Judicial Officers and Best Practice: Improving Aboriginal and Torres Strait Islander Women's Experience of Family Violence Protection Order Proceedings

LITERATURE REVIEW

CEVAW
ARC Centre of Excellence for the Elimination of Violence Against Women

Australian Research Council Centre of Excellence for the Elimination of Violence Against Women
Judicial Officers and Best Practice: Improving Aboriginal and Torres Strait Islander Women's Experience of Family Violence Protection Order Proceedings. Literature Review.

Traditional Custodians

The Australian Research Council Centre of Excellence for the Elimination of Violence Against Women acknowledges the Traditional Custodians of the lands on which our various nodes stand and whose cultures and customs have nurtured and continue to nurture these lands since the Dreamtime. We pay our respects to Elders past and present. We extend our respects to all Aboriginal, Torres Strait Islander, and other Indigenous peoples around the world. In particular, we acknowledge the Wurundjeri Woi-wurrung and Bunurong peoples of the Kulin nation, on whose lands the writing and research in relation to this report was conducted.

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The Australian Research Council Centre of Excellence for the Elimination of Violence Against Women aims to transform our understanding of gender-based violence by examining the structural drivers that cause and compound violence, while pioneering evidence-based approaches to improve policy and practice across Australia and the Indo-Pacific. The Centre mobilises survivor-centric and Indigenous methodologies, interdisciplinary collaborations, and Indo-Pacific partnerships to deliver scalable solutions across legal, security, economic, health, and political systems.

Participating Organisations

	Researchers at the University of Melbourne conducted this research as part of its role within the Centre of Excellence in the Elimination of Violence Against Women (CEVAW), an initiative comprising six Australian universities and a number of partner organisations. This project was led by the University of Melbourne under CEVAW, and we are grateful for the support and resources provided by this important program.
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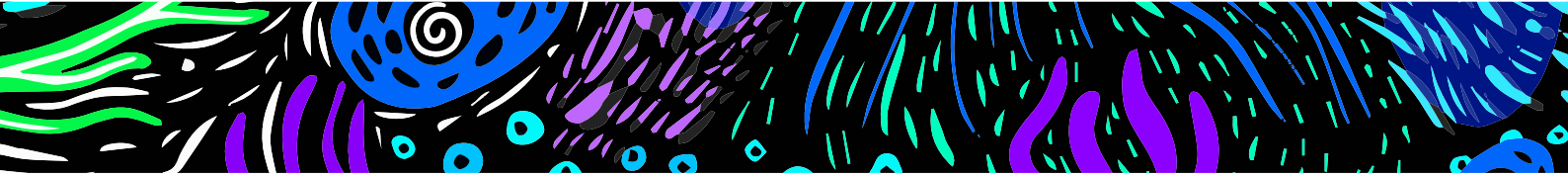

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Introduction

Aboriginal and Torres Strait Islander women's experience of the judicial system is shaped by intersecting factors. Aboriginal and Torres Strait Islander women experience high rates of family violence, alongside structural forms of violence and racial inequality through incarceration and the criminal legal system. This intersection influences how Aboriginal and Torres Strait Islander women experience mainstream legal systems, including the judicial system. Although Aboriginal sentencing courts exist (see Appendix A), the scope of these courts is limited. The vast majority of legal matters involving Aboriginal and Torres Strait Islander peoples are being heard in mainstream courts (Cunneen, 2018). As Langton et al. (2020, p. 70) affirm in relation to Aboriginal and Torres Strait Islander women's engagement with legal and social support services, commenting on systems abuse specifically:

> It is likely that there are further compounding factors for Aboriginal and Torres Strait Islanders engaging with the judicial system, such as cultural approaches and understandings of justice. However, this gap in the literature is another area requiring further investigation.

In this literature review, we highlight areas of investigation in relation to these 'compounding factors', by examining both secondary and grey literature. In so doing, we echo Langton et al.'s (2020) call for further research on the experiences of Aboriginal and Torres Strait Islander women who are victim-survivors of family violence, and their engagements with the judicial system.

We will first provide a brief overview of scholarship that examines family violence and the experiences of Aboriginal and Torres Strait Islander women. We will then explore literature that focuses on Aboriginal and Torres Strait Islander women's experience of mainstream courts, paying particular attention to family violence protection order proceedings. We group this literature under three key themes. First, we consider the barriers to access and participation in court proceedings. Second, we explore the role of judicial officers. Third, we examine existing literature on Aboriginal and Torres Strait Islander Court Support Officers. In exploring this scholarship, we outline limitations in our current understanding of best practice and the role that judicial officers can play in improving Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings.

In engaging what Tynan and Bishop (2023, p. 498) describe as 'relationality' when writing this literature review, we focus on particular literatures. As non-Indigenous settler

researchers,[1] we prioritise the voices and perspectives of Aboriginal and Torres Strait Islander academics, and we also draw on submissions to key inquiries (see Appendix B[2]) from Aboriginal community-controlled organisations. We recognise that any research on Aboriginal and Torres Strait Islander women's experience of the judicial system must be Aboriginal and Torres Strait Islander-led. As Ms Wendy Anders, Chief Executive Officer of the National Aboriginal and Torres Strait Islander Women's Alliance ('NATSIWA'), emphatically notes in a recent hearing for the *Standing Committee on Social Policy and Legal Affairs: Inquiry Into Family Violence Orders* ('*Family Violence Order Inquiry*'):

> …for any system change, Aboriginal women—or Aboriginal people—have to be at the centre of it. They have to be the ones who are saying, 'This is what we want; this is what we need,' and I think there are a lot of things happening that just don't include Aboriginal women's voices. Having a system that is culturally appropriate and culturally respectful would be a huge step towards healing their trauma. (House of Representatives Committee, 2024a, p. 39)

In this literature review, we centre Aboriginal and Torres Strait Islander voices and consolidate literature that provides insight into both the potential avenues and barriers towards a culturally responsive and respectful family violence protection order system. We conclude this literature review by affirming that any research on this topic must be led by Aboriginal and Torres Strait Islander people and centre their voices and experiences. We also highlight that this research is only one part of a broader picture and call for consideration to be given to structural change and responses that sit outside of settler legal systems.

[1] Samantha's position as a white settler criminologist and socio-legal researcher is one of privilege. Samantha has Irish and English heritage and grew up in Sydney on the lands of the Cammeraygal people and Gadigal and Wangal peoples of the Eora nation. Samantha's interest in this project is informed by her experience working as a lawyer in the community legal sector and is driven by her commitment to research that contributes to communities in grounded, tangible, and material ways. Heather is a settler law academic whose heritage is Scottish and Irish. Heather's childhood in country Victoria and Melbourne/Naarm, living on the lands of the Wurundjeri people of the Kulin Nation, was privileged. Formative for Heather in the context of this project was working as a lawyer with the Aboriginal Legal Service in Alice Springs/Mparntwe on the lands of the Arrernte people. This experience highlighted the injustices that the law could mete out, but also its potential, and have informed her scholarship.

[2] Not all submissions have been analysed in detail for the purpose of this literature review. However, this appendix is included to highlight the breadth of recent and relevant inquiries. As a note, this list is not exhaustive and we have only included inquiries that also publish their submissions.

1. Background: Aboriginal and Torres Strait Islander Women and Family Violence

1.1 Experiences of Family Violence and Reporting

Existing scholarship has importantly called attention to the particular experiences of Aboriginal and Torres Strait Islander women who are victim-survivors of family violence. This research has highlighted that Aboriginal and Torres Strait Islander women experience family violence, including homicide (Bricknell & Miles, 2024), at high rates, and a range of explanatory reasons for this 'vulnerability' to family violence victimisation have been identified (Cripps & Davis, 2012). As Cripps and Davis (2012, p. 1) critically highlight, 'there is no single factor, but rather a multitude of interrelated factors that contribute to the occurrence of family violence in Indigenous communities'. Although not an exhaustive list, interrelated factors that have been identified include the past and ongoing impacts of colonisation, the removal of Aboriginal and Torres Strait Islander children from their families and communities, racialised inequalities, intergenerational trauma, socio-economic disadvantage, and inequitable access to health services and care (Australian Human Rights Commission, 2020; Blagg et al., 2022; Cripps & Davis, 2012). Additionally, Aboriginal and Torres Strait Islander women's specific and nuanced experiences of family violence are often not recognised by services and 'mainstream' legal systems (Cripps & Davis, 2012; Langton et al., 2020). As an important qualification when assessing these explanatory factors, Langton et al. (2020, p. 26) argue that while colonialism is a relevant consideration, these factors must also be considered *alongside* 'the agency of perpetrators'. If we fail to consider these factors together, we sideline the needs of Aboriginal and Torres Strait Islander women (Langton et al., 2020).

Research has also examined the significant impact of 'pervasive racial inequality' in hampering local strategies to address family violence within Aboriginal communities (Blagg et al., 2022; Hovane, 2009, p. 14). In particular, attention has specifically been given to systemically racist policing responses that limit Aboriginal and Torres Strait Islander women's capacity to report family violence and expose these women to violent and paternalistic state responses (for example, Buxton-Namisnyk, 2022; Cripps, 2023; Kelly, 1999). In line with these barriers, Langton et al. (2020, p. 47) highlight that Aboriginal and Torres Strait Islander women are hesitant to report family violence because of legitimate fears related to child removal, concerns regarding access to housing, and 'fear and distrust of, state agencies, including police forces, court personnel, child protection agencies and service agencies. Usually, they have experienced racist attitudes and discriminatory practices in previous encounters.' Racial inequality and racist experiences with existing

systems, thus, play a key role in Aboriginal and Torres Strait Islander women's willingness to engage with services and legal systems, including the judicial system.

In considering the intersectional experiences of Aboriginal and Torres Strait Islander people, Victoria Hovane (2009, p. 13) importantly emphasises that family violence 'has a different background, different dynamics, it looks different, it is different'. Family violence, as opposed to the terminology *domestic violence*, is recognised as a term that more usefully captures wider understandings of family – this term includes kinship and community structures within Aboriginal communities (Blagg et al., 2022; Buxton-Namisnyk, 2022; Cripps & Davis, 2012; Hovane, 2009). In their research on interfaces between Aboriginal Law and Culture, and settler law, Blagg et al. (2022, p. 549) challenge dominant understandings of family violence for failing to adequately recognise the impact of intergenerational trauma, substances like alcohol, and jealousy and 'jealousing'. In unpacking 'jealousing', which they describe as a critical consideration in understanding family violence perpetration, Blagg et al. (2022, p. 550) explain:

> 'Jealousing' is difficult to translate and has multiple meanings; including behaviours or actions that test the commitment and seriousness of relationships by deliberately setting out to make a partner jealous, for example flirting with or looking at others, or conflicts over partners. 'Jealousing' can involve other family members who will deliberately undermine a relationship by stirring up feelings of resentment and insecurity.

Understandings of family violence must, therefore, be situated within the specific experiences of Aboriginal and Torres Strait Islander people who have '*their own story … their own theoretical discourses* and their own *lived realities* about what it's like to experience DFV within the prevailing racially unequal systems in contemporary Australia' (Hovane, 2009, p. 16) [emphasis in the original]. Furthermore, understandings and interventions must be locally and community-driven, and recognise difference among Aboriginal and Torres Strait Islander peoples and communities (Cripps & Davis, 2012). Recent research has also urged for understandings of family violence and service provision that account for the experiences of Aboriginal and Torres Strait Islander LGBTIQSB+ people (Soldatic et al., 2024). In examining interventions, the impact of incarceration is also a critical consideration.

1.2 Incarceration and the Criminal Legal System

Recognition of Aboriginal and Torres Strait Islander women's experiences in the criminal legal system is integral to understanding their engagements with courts. As Sisters Inside

and the Institute for Collaborative Race Research affirm, in a submission to the *Queensland Women's Safety and Justice Taskforce Hear Her Voice Consultation*, we cannot address Aboriginal and Torres Strait Islander's women's experiences of gender-based violence without also recognising their experiences of state violence through incarceration and the criminal legal system (Sisters Inside and the Institute for Collaborative Race Research, 2021). Aboriginal and Torres Strait Islander women are the fastest growing cohort in terms of incarceration in Australia. In 2023, Aboriginal and Torres Strait Islander women were '25 times more likely' to be incarcerated than non-Indigenous women (Shields, 2023), additionally, of these women who are imprisoned, they report high rates of family and sexual violence. In the *Wiyi Yani U Thangani (Women's Voices): Security Our Rights, Securing Our Future Report* (Australian Human Rights Commission, 2020, p. 169), former Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar, notes:

> In every prison and juvenile detention facility I visited, I heard similar stories of violence and abuse leading, indirectly and directly to an offence … Women have also told me how they have been incarcerated for using violence in acts of self-defense or retaliation after living with abuse.

Although the majority of Aboriginal and Torres Strait Islander women who experience family violence are not incarcerated, many women who are incarcerated have experienced family and/or sexual violence (Australian Human Rights Commission, 2020, p. 170). These findings align with the evidenced connections between family violence and women's experiences of criminalisation (Segrave & Carlton, 2010). Aboriginal and Torres Strait Islander women who are victim-survivors of family violence may, therefore, come into contact with courts as a witness, defendant, aggrieved, and/or respondent.

The complexity of these experiences is supported by research on Aboriginal and Torres Strait Islander women's experience of the judicial system, and their 'multiple roles over time' (Judicial Council on Cultural Diversity, 2016b, p. 21). Although somewhat dated, a national survey on legal needs and access to justice found that although Aboriginal and Torres Strait Islander people were not more likely to experience a greater number of legal issues than the general population, they were more likely to experience multiple legal issues (Coumarelos et al., 2012, p. 71). More recently, Douglas and Fitzgerald (2018) highlight similar findings in the specific context of family violence protection orders, a system which they argue entangles Aboriginal and Torres Strait Islander people in the criminal justice system, as it sits across both civil and criminal law. Aboriginal and Torres Strait Islander women are 'significantly overrepresented within the DVO system, as both

aggrieved and respondent, at the application stage, in contravention stages and in resulting imprisonment outcomes' (Douglas & Fitzgerald, 2018, p. 52). This finding is supported by the Commission of Inquiry into Queensland Police Service responses to domestic and family violence (2022) report, which notes that Aboriginal and Torres Strait Islander women were 37.3 times more likely than non-Indigenous women to be incarcerated for an offence related to family violence or breaching a family violence protection order.

In examining Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings, we must recognise how their experiences are shaped by multiple engagements across legal systems. Although specialised Aboriginal sentencing courts exist, this entanglement is commonly in 'mainstream' courts. Research has highlighted Aboriginal women's violent experiences in criminal courts in a family violence context (Bevis et al., 2020; Douglas et al., 2020; McGlade & Tarrant, 2021). For example, McGlade and Tarrant (2021, p. 114) explore the 2015 homicide trial of Jody Gore and argue that 'the very space of the court was active in the ongoing operations of colonial violence' where a focus on intoxication and racialised and gendered stereotypes subsumed any examination of her experiences of family violence and, therefore, a just consideration of self-defence. Less attention has been given to Aboriginal and Torres Strait Islander women's experiences in mainstream courts related to family violence protection order proceedings.

1.3 Aboriginal Sentencing Courts

To work to redress Aboriginal and Torres Strait Islander people's negative and 'alienating' experiences in mainstream courts, and specifically criminal matters (Australian Human Rights Commission, 2020, p. 186; Yoorrook Justice Commission, 2023, p. 344), specialised Aboriginal sentencing courts have been introduced in various forms across Australia. For example, the Koori Court, Circle Sentencing in New South Wales ('NSW'), and the Murri Court (Australian Human Rights Commission, 2020; Cripps & Davis, 2012; Marchetti, 2009; Marchetti & Ransley, 2014; Yoorrook Justice Commission, 2023). We have included a table with the Aboriginal sentencing courts and options across Australia as Appendix A. Across the literature accessed for this review, there was broad support from Aboriginal and Torres Strait Islander people and organisations for these programs and their expansion (Aboriginal Family Law Services, 2019a, p. 8; Australian Human Rights Commission, 2020, p. 186; Blagg et al., 2022, p. 547; Judicial Council on Cultural Diversity, 2016b, p. 32; Langton et al., 2020, p. 78; Yoorrook Justice Commission, 2023, pp. 344–345). For example, Ms Wendy Anders, Chief Executive Officer of NATSIWA, in a

hearing for the *Family Violence Order Inquiry*, notes that 'Koori courts are a wonderful thing. We've seen them be effective here in Victoria' (House of Representatives Committee, 2024a, p. 39). Former Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar, similarly explains that the 'Aboriginal and Torres Strait Islander women and girls I met with were unanimously supportive of Murri and Koori Courts wherever they existed', they considered these courts to be critical for improving engagements with the criminal legal system (Australian Human Rights Commission, 2020, p. 186).

Alongside this broad support, however, the Koori Court has previously been critiqued for its inability to represent the needs of victim-survivors (Cripps, 2011), while more contemporary literature acknowledges the limits of these alternative justice mechanisms as they currently stand. Specifically, the requirement that an Aboriginal person plead guilty to access these courts, the limited ability of some of these courts/sentencing options to consider sexual offences and more serious family violence matters,[3] and the limited accessibility of these types of mechanisms in certain jurisdictions, like Western Australia ('WA') and the Northern Territory ('NT') (Blagg et al., 2022; Marchetti, 2009; Yoorrook Justice Commission, 2023). As Cunneen (2018, p. 14) has pointed out, and although it is challenging to estimate due to the limited operation of Aboriginal sentencing courts, it is likely that more than 95 per cent of Aboriginal and Torres Strait Islander people's engagements with the judicial system are in mainstream courts. Noting that this figure may have changed.

Additionally, Aboriginal and Torres Strait Islander women may experience violence perpetrated by a non-Indigenous partner (ACT Victims of Crime Coordinator, 2009; Longbottom, 2018). In the 2021 census, in couples where one or both people identified as Aboriginal and/or Torres Strait Islander, in 81.7 per cent of these couples, one person in the couple was non-Indigenous while the other person was Aboriginal and/or Torres Strait Islander (Australian Bureau of Statistics, 2023). As Marlene Longbottom (2018) highlights in an article that refers to a larger qualitative research project 'a little over half of the 14 participants … experienced violence with non-Aboriginal partners, so this is not just an Aboriginal issue; violence against Aboriginal women is a whole of community issue'. Therefore, Aboriginal and Torres Strait Islander women, who are experiencing abuse from

[3] Many Aboriginal sentencing courts and options can consider offences that are capable of finalisation in the lower/requisite level court, which includes offences commonly associated with less serious (in a legal sense) forms of family violence. Many of these courts and options explicitly exclude sexual offences. In Victoria, only specific divisions of the Koori Magistrates' Court and Koori County Court can hear family violence intervention order breaches, if they have been designated as such.

a non-Indigenous partner, may come into contact with mainstream courts as the aggrieved, regardless of the expansion of Aboriginal sentencing courts.

In light of this finding, and without limiting calls for the expansion of Aboriginal sentencing courts in terms of both geographical reach and scope, we highlight the importance of focusing on Aboriginal and Torres Strait Islander women's experiences in mainstream courts as victim-survivors of family violence. In this review, we additionally limit our attention to family violence protection order proceedings. That is not to say, however, that other areas are not important. Aboriginal and Torres Strait Islander women's experiences as victim-survivors of family violence related to criminal matters, including bail and sentencing, as well as family law and child protection, deserve specific consideration. These are issues that have also been considered in detail by Aboriginal academics, commissions, and Aboriginal community-controlled organisations (for example, Anthony et al., 2017; Behrendt, 2019; Victorian Aboriginal Child and Community Agency, 2024, pp. 40–42; Yoorrook Justice Commission, 2023, p. 346). Although we touch on Aboriginal and Torres Strait Islander women's engagements with these related legal systems in the below sections, we do not draw out the specificities in any detail. Our focus is family violence protection order proceedings.

2. Aboriginal and Torres Strait Islander Women's Experience of Family Violence Protection Order Proceedings

In consolidating existing literature on Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings, we broadly focus on three themes. First, we consider barriers to Aboriginal and Torres Strait Islander women accessing court and participating safely in court proceedings. Second, we focus more narrowly on the role of judicial officers and their capacity to meet the needs of Aboriginal and Torres Strait Islander women, as well as the role they can play in preventing misidentification and systems abuse through family violence protection order proceedings. Third, we examine literature on Aboriginal and Torres Strait Islander Court Support Officers. In exploring these findings, we call for consideration to be given to the perspectives, experiences, and expertise of Aboriginal and Torres Strait Islander Court Support Officers, as a starting point for understanding judicial officers and best practice in family violence protection order proceedings.

2.1 Barriers to Safe and Accessible Participation in Court Proceedings

2.1.1 Cultural Competency and Responsiveness

At a broad level, literature on Aboriginal and Torres Strait Islander women and the judicial system, suggests that 'the court system is a culturally confronting one for many Aboriginal and Torres Strait Islander peoples. Our cultures have been alienated from courts' (Australian Human Rights Commission, 2020, p. 186; Victorian Royal Commission into Family Violence, 2016a, p. 140). This finding is supported by Hovane (2009, p. 16) who explores the distrust of mainstream legal systems, including courts, and questions the capacity of these systems to adequately respond to Aboriginal and Torres Strait Islander peoples. Focusing on the Victorian criminal justice system, the Yoorrook Justice Commission (2023) affirms that this system 'was and is an institution of colonisation' (p. 236) and similarly found (p. 342):

> Cultural competence in relation to First Peoples should be a requirement for everyone working in the criminal justice system. Yet evidence presented to Yoorrook raises concerns about the impact of systemic racism and the level and consistency of cultural understanding among judicial officers.

This is an inconsistency that has also been documented at the national level. The Judicial Council on Cultural Diversity (2016b, p. 31) (now the Judicial Council on Diversity and Inclusion) found that 'cultural competency' varied across the judiciary. Although training programs exist, access to training that considers cultural context *alongside* family violence

is limited (Judicial Council on Cultural Diversity, 2016b). The Victorian Royal Commission into Family Violence (2016a, p. 140) similarly supported the importance of training for judicial officers that cuts across family violence and cultural contexts, as essential for ensuring just outcomes for Aboriginal and Torres Strait Islander peoples.

In terms of existing programs, there is no clear information on the cultural competency training already offered across the judicial system at the state and national levels. There has been attempts at providing this information, for example, by the Judicial Council on Cultural Diversity, yet this information is now dated and is not limited to training that focuses specifically on Aboriginal and Torres Strait Islander peoples (Judicial Council on Cultural Diversity, 2016a). In the Victorian context, the Yoorrook Justice Commission (2023, p. 299) found that cultural awareness training is offered, however, these programs are 'strongly recommended' but not compulsory for judicial officers working in mainstream courts. Therefore, this training is primarily undertaken by judicial officers 'already invested in the issues' (Judicial Council on Cultural Diversity, 2016b; Yoorrook Justice Commission, 2023, p. 343). The Judicial Council on Cultural Diversity additionally found that training needs to be 'tailored to local circumstances' and accompanied by 'a culture of continuous learning, based on regional approaches and meaningful engagement' (Judicial Council on Cultural Diversity, 2016b, p. 31). In the National Framework that followed this report, the Judicial Council on Cultural Diversity (2017) recommended the introduction and review of judicial education programs related to both cultural competency and family violence across all courts.

Additional research is needed to understand whether such training has been implemented, and if it has, how courts are ensuring all judicial officers participate in this training, how effectively these training programs address both cultural responsiveness *and* family violence, and the impact of this training on Aboriginal and Torres Strait Islander women's experiences in mainstream courts, including specialised family violence courts. Consideration must also be given to what cultural competency and responsiveness means to Aboriginal and Torres Strait Islander women and communities. As Langton et al. (2020, p. 15) outline, in relation to service providers more broadly:

> Cultural awareness and culturally appropriate services should not be superficially implemented. A detailed and highly localised understanding of what is involved must be embedded in the core values of service providers. Cultural competency requires well-researched and local knowledge of the histories of Aboriginal and Torres Strait Islander people, specifically relating to effects of colonisation and the forced removal of Aboriginal children.

The Better Justice Together Queensland's Aboriginal and Torres Strait Islander Justice Strategy 2024-2031 (Queensland Government, 2024, p. 23), developed by the First Nations Justice Office as part of a co-design strategy, also notes that 'enhancing cultural safety and cultural capability within the justice system is not enough to address racism, in particular systemic racism … anti-racism strategies' are needed and Aboriginal and Torres Strait Islander peoples must be represented within 'decision-making structures'. These rich descriptions of cultural awareness and safety tie into findings from the Judicial Council on Cultural Diversity (2016b), where judicial officers were viewed positively when they took the time to understand and engage with local communities. These findings highlight the importance of respect, local engagement, decision-making power, and time, in terms of relationship building between judicial officers, courts, and local communities.

2.1.2 Structurally-Embedded Language and Communication Barriers

Language and communication barriers were raised as another key concern that impacts Aboriginal and Torres Strait Islander women's participation in mainstream courts (ACT Victims of Crime Coordinator, 2009; Australian Human Rights Commission, 2020; Judicial Council on Cultural Diversity, 2016b, 2017). Former Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar, explains how across 'several locations, women who had been through the mainstream court experience told me they felt they were pushed through a process they did not understand' (Australian Human Rights Commission, 2020, p. 187). These structurally-embedded barriers regarding women's understanding of court and legal processes are primarily related to three key areas: (i) the accessibility of appropriate legal advice, (ii) access to Aboriginal and Torres Strait Islander language interpreters, (iii) and the communication of legal information.

Turning to the first barrier, women's understanding of legal processes is impacted when they cannot access legal advice from a service that specifically supports Aboriginal and Torres Strait Islander peoples, and they are wanting legal advice from this type of service. For example, women who are victim-survivors of family violence from an Aboriginal partner, may be conflicted out of being represented by a service, like the Aboriginal Legal Service (ACT Victims of Crime Coordinator, 2009; Australian Human Rights Commission, 2020; Langton et al., 2020). While Aboriginal and Torres Strait Islander LGBTQSB+ victim-survivors may be unable to access services that are both 'culturally appropriate' and with 'LGBTIQ-appropriate expertise to holistically meet their needs' (Lusby et al., 2022, p. 44). Additionally, the accessibility of legal services may be limited in remote areas. Ms Thelma Schwartz, the Principal Legal Officer from the Queensland Indigenous Family Violence Legal Service, in a hearing as part of the *Family Violence Order Inquiry*, describes how

their service may be the only contact point for some victim-survivors (House of Representatives Committee, 2024b). Ms Schwartz explains that certain islands in the Torres Strait have no access to phone and internet, while areas prone to natural disasters, like flooding, may become inaccessible, which 'compounds the isolation and the terror for a victim' (House of Representatives Committee, 2024b, p. 39). We do not currently know whether courts and judicial officers are accounting for these specificities related to women's access to legal advice in more remote areas and best practice for doing so.

Turning to the second key barrier, scholarship highlights that access to interpreters in Aboriginal and Torres Strait Islander languages in courts is inconsistent. The Judicial Council on Cultural Diversity (2016b, 2017) describes this issue as prevalent in the Magistrates Court (or the Local Court in NSW), and makes a number of recommendations that would ensure the provision and accessibility of Aboriginal and Torres Strait Islander language interpreters across all courts. Importantly, it is an individual Magistrates' responsibility to decide whether an interpreter is needed, and in remote courts in particular, resource and time constraints may impact their ability to make an appropriate decision (Judicial Council on Cultural Diversity, 2016b, p. 25). Since this report, the *Recommended National Standards for Working with Interpreters in Courts and Tribunals* have been updated, and these include discussion of Aboriginal and Torres Strait Islander languages (Judicial Council on Cultural Diversity, 2022). Further research is needed to understand whether these standards are operating effectively, and how accessible Aboriginal and Torres Strait Islander language interpreters are across Magistrates Courts nationally.

The third main barrier is structural issues concerning how legal information is communicated. Existing research describes how Aboriginal and Torres Strait Islander women's understanding of legal proceedings and processes is negatively impacted by issues related to literacy, complex legal language used by judicial officers, the inaccessibility of education from courts around laws and processes, the stressful nature of court, and the distraction of young children in court when women do not have access to childcare (ACT Victims of Crime Coordinator, 2009; Australian Human Rights Commission, 2020; Judicial Council on Cultural Diversity, 2016b; Putt et al., 2017). Grey literature also highlights how these issues particularly impact Aboriginal and Torres Strait Islander women in terms of their engagement with family violence protection orders. For example, Ms Wendy Anders, Chief Executive Officer of NATSIWA, in the *Family Violence Order Inquiry* hearing, describes how unclear and legally complex processes mean that, '[w]e hear from our women all the time that they won't do anything because there's just no process that's simple for them' (House of Representatives, 2024a, p. 40). Similarly, in a

submission to the *Inquiry into the Magistrates Court of Western Australia's Management of Matters Involving Family and Domestic Violence* ('*WA Magistrates Court Inquiry*'), Aboriginal Family Law Services (2019a, p. 4) explain, 'Aboriginal victims of family violence still have limited knowledge about the processes of the Magistrates Court, namely how to apply for family violence restraining orders and what protection such an order may provide'. Aboriginal and Torres Strait Islander women, thus, face structural barriers to effectively engaging in these legal processes.

These structural barriers to understanding family violence protection orders additionally extend to the communication of conditions associated with an order, once it is made. The Judicial Council on Cultural Diversity (2016b, p. 29) provides a useful example of best practice when they describe how a 'stakeholder commended an experienced Magistrate who always used plain English to explain orders, for example, explaining that the terminology meant "Don't come to the house when you are drunk and angry. Don't swear or yell. Don't lay hands on her".' This framing is a useful starting point, yet further guidance is still needed on best practice for judicial officers to ensure family violence protection orders are communicated in safe and clear ways to victim-survivors of family violence more broadly, as the aggrieved and/or respondent, with specific consideration given to communication that is culturally safe and respectful for Aboriginal and Torres Strait Islander women. Additionally, further research is needed on the role that judicial officers can play in improving knowledge and awareness of the law more broadly, as well as any useful changes to court processes. We will return to consider the importance of appropriate conditions later in this review.

2.1.3 Safety and Accessibility in Courtrooms

Across the literature, the safety and security of Aboriginal and Torres Strait Islander women in courtrooms, as victim-survivors of family violence, was raised as an important barrier to their participation (Judicial Council on Cultural Diversity, 2016b; Putt et al., 2017; Victorian Aboriginal Legal Service, 2024). For example, the Victorian Aboriginal Legal Service ('VALS') (2024) explains that victim-survivors and their family members are commonly in the same waiting area in the courtroom as the perpetrator. VALS highlights differences across federal and state courts, where federal courts 'have strong security, including separate rooms where litigants can wait on their own. In contrast, state courts, which are often busier, typically lack these facilities' (Victorian Aboriginal Legal Service, 2024, p. 10). The Judicial Council on Cultural Diversity (2016b) highlights similar findings in terms of the physical safety of victim-survivors in courtrooms. Yet they additionally highlight the added complexity of cultural reasons dictating who should be present in court

hearings, where the presence of particular people must be determined on a case-by-case basis.

Courtroom video link capacities have been suggested as a mechanism that would improve the safety of Aboriginal and Torres Strait Islander women when they are appearing in court as victim-survivors of family violence. For example, in the context of the Family Court, Ms Wendy Anders, Chief Executive Officer of NATSIWA, in the *Family Violence Order Inquiry* hearing, suggests that women should have the capacity to apply for a court order through video link from a safe space within a trusted community organisation (House of Representatives Committee, 2024a; see also, Judicial Council on Cultural Diversity, 2016b). Although, in the WA context, Aboriginal Family Law Services (2019a, p. 4), in their submission to the *WA Magistrates Court Inquiry,* are less supportive of this position. They note that although access to the Magistrates Court is limited for a variety of reasons, '[v]ideo and phone link ups are not appropriate for Aboriginal people due to misunderstandings and language barriers particularly in regional, remote areas' (Aboriginal Family Law Services, 2019a, p. 4). This finding, however, must be contextualised in light of the structural inequalities associated with digital inclusion, and as suggested above, may change if there is improved technological access in regional and remote areas, and safe spaces available within trusted community organisations. These findings further highlight that women's safety and accessibility needs are not homogenous, they may vary across courts, and the particular needs of Aboriginal and Torres Strait Islander women must be considered at local levels.

The accessibility of courts, both the Magistrates Court and more broadly, is another issue that has particular impacts for Aboriginal and Torres Strait Islander women. For women attending court, geographical accessibility is a concern in remote and regional areas that is then exacerbated by the expenses related to childcare and accommodation if women do travel (Aboriginal Family Law Services, 2019a; Judicial Council on Cultural Diversity, 2016b; Putt et al., 2017). Even when Aboriginal and Torres Strait Islander women can access and attend court, the judicial system can be 'confronting' (Australian Human Rights Commission, 2020, p. 186; Victorian Royal Commission into Family Violence, 2016a, p. 140). Existing literature suggests that more can be done to 'humanise' courtrooms (Judicial Council on Cultural Diversity, 2016b, p. 26) and make waiting areas in courtrooms more 'pleasant' (Putt et al., 2017, p. 13). In relation to the service sector more broadly, and without replacing the need for an embedded cultural responsiveness, Langton et al. (2020, p. 88) describe how 'local artworks … signage in local Aboriginal languages and featur[ing] the Aboriginal flag prominently' are all important steps. Ms Wendy Anders, Chief Executive Officer of NATSIWA, in the *Family Violence Order Inquiry* hearing, also challenges the

traditional Family Court structure and notes, '[c]an we not change that and have a room that is circular, like a family, so that everyone's connected together around a table with no noticeable hierarchy?' (House of Representatives, 2024a, pp. 38–39). In this sense, accessibility is related to both barriers to attending court, as well as barriers to participation when women do attend.

In remote and regional areas, Aboriginal and Torres Strait Islander women may also face additional issues that limit their engagement with the judicial system. For example, in WA, Aboriginal Family Law Services (2019b, pp. 6–7) explain that in remote areas the Magistrates Court may be held in a police station and police may also act 'as Deputy Registrar of the Magistrates Court in DV matters' – both situations 'deter Aboriginal victims of [family violence] from seeking assistance or protection of a [family violence intervention order]'. This particular issue affirms the importance of considering Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings in local contexts. There may be particular issues that are locally specific. Longbottom (2018) also examines the distressing experience of an Aboriginal woman who was charged and incarcerated in a police cell overnight in NSW for failing to attend court to give evidence in relation to a family violence matter. Longbottom (2018) connects this structural violence with the systemic failure to provide 'adequate support' to attend court, and refers to qualitative research that evidences the racist and invalidating experiences Aboriginal women face when they do attend court. We will now shift to more explicitly examine the role of judicial officers.

2.2 The Role of Judicial Officers in Family Violence Protection Order Proceedings

2.2.1 Meeting Victim-Survivors' Needs

Judicial officers can play a central role in ensuring that Aboriginal and Torres Strait Islander women's needs in family violence protection order proceedings, as the aggrieved and/or respondent, are acknowledged and met. This role is particularly important in family violence protection orders where the police are the applicant. Police-instigated protection orders are common, with Douglas and Fitzgerald (2018) estimating that the police are the applicants in over 70 per cent of cases, while Cunneen (2010, p. 12) notes that police are the applicants in over 95 per cent of cases in remote Aboriginal communities. Furthermore, the voices of victim-survivors may be denied in these processes. This denial is evidenced by Wirringa Baiya Aboriginal Women's Legal Centre ('Wirringa Baiya') (2011b, p. 10), in a submission to the *Domestic Violence Trends and Issues in NSW Inquiry*, who explain that 'a common complaint from our clients is that they feel powerless and excluded from the

process when police seek a final apprehended domestic violence order'. Buxton-Namisynk (2022) highlights the impact of this exclusion in her research on Aboriginal and Torres Strait Islander women who were killed by an intimate partner. Across her sample, 18 per cent of police-instigated family violence intervention orders were taken out against the victim-survivor's wishes (Buxton-Namisnyk, 2022). In relation to this concern, the actions of judicial officers can work in multidirectional ways. Judicial officers are uniquely placed to challenge victim-survivors' experiences of powerlessness, and on the other hand, they are also embedded within a system that often works to reinforce and perpetuate women's experiences of harm.

This reinforcement of harm can happen if judicial officers do not obtain sufficient advice from a victim-survivor before making an order (Judicial Council on Cultural Diversity, 2016b, p. 30), and reflects the differential treatment of Aboriginal and Torres Strait Islander people in family violence protection order proceedings (Cunneen, 2010; Douglas & Fitzgerald, 2018). The devastating consequences of failing to do so can be severe. As Buxton-Namisynk (2022, p. 1334) exemplifies, in one case concerning an Aboriginal woman from NSW who was the victim of intimate partner homicide, she 'told police that she did not want a DVO, but the police applied for (*and the court granted*) this order against her wishes. The order included an ouster/exclusion condition, even though the woman and her partner remained living together' [emphasis added]. This story highlights the capacity of judicial officers to reinforce harm, while also alluding to the important safeguard role that judicial officers can play if they ensure that victim-survivors' voices are listened to and their needs are met.

This story also emphasises the importance of appropriate conditions in a family violence protection order. Putt et al. (2017, p. 51), in their research on integrated family violence responses in Alice Springs, explore how the 'right' family violence intervention order can improve victim-survivors' feelings of safety. From their research with Aboriginal women, these women commonly viewed having a family violence intervention order in place positively. Importantly, this positive experience was related to particular conditions that created safety, and these conditions commonly took into consideration the victim-survivor's desire 'to continue to live with the defendant ([they] may not want to pursue criminal prosecution) but do not want him to be around when he is intoxicated' (Putt et al., 2017, p. 53). Similarly, an Australian Capital Territory ('ACT') report conducted by Kerry Arabena found that an intervention order is a key reason why Aboriginal and Torres Strait Islander women 'sought to access legal and justice agencies' (ACT Victims of Crime Coordinator, 2009, p. 102). This report similarly highlights the perspectives of Aboriginal women who wanted the violence to end, but did not want the relationship to end, and

stressed the importance of services and systems listening to and respecting women's needs and voices (ACT Victims of Crime Coordinator, 2009, p. 136).

Ms Linda Cao, a Senior Lawyer with Aboriginal Family Law Services, in a *WA Magistrates Court Inquiry* hearing*,* similarly highlights the important role that judicial officers can play in ensuring the right conditions, but only if they have an appropriate awareness of the dynamics of family violence (Community Development and Justice Standing Committee, 2019). Ms Cao explains that when a Magistrate 'gets it wrong', the issue is not that they 'do not care', but the limited awareness of the ramifications of particular conditions:

> on the entirety of the person's life … where they are living … their relationship with other family members, which is particularly important in the regions because the kinship groups quite often require people to stay together, even in circumstances in which there is violence. (Community Development and Justice Standing Committee, 2019, p. 5)

Ms Cao additionally outlines that inappropriate orders may leave Aboriginal and Torres Strait Islander women in 'an even worse position than they would have been if their needs had been understood by the magistrate at that first instance' (Community Development and Justice Standing Committee, 2019, p. 5). This finding further supports the need for training that is specific to family violence *and* the experiences of Aboriginal and Torres Strait Islander women, as well as research on the appropriateness of conditions associated with family violence protection orders for Aboriginal and Torres Strait Islander women.

As another note, related to ensuring the needs of victim-survivors are met, scholarship suggests low attendance rates at court, as the respondent and/or aggrieved, for Aboriginal and Torres Strait Islander peoples (Cunneen, 2010). Although, Putt et al. (2017, p. 50) contextualise this finding when they explore how judicial officers in Alice Springs resisted the introduction of a victim support program in courts, 'because of a perception … that women didn't come to court'. This report challenges this perception and notes 'one stakeholder asserted women are more likely to appear in court when they are supported by the [Victim Support and Advocacy Service]' – the program that was subsequently implemented (Putt et al., 2017, p. 50). This finding highlights the structural reasons, including the supports that women have access to in court, that impact Aboriginal and Torres Strait Islander women's attendance at court for proceedings related to family violence intervention orders. We discuss the importance of appropriate support in court, when we consider Aboriginal and Torres Strait Islander Court Support Officers later in this literature review.

2.2.2 Misidentification and Systems Abuse

Another key consideration related to family violence protection orders, and Aboriginal and Torres Strait Islander women's experience of mainstream courts, is the impact of misidentification. This experience refers to victim-survivors of family violence who are misidentified as the aggressor. Misidentification may be related to systems abuse, for example, where a perpetrator attempts to have the victim-survivor named as the respondent in a family violence protection order (Douglas, 2018). Systems abuse is also a recognised form of family violence in the National Domestic and Family Violence Bench Book (Australasian Institute of Judicial Administration, 2023). Relevantly for this literature review, misidentification has particular impacts on Aboriginal and Torres Strait Islander women. As Langton et al. (2020, p. 69) describe, 'informants explained to us that they frequently observe situations where perpetrators seek out protection orders against their victims as a form of manipulation.' Nancarrow (2019) has also importantly argued that we cannot separate misidentification from the systemic racism that Aboriginal and Torres Strait Islander women experience across legal systems (see also, Nancarrow et al., 2020).

Aboriginal and Torres Strait Islander women's experience of misidentification is also quantitatively supported, for example, in the Victorian context. In Family Violence Reports (known as an L17 report), which are a police record of family violence incidents that were attended by Victoria Police, there was a 44 per cent increase in Aboriginal women being named as respondents between 2016 and 2020, and in 2020, 79.4 per cent of Aboriginal women, who were named as respondents, had previously been named as a victim (Family Violence Reform Implementation Monitor, 2021, p. 10). Furthermore, misidentification often has serious consequences for the impacted individual, including criminalisation, the removal of children, and impacts on housing and employment (Douglas & Fitzgerald, 2018; Family Violence Reform Implementation Monitor, 2021; Langton et al., 2020; Victorian Aboriginal Child and Community Agency, 2024, p. 37). In light of these findings, judicial officers can play an important role in challenging this form of systems abuse.

Judicial officers are uniquely placed to act as a safeguard in preventing the harmful consequences of misidentification. Nancarrow et al. (2020) note that judicial officers must recognise the power they hold in relation to civil determinations that relate to family violence, while the Family Violence Reform Implementation Monitor (2021, p. 26) found that Victorian courts are a 'main mechanism to resolve misidentification … where a family violence safety notice is in place, an application for an [Family Violence Intervention Order] has been made or criminal charges have been filed'. Where a Magistrate recognises that misidentification and/or systems abuse is taking place, they can have a case dismissed.

Although this safeguard exists, the Family Violence Reform Implementation Monitor (2021, p. 28) found inconsistencies 'in misidentification being picked up at court, with significant variability in magistrates' understanding of family violence, coercive control and the issue of family violence'. These findings, regarding the importance of improving awareness about family violence among judicial officers in mainstream courts, and coercive control in particular, have also been explored academically (Douglas, 2018, 2021; Douglas & Ehler, 2022). Additionally, Douglas (2021, p. 186) draws specific attention to the experiences of women applicants in a family violence protection order, where these women commonly see multiple judges on multiple occasions, thus, it is 'difficult for a judge in a protection order case to develop an appreciation of the pattern of abuse'. Addressing this variability in knowledge, and issues with process, with specific attention given to Aboriginal and Torres Strait Islander women's experiences, may provide insight into the role that judicial officers can play in challenging misidentification and systems abuse.

2.2.3 Case Coordination

The literature also highlights the importance of case coordination, as a mechanism to improve Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings, and the role that courts and judicial officers can play. As discussed earlier, Aboriginal and Torres Strait Islander women may have many legal matters across multiple courts. To account for this evidenced experience, the Judicial Council on Cultural Diversity (2016b, 2017, p. 18) recommends 'daily coordination meetings' before family violence lists in the Magistrates Court, explaining that there is a current lack of coordination and information sharing across courts and between judicial officers. The Queensland Indigenous Family Violence Legal Service (2024), in a submission to the *Family Violence Order Inquiry*, also recommends the creation of a mechanism to ensure information is shared between Family Courts and Specialist Domestic and Family Violence Courts. This mechanism would ensure 'the Court has all relevant information and Orders' and alleviate the current burden on relevant parties to provide the court with these documents (Queensland Indigenous Family Violence Legal Service, 2024, p. 2). Case coordination may also relate to ongoing matters related to child protection.

2.2.4 Awareness of Justified Fears Related to Child Removal

A key reason why Aboriginal and Torres Strait Islander women do not report family violence, and are hesitant to engage with mainstream legal systems, is legitimate fears related to child removal and the involvement of child protection (Judicial Council on Cultural Diversity, 2016b; Langton et al., 2020, p. 48). We do not consider the impact of

the child protection system on Aboriginal and Torres Strait Islander women in detail in this literature review (see for example, Victorian Aboriginal Child and Community Agency, 2024). Yet the systemic racism that is embedded in misidentification and/or criminalisation, works hand in hand with child removal (Australian Human Rights Commission, 2020). Ms Thelma Schwartz, the Principal Legal Officer from the Queensland Indigenous Family Violence Legal Service, in the *Family Violence Order Inquiry* hearing, also highlights specific interactions between family violence protection order proceedings (or the police precursor, a police protection notice[4]) and child protection. She explains that in Queensland, when women who are victim-survivors are:

> given a police protection notice and assistance, that triggers an automatic referral to child safety if children are involved. Child safety are then involved and will move to remove her children. So her first point of contact, if we're not fighting the fact that she's been misidentified as the aggressor, will then be about engaging in staving off child safety. (House of Representatives Committee, 2024b, p. 35)

Therefore, this legitimate risk regarding child removal impacts Aboriginal and Torres Strait Islander women's experience in courts, and this risk is something that judicial officers should consider when hearing applications for family violence protection orders.

Along similar lines, Langton et al. (2020, p. 15) describe that another key reason for women's hesitancy to report experiences of family violence is the risk of homelessness, often due to a financial dependence on their abusive partner, as well as 'the fear of isolation from family and community' (see also, Victorian Aboriginal Child and Community Agency, 2024). The authors additionally explore how Aboriginal and Torres Strait Islander women are often forced to decide between remaining with their partners, and if they do, losing custody of their children, a choice that Langton et al. (2020) describe is a false one that does not account for the dynamics of family violence (see also ACT Victims of Crime Coordinator, 2009). Douglas (2021, p. 111) highlights this situation when she examines the story of Cassie, an Aboriginal woman who experienced family violence from an Aboriginal partner and who also had her children removed. Douglas (2021) describes how Cassie's partner was incarcerated as a result of the family violence, and she was pressured by child protection to leave her partner. Yet Cassie did not necessarily want to separate as she did not want to be another person in her partner's life to 'give up on him' (Douglas, 2021, p. 116). This story highlights the risks associated with reporting family violence, where Aboriginal and Torres Strait Islander women may not want to engage in

[4] *Domestic and Family Violence Protection Act 2012* (QLD), s101.

processes that pressure and/or force separation, and which commonly lead to a partner's incarceration and/or the removal of their children. We will now turn to examine the role that is already being played by Aboriginal and Torres Strait Islander Court Support Officers to support victim-survivors of family violence in court.

2.3 Aboriginal and Torres Strait Islander Court Support Officers

Across the secondary and grey literature, academics, policymakers, and practitioners highlight the role that is played by Aboriginal and Torres Strait Islander Court Support Officers. In particular, attention has been drawn to the support these officers provide Aboriginal and Torres Strait Islander women who are victim-survivors of family violence in court. Across scholarship and inquiries, calls have consistently been made to ensure this role is appropriately funded, so that this position exists across all courts and jurisdictions (ACT Victims of Crime Coordinator, 2009; Judicial Council on Cultural Diversity, 2016b, 2017; Victorian Royal Commission into Family Violence, 2016b). Despite this recognition and support, there is a lack of clarity around how this position is constituted, what role Aboriginal and Torres Strait Islander Court Support Officers play, and differences across jurisdictions and between courts. In this section, we map out where these roles exist, what is already known about these roles, and limits in our existing understanding. We also include a table of the formal supports available in mainstream courts for Aboriginal and Torres Strait Islander women who are victim-survivors of family violence, as Appendix C. We note that this table is based on public information only and may be incomplete. In so doing, we argue that research with Aboriginal and Torres Strait Islander people, who support victim-survivors of family violence in a professional capacity, is an important starting point for understanding best practice in terms of judicial officers as a way to improve Aboriginal and Torres Strait Islander women's experience of mainstream courts as victim-survivors of family violence.

Turning first to Victoria, there is arguably the most information available in relation to this role. In their final report, the Victorian Royal Commission (2016b, p. 41) notes that 'a number of submissions to this Commission similarly described the value of having Aboriginal liaison officers at court to assist people to understand the family violence intervention order process … various submissions described the value of the Koori Family Violence and Victims Support program at the Melbourne Magistrates' Court'. At the time of the Victorian Royal Commission, this program had been defunded. Following recommendations from the Victorian Royal Commission, this program was reinstated as the *Umalek Balit* program which provides assistance in family violence protection orders, criminal matters that involve family violence, as well as in the Victims of Crime Assistance

Tribunal (Langton et al., 2020; Magistrates' Court of Victoria, 2020). Langton et al. (2020, p. 77) also focus specifically on the Wodonga Magistrates' Court, and describe how an Aboriginal Liaison Officer assists women who are victim-survivors of family violence as part of the Victims Assistance Program. In this sense, this role appears to be constituted differently in different courts across the Victorian jurisdiction.

In NSW, Langton et al. (2020) examine the Albury Local Court, and explain that no similar role exists, ad hoc support is instead provided by Aboriginal community-controlled organisations. In NSW courts more broadly, there does appear to be an Aboriginal Client Service Specialist Program in operation, that supports 'Aboriginal victims of crime; court users and their families' (NSW Department of Communities and Justice, n.d.), however, there is a lack of information about which courts this program is operating in and the scope of operation. Women's Domestic Violence Court Advocacy Services also appear to be funded to employ an Aboriginal Specialist Worker in certain courts (Women's Domestic Violence Court Advocacy Services Newcastle, n.d.), but there is no additional information on this role that is available publicly. One Aboriginal community-controlled organisation, that is evidently providing support to victim-survivors of family violence in NSW courts, is Wirringa Baiya. For a number of years, they have provided support in civil matters at the Federal Circuit and Family Court of Australia, the Downing Centre, Waverley Local Court, and Newtown Local Court. They describe, '[w]e can sit with you while you wait for your matter to be called, sit in the Courtroom with you during your matter and talk to you after about what happened' (Wirringa Baiya Aboriginal Women's Legal Centre, n.d., 2011a, 2011b). In a submission to the *Standing Committee on Social Policy and Legal Affairs: Inquiry into Missing and Murdered First Nations Women and Children*, Wirringa Baiya (2022, p. 9) additionally call for increased funding to employ 'First Nations Court Support officers' across jurisdictions and courts.

In Queensland, there is less information available in relation to whether this role exists in mainstream courts. Across the Specialist Domestic and Family Violence Courts in Queensland, 'Community Justice Groups' are funded to assist Aboriginal and Torres Strait Islander people who are involved in court proceedings related to family violence across all five specialist court locations (Queensland Courts, 2023). In an Evaluation Report of the Southport Specialist Domestic and Family Violence Court, there is mention of Kalwun, an Aboriginal community-controlled organisation, that provides court support to Aboriginal and Torres Strait Islander women (Queensland Department of Justice and Attorney-General, 2021). This Evaluation Report also describes the Numala Yalnun trial program, a program that previously provided support to Aboriginal and Torres Strait Islander people in specialist courts across civil and criminal family violence matters, but notes that this

government-program was only funded for 6-months (Queensland Department of Justice and Attorney-General, 2021).

In the Magistrates Court of Tasmania, an Aboriginal Court Support Officer provides support to victim-survivors of family violence, including related to family violence intervention orders, and 'guides victim-survivors through the justice system and after court appearances' (Department of Justice Tasmania, n.d.). In the ACT, Legal Aid and the Domestic Violence Crisis Service appear to employ an Aboriginal Liaison Officer who can assist in family violence protection order matters; however, the scope of these roles is unclear (ACT Magistrates Court, n.d.). In South Australia ('SA'), six Aboriginal Justice Officers provide support to both court users and victims across courts in Adelaide, as well as courts in regional and remote locations (Courts Administration Authority of South Australia, n.d.). In WA, a Senior Aboriginal Liaison Officer role exists, but this role appears to be confined to court users and is not specific to family violence (Magistrates Court of Western Australia, 2023). It is unclear whether a similar role exists in the NT. We do know that in Alice Springs, the Victims Support and Assistance Program was supporting women who were victim-survivors of family violence across criminal and civil matters, and 81 per cent of their clients were Aboriginal women (Putt et al., 2017, p. 53). However, at that point in time, this role was not an Aboriginal-identified position. It is, therefore, unclear if similar programs exist across other jurisdictions. What these findings do highlight is the role that Aboriginal and Torres Strait Islander Court Support Officers play in supporting victim-survivors of family violence in court, as well as an avenue for further exploration in terms of how this role is constituted and the types of support that are being provided.

Conclusion

In this review, we have examined literature that considers Aboriginal and Torres Strait Islander women's experience of family violence protection order proceedings. We have argued that there are limitations in terms of our current knowledge as to judicial officers and best practice. These limitations relate to gaps in our understanding about the three key themes that we have explored in this review. First, how judicial officers and courts can challenge structural barriers to Aboriginal and Torres Strait Islander women's participation in court proceedings. Second, how judicial officers can work to prevent and limit Aboriginal and Torres Strait Islander women's harmful experiences related to family violence protection order proceedings. Third, understanding the role that is currently being played by Aboriginal and Torres Strait Islander Court Support Officers, and/or the more informal role of Aboriginal community-controlled organisations. Furthermore, returning to the quote from Langton et al. (2020) that we raised at the start of this review, these limitations in our current understandings also raise broader questions around what justice and cultural responsiveness looks like in the judicial system for Aboriginal and Torres Strait Islander women who are victim-survivors of family violence. And importantly, whether mainstream courts can operate as a mechanism of justice at all.

In exploring these questions, we consider a useful starting point to be turning to the experiences and expertise of Aboriginal and Torres Strait Islander Court Support Officers, and laying the groundwork for engagement with the stories, perspectives, and voices of Aboriginal and Torres Strait Islander women who are victim-survivors of family violence and engaged in family violence protection order proceedings. We also recognise that these research 'groups' are not always distinct, and Aboriginal and Torres Strait Islander Court Support Officers may have their own personal experiences of family violence (Langton et al., 2020, p. 53). Furthermore, we affirm the importance of this research being led by Aboriginal and Torres Strait Islander people. While we have raised some potential areas of inquiry, these priorities must be driven by the needs of Aboriginal and Torres Strait Islander peoples and communities. We draw on the important work of scholars like Larissa Behrendt (2019, p. 205), who explores the importance of 'storytelling' and 'making space for … voices to be heard in their own words', First Nations community advisory groups, and listening (Anthony et al., 2021). These are all elements that must be embedded in this research.

As a final note, this literature review developed out of a partner project between the Australian Association of Women Judges and the Centre of Excellence for the Elimination

of Violence Against Women. The focus of our review is grounded in what judicial officers have outlined as a key priority area in terms of practically-oriented research that is needed on the ground. This literature review is, therefore, an important starting point within a broader picture. Our ongoing work is examining what can be done now to improve Aboriginal and Torres Strait Islander women's experience of the judicial system. Integrally, this literature review must be read alongside calls for structural change, and responses to family violence that turn away from the criminal legal system, and toward responses that centre Aboriginal Laws, cultures, and communities (Blagg et al., 2022). We, therefore, recognise the importance of research that aims to improve women's everyday lives, while also building towards systemic change.

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Appendix A

Jurisdiction	Name
Australian Capital Territory	Galambany Court (Circle Sentencing) is available in the ACT Magistrates Court. Warrumbul Circle Sentencing Court is available in the ACT Childrens Court. A pilot Circle Sentencing list recently started in the ACT Supreme Court.
New South Wales	There is the Circle Sentencing Intervention Program in the Local Court of NSW, the Walama List Pilot in the District Court of NSW, and the Youth Koori Court.
Northern Territory	Community Court is available in Groote Eylandt and, recently established, in Kintore in the Local Court of the NT and the Youth Court of the NT. There are plans for expansion to Maningrida.
Queensland	Murri Court, which is located in the Queensland Magistrates Court and the Queensland Childrens Court.
South Australia	The Nunga Court Division of the Magistrates Court in SA. Any criminal court can also convene an Aboriginal Sentencing Conference.
Tasmania	N/A
Victoria	Koori Court, which is located in the Magistrates Court of Victoria, the Childrens Court of Victoria, and the County Court of Victoria.
Western Australia	The Barndimalgu Court, a specialist family and domestic violence court in Geraldton. The wider Aboriginal Community Court, which operated as part of the Magistrates Court of WA, ended in 2015.

Appendix B

Jurisdiction	Inquiry	Year
National	The House Standing Committee on Social Policy and Legal Affairs: Inquiry into family violence orders	2024 – ongoing
	The House Standing Committee on Social Policy and Legal Affairs: Inquiry into missing and murdered First Nations women and children	2022–2024
	The House Standing Committee on Social Policy and Legal Affairs: Inquiry into family, domestic and sexual violence	2020 – 2021
Australian Capital Territory	N/A	
New South Wales	Parliament of New South Wales: Domestic violence trends and issues in NSW	2011–2013
Northern Territory	N/A	
Queensland	Women's Safety and Justice Taskforce: Here Her Voice Consultations	2021–2022
	Independent Commission of Inquiry into Queensland Police Service response to domestic and family violence	2022
South Australia	Royal Commission into Domestic, Family and Sexual Violence	2024 – ongoing
Tasmania	N/A	
Victoria	Yoorrook Justice Commission	2022 – ongoing
	Inquiry into Victoria's Criminal Justice System	2021–2022
	Royal Commission into Family Violence	2015–2016
Western Australia	Inquiry into the Magistrates Court of Western Australia's management of matters involving family and domestic violence	2019–2020

Appendix C

Court/Jurisdiction	Title	Information on Role
Federal Circuit and Family Court of Australia	Indigenous Family Liaison Officers	Located across Australia, excluding WA. Provide support in court to Aboriginal and Torres Strait Islander families.
ACT Magistrates Court	Aboriginal Liaison Officer	Both Legal Aid ACT and the Domestic Violence Crisis Service appear to employ an Aboriginal Liaison Officer who can assist in family violence protection order matters.
Local Court of New South Wales	Aboriginal Client Service Specialist Program	Located in Local Courts across NSW. Provide support to Aboriginal and Torres Strait Islander victims of crime, as well as court users. This program is not specific to family violence.
New South Wales	Women's Domestic Violence Court Advocacy Services	Funded by Legal Aid NSW to assist women and children who are victim-survivors of family violence in courts. Employ an Aboriginal Specialist Worker in some courts.
Northern Territory	N/A	
Specialist Domestic and Family Violence Courts in Queensland	Community Justice Groups	Community Justice Groups receive state funding to support Aboriginal and Torres Strait Islander people involved in court proceedings related to family violence across all five Specialist Domestic and Family Violence Courts.
South Australia	Aboriginal Justice Officers	Six Aboriginal Justice Officers are employed by the Courts Administration Authority in SA to support court users and victims across courts in Adelaide, as well as courts in regional and remote areas.
Tasmania	Aboriginal Court Support Officer	Funded by the Department of Justice Tasmania, to support Aboriginal adults and children who are victim-survivors of family violence in court.
Magistrates Court of Victoria	Umalek Balit Program (Koori Women's and Men's Family Violence Practitioners)	Umalek Balit includes a Koori Women's Family Violence Practitioner, and a Koori Men's Family Violence Practitioner, who support Aboriginal and Torres Strait Islander families in family violence related proceedings across Magistrates Courts.
Magistrates Court of Western Australia	Senior Aboriginal Liaison Officer	Senior Aboriginal Liaison Officers are not specific to family violence, and appear to only support court users, and not victims.

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