44 percent rise in Aboriginal women being listed as a respondent in Family Violence reports from 2016-2020.<sup>4</sup>

There is also a significant risk of criminalising young people who use violence in the home, this includes how we capture and understand criminogenic data relating to family violence. It is well documented that family violence is the lead cause of Aboriginal children being removed from their home.<sup>5</sup> We also know that 89 per cent of young people who use violence in the home have experienced violence or abuse themselves, and that this violence can co-occur with intergenerational trauma and

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<sup>2</sup> VALS, (2021) [Nuther-mooyoop to the Yoorrook Justice Commission's Inquiry into Victoria's Criminal Justice Inquiry](#), p71; VALS Policy Paper, 'Addressing Coercive Control Without Criminalisation' p61.

<sup>3</sup> Centre for Innovative Justice, '[Leaving Custody behind: A fact sheet on drivers and alternatives to women's incarceration](#)' (RMIT, 2021)

<sup>4</sup> Family Violence Reform Implementation Monitor, '[Monitoring Victoria's family violence reforms: Accurate identification of the predominant aggressor](#)', December 2021, p.10.

<sup>5</sup> Yoorrook Justice Commission (2023) Yoorrook for Justice Report.

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child abuse.<sup>6</sup> Any focus on understanding the “profile and volume” of people who use violence, especially when it comes to Aboriginal children and young people, poses a risk of criminalising and traumatising young people who have also been the affected family members (AFMs). VALS supports Victoria Legal Aid’s submission to the Committee which raises concern about how the current data relating to persons using violence (PUV) is used/collected, especially when it relates to young people and the inherent power dynamics that occur when there is family violence, and the young person is using violence in the home.<sup>7</sup>

VALS shared with the Yoorrook Justice Commission at the Social Justice Hearing dedicated to Family Violence a case study of an Aboriginal woman who had been misidentified as the PUV by police. She had defended herself and a relative. Ms Emily Yates, Managing Lawyer for VALS’ Criminal Practice shared that, “She was not a violent person, and was accused of that probably because she’s an Aboriginal woman and wasn’t believed in the first instance by police, and then also by the prosecution.”<sup>8</sup>

### **Nuance of family violence data available**

How we collate and share data relating family violence must do no further harm to affected family members nor further criminalise those who have been misidentified. The government must be transparent and accountable about what data they have and not use it to further criminalise people. The Victorian Family Violence Information Sharing Scheme needs to be adhered to, which includes requesting and sharing confidential information for family violence protection purpose, which includes risk of person using violence as well as the AFM being subjected to family violence.<sup>9</sup>

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<sup>6</sup> Australia’s National Research Organisation for Women’s Safety (2022). Adolescent family violence in Australia [Fact sheet].

<sup>7</sup> Victoria Legal Aid, ‘[Inquiry Into Capturing Data On Family Violence Perpetrators In Victoria](#)’ 31 May 2024, Submission 35, p3.

<sup>8</sup> VALS, Yoorrook Social Justice Hearing, [Family Violence](#),

<sup>9</sup> <https://ovic.vic.gov.au/privacy/resources-for-organisations/family-violence-information-sharing-scheme-and-privacy/#easy-footnote-32-22582>

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VALS Wirraway Police and Prison Accountability Practice (**Wirraway**) shared concerns relating to the discriminatory policing practices including the over-policing of Aboriginal people where the circumstances of the situation and the needs of those involved are not taken into consideration. Wirraway shared that they have had clients where police have been called out due to mental health concerns of the person using violence, and instead of providing appropriate interventions and supports and listening to what the AFM needs, they have proceeded to issue a family violence safety notice.

Wirraway also spoke to their concerns about the “under policing” of family violence experienced by Aboriginal women, where their concerns are not taken seriously and the PUV is not charged when they have breached an FVIO. This would undoubtedly impact collection of data for PUV.

Our Aboriginal Families team has consistently raised concerns about systems abuse, and there is inconsistent data available as to the prevalence of systems abuse. Systems abuse occurs when someone committing family violence uses government systems and social services to extend and enforce their control over someone,<sup>10</sup> and involves a PUV manipulating “the legal system to exert control over, threaten and harass a current or former partner. This can have substantial detrimental impacts on the physical and psychological health of the respondent, and on any children involved in proceedings.”<sup>11</sup>

We currently rely heavily on crime stats in/from the Family Violence Data Portal and Victoria Police data to understand the prevalence and nature of family violence data. Only recently did Victoria Police start reporting the identity of the PUV, not just the AFM. Both Djirra and VACCA speak to how the majority of their AFM clients are partnered with non-Aboriginal men, and the evidence that supports this<sup>12</sup>. A persistent stereotype and narrative relating to family violence experienced by Aboriginal women is that violence is inherent in Aboriginal culture, and that family violence is an Aboriginal problem. This is another form of colonial violence towards Aboriginal women and children, where our lives are not valued. We echo VLA’s

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<sup>10</sup> VALS, [addressing coercive control without criminalisation](#) (2022), p 28.

<sup>11</sup> Family Law Amendment Bill 2023, Explanatory Memorandum, [7].

<sup>12</sup> Djirra, [‘Djirra welcomes the Victorian Government’s statement that more must be done to support victim survivors’](#); VACCA, [Yoorrook Justice Commission Nuther-mooyoop on Family Violence](#), 2024.

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concerns raised to this Committee about the limited data available and the challenges in determining emerging trends on particular patterns of behaviour for the PUV.<sup>13</sup>

Relying on crime stats and VicPol data means that the data is limited to family violence incidents where police have intervened and issued a Family Violence Safety Notice or have charged the alleged perpetrator, and will not capture the breadth of PUVs.

To better understand the complexity and nuance of the prevalence of family violence, including what are the patterns of offending behaviour, VALS legal teams have identified that it would be valuable to have data on:

- Misidentification of PUVs i.e. where police issued FVIO applications are withdrawn at first mention because of misidentification.
- Whether there is an IVO in place, and whether the identified AFM or PUV has previously breached a FVIO.
- Whether a referral to specialist family violence supports were made available to those identified as PUVs (diversion or court ordered), if the PUV attended and if there were further breaches.
- For a longitudinal study to be commissioned to look at PUV behaviour change
- For data relating to the new Affirmative Consent reforms to be made available
- Prevalence of, and system responses towards systems abuse

## **Data sovereignty**

Indigenous Data Sovereignty (IDS) and Indigenous Data Governance (IDG)<sup>14</sup> continue to be a key priority for VALS, and are fundamental to self-determination.

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<sup>13</sup> Victoria Legal Aid, '[Inquiry Into Capturing Data On Family Violence Perpetrators In Victoria](#)' 31 May 2024, Submission 35, p3.

<sup>14</sup> IDS refers to “the right of Indigenous peoples to exercise ownership over Indigenous Data. Ownership of data can be expressed through the creation, collection, access, analysis, interpretation, management, dissemination and reuse of Indigenous Data.” See Indigenous Data Sovereignty Summit, Communique, 20 June 2018, p. 1.; IDG refers to “the right of Indigenous Peoples to autonomously decide what, how and why Indigenous Data are collected, accessed and used. It ensures that data on or about Indigenous peoples reflects our priorities, values, cultures, worldviews and diversity.” See Indigenous Data Sovereignty Summit, Communique, 20 June 2018, p. 1

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We refer to our previous nuther-mooyoops to the Yoorrook Justice Commission, which outlined critical legislative and policy reforms to ensure that Aboriginal communities can:

- a) Exercise control over the manner in which data concerning Aboriginal individuals and communities is gathered, managed, interpreted and utilised; and
- b) Access and collect data obtained about Aboriginal individuals and communities.<sup>15</sup>

In its Yoorrook for Justice Report, the Commission recommended that the Victorian Government must transfer decision-making power, authority, control and resources, to give full effect to the right of Aboriginal communities to self-determination in the criminal legal system and the child protection system.<sup>16</sup> VALS strongly supports transformational change in both of these systems, which must include Aboriginal ownership and control of data.

Additionally, we continue to advocate for immediate legislative and policy reforms to ensure that information about Aboriginal people and communities across all sectors, is treated in accordance with the principles of IDS and IDG. In this regard, we reiterate the following key points:

- IDS and IDG are a specific exercise of the right to self-determination as enshrined in Articles 3, 4, 5, 18 and 20 (alongside others) of the UNDRIP, which Australia has endorsed.<sup>17</sup>
- Under the Victorian Closing the Gap (CTG) Implementation Plan, the Government has committed “to develop sector wide data access and data sharing agreements with and for ACCOs and Traditional Owners in their sector (local, statewide and peak) with advice and input from the appropriate Aboriginal governance mechanism.”<sup>18</sup> There has been limited progress (if any) in developing data access and sharing agreements.

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<sup>15</sup> VALS, [Nuther-mooyoop: Criminal Legal System](#) (2022), p 7.

<sup>16</sup> Yoorrook Justice Commission, [Yoorrook for Justice](#) (2023), Recommendations 1 and 2

<sup>17</sup> UNDRIP, Articles 3,4,5,18 and 20.

<sup>18</sup> Victorian State Government, [Victorian Closing the Gap Implementation Plan 2021-2023](#), (2021), p. 27.

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- There are also commitments under Dhelk Dja relating to data and information sharing under Strategic Priority Five: Aboriginal-led and informed innovation, data and research, including Family Safety Victoria developing a dedicated data 'position' to improve access.
- VALS is concerned about data being used for criminological purposes. Data should be prioritised for service delivery and risk assessment, in line with FVISS, and do no further harm for AFM, and those who are misidentified as PUV.
  - The government continues to control access to data, and in turn controls the narrative about Aboriginal people's involvement across all sectors including, education, health, housing, child protection, family violence and the criminal legal system. Control of data also allows the Government to control the narrative about their own accountability.
  - VALS and other ACCOS face consistent challenges in accessing, let alone having control over, data about our communities. If we are going to provide adequate services, access sufficient resources, advocate for change, and hold the government accountable, we need access to data, and we need to be able to use this data as we choose.<sup>19</sup>

Deidentified data on the prevalence, rates and nature of family violence incidents including AFM and PUV involving Aboriginal people must be shared with Aboriginal communities in accordance with IDS and IDG.

Recently, the Productivity Commission also made key recommendations on IDS and IDG, including that the National Agreement on Closing the Gap should be amended to include IDS and IDG in Priority Reform 4, and to establish a Federal Bureau of Indigenous Data.<sup>20</sup> VALS supports these recommendations.

### **Recommendations:**

VALS proposes the following recommendations for the Committee's consideration:

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<sup>19</sup> VALS, Nuther-mooyoop: [Criminal Legal System](#) (2022), p 25

<sup>20</sup> Productivity Commission, [Review of National Agreement on Closing the Gap](#) (2024), Recommendation 2.

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- For the Victorian Government to develop a formal mechanism to enable the prompt correction of misidentification and other errors held by Police, Child Protection, the Central Information Point and other relevant Government record holders.
- For the Victorian Government to invest in ACCOs with specialist family violence services, including legal assistance like VALS, to develop more robust and comprehensive data relating to family violence, with a particularly focus on misidentification, systems abuse and young people who use violence in the home. This is in line with principles of data sovereignty and self-determination, and must include the establishment of data sharing agreements with the government and Victoria Police.

For data relating to PUV's accessing interventions and supports (court ordered and diversion) to not simply track attendance, but also look at long term behaviour change.

We refer the Committee to our detailed responses on the issues family violence more broadly in our submissions to the [Yoorrook Justice Commission](#), and the [evidence we presented at the hearing](#), and our submission to the [Missing and Murdered First Nations Women and Children Inquiry](#). We have attached these submissions for ease of reference.

We look forward to presenting to the Committee on the 6<sup>th</sup> August.

Yours sincerely,

*Nerita Waight*

Nerita Waight  
Chief Executive Officer

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## **Appendix One: About VALS**

The Victorian Aboriginal Legal Service (**VALS**) is an Aboriginal Community Controlled Organisation (**ACCO**) with 50 years of experience providing culturally safe legal and community justice services to our people across Victoria.

Our legal practice serves Aboriginal people of all ages and genders. Our 24-hour criminal law service is backed up by our 24 hour a day, seven day a week The Custody Notification System (**CNS**) system. When an Aboriginal or Torres Strait Islander person is taken into police custody in Victoria, VALS is notified and we offer support. The CNS sends an alert to VALS and we respond in the interests of the person. This service operates 24 hours a day, seven days a week. Currently, Our Custody Notification Officers (**CNOs**) have working relationships with 333 police stations across the state. The phones are staffed by an Aboriginal team. We also have our Client Service Officers (**CSOs**). Our CSOs are key connectors for our clients and local communities to VALS legal assistance. CSOs assist clients to attend court, arrange legal representation, advocate on the client's behalf, and assist them in their communications with lawyers and to understand court processes and orders. We have legal teams that provide support to community members through our Criminal Law Practice, Civil and Human Rights Practice, Aboriginal Families Practice, Wirraway Police and Prison Accountability Practice, and Balit Ngulu, dedicated service for Aboriginal children and young people.

VALS supports Aboriginal women, children and young people who have experienced family violence as well as being the users of family violence across a number of our programs including our Aboriginal Family Practice Team, Criminal Justice Team and Balit Ngulu, our specialist youth program dedicated to providing legal assistance and representations to Aboriginal and Torres Strait Islander young people. Balit Ngulu means 'Strong Voice' in Wurundjeri language. Balit Ngulu was established to ensure that young people had access to culturally appropriate legal representation. We also provide supports through our Community Justice Programs such as Baggarrook, Family violence is an issue that impacts the majority of our clients, more

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than 7 per cent of all matters VALS responded to directly concerned family violence matters in 2023, a third of these were relating to breaches of orders.

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