



84 Hartley Street
PO Box 2109
Alice Springs NT 0871

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

FREECALL: 1800 088 884
Phone: 08 8953 6355
Fax: 08 8953 6749
Email: caaflu@caaflu.com.au

BY EMAIL: TF.DomesticViolenceDirectorate@nt.gov.au

2 August 2019

Office of Domestic, Family and Sexual Violence Reduction
PO BOX 37037
WINNELLIE NT 0802

Dear Sir/Madam

Northern Territory Sexual Violence Prevention and Response Framework Discussion Paper – The Central Australian Aboriginal Family Legal Unit's Submissions

We write in response to the Northern Territory Government's invitation for submissions on the *Northern Territory Sexual Violence Prevention and Response Framework Discussion Paper* (2019).

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

Our services include free and confidential information to Aboriginal and Torres Strait Islander people across the region on issues of family violence and sexual assault. We primarily advise and represent clients on domestic violence order applications and assist them with talking to police and understanding the court process and provide specific legal and other support to victims of sexual assault.

CAAFLU additionally develops and delivers community legal education to government agencies, non-government organisations, schools and other community stakeholders and contributes to specific law reform measures both locally and nationally.

We set out our response to questions 11 and 13 of the Discussion Paper as follows:

Q. 11. What can be done to support and respond to adults who have experienced sexual violence in your community and across the NT?

Legislative and other reforms to emergency financial assistance

CAAFLU submits that the *Victims of Crime Assistance Act 2006* (NT) (**the Act**) requires reform to better support and respond to adults who have experienced sexual violence. One of the fundamental barriers that hinders victims of sexual violence from leaving situations of violence is a lack of finances.



Financial support is particularly crucial for many Aboriginal and Torres Strait Islander victims who need to travel long distances in order to leave their close family structures to protect themselves and family members from violence.

Immediate payments of financial assistance is located in Division 2 of the Act. Section 27(5) states that that the maximum amount of immediate financial assistance is \$5,000. CAAFLU believes this to be an extremely insufficient amount for victims of sexual violence to utilise in the short term, especially considering the number of immediate costs that a victim leaving a situation of violence must account for, such as:

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

Furthermore, the legislation fails to consider the fact that many victims who seek immediate financial assistance in order to escape sexual violence often take their children with them. Currently, the Act does not give any recognition to this important factor of including the responsibility to care for children when determining whether immediate payment which in our submission should be granted and be considered when determining how much financial assistance should be given. Accordingly, additional clauses should be added in ss 26 & 27 of the *Victims of Crime Assistance Act 2006* (NT) in order to consider the fact that children may also need to be covered under this emergency relief grant. CAAFLU believes that the limit should be increased to \$10,000 in order to more adequately support the varying circumstances of victims and noting that this may be their only source of income for an indefinite period. We note that submissions were provided to the NT Government regarding proposed amendments to the victims of Crime legislation however given this additional specific request around the Sexual Violence Prevention and Response Framework Discussion Paper, the NT government we submit ought be required to consider these additional considerations.

In addition to monetary relief, CAAFLU stresses that assistance should also be provided in other ways. Vouchers to buy food, supplies and public transportation costs are possible means through which the government could provide practical support. This could help in reducing the stress of victims in determining how much money they need to set aside for basic goods if they know that these necessities can be covered in the form of vouchers. It is particularly important to consider that the commonwealth government Centrelink scheme provide emergency payments up to the level of 1 fortnightly payment which could equate to \$400-500. This is expected to capture the costs listed in items (a)-(f) which again is a failure to recognise the practical costs of escaping violence.

Separately, despite the Royal Commission into Banking and the key findings that have been handed down, only the Commonwealth Bank of Australia offers an emergency Domestic Violence package up to the amount of \$2000 which is assessed for customers only by qualified counsellors. The funds are usually provided by way of vouchers, food or petrol to assist with immediate evacuation costs.

The legislation as it stands also discourages victims from seeking the financial assistance, they need to escape violence. Section 28(1) of the Act states that the decision about immediate payment is final and not subject to any review or appeal.

CAAFLU submits that this unfairly burdens sexual violence victims and acts as a deterrent to seeking emergency relief in the first place. Victims may be intimidated if they believe that they do not have enough evidence or that the violence is not substantial enough in order to utilise their one and only attempt to seek emergency assistance and escape. Therefore, CAAFLU believes that this clause should be completely removed as an important step in supporting victims of sexual violence in the Northern Territory.

Section 29 of the Act further states that payment must be made as soon as practicable but within 28 days. Whilst CAAFLU supports that the legislation instructs for payment to be made as soon as practicable, CAAFLU believes the inclusion of the 28 day timeframe gives unnecessary leeway for the payment to be delayed. The timeframe should be shortened to no more than 7 days. In our experience, women in sexual violence situations often only consider leaving when they find themselves in imminent, serious danger. Thus, every means possible should be used to ensure that victims have access to emergency relief quickly - including by significantly shortening the 28 day leeway.

Overall, CAAFLU has significant concerns about the effectiveness of the *Victims of Crime Assistance Act 2006* (NT) and how many victims are applying and receiving funding through this legislation. There seems to be conflicting information between what is stated in legislation and what is written at the front of the *Application for Immediate Financial Assistance* form.¹ The statute does not seem to require medical or police reports in order to be eligible for emergency funding. It simply states that victims should provide reasons if a police statement has not been made.² There is no mention of needing to provide medical records to obtain immediate financial assistance. However, the front page of the form seems to differ to the legislation, stating "*Copies of police reports and medical records will be required to support your claim.*" Current and accurate information about the use of this legislation was not publically obtainable online. CAAFLU strongly believes that there may be significant gaps between what is required by legislation and what is asked for in practice when assessing immediate relief applications. We have several important questions regarding this emergency financial assistance, including:

- (i) How many applications are made per year for victims of sexual assault?;
- (ii) What percentage of applications for immediate relief are granted for victims of sexual assault?;

¹ Northern Territory Department of the Attorney-General and Justice, *Application for Immediate Financial Assistance* < https://nt.gov.au/_data/assets/pdf_file/0020/170831/completed-application-for-immediate-financial-assistance-form.pdf > (accessed 31 July 2019)

² *Victims of Crime Assistance Act 2006* (NT) s 26(3)(f)



- (iii) What is the average amount of funding granted per application for victims of sexual assault?;
- (iv) What evidence is generally required for applications to be approved for victims of sexual assault?; and
- (v) On average, how long does the process take from the time the application is submitted to funding being received for victims of sexual assault?
- (vi) Is there any distinction drawn between victims of domestic violence and victims of sexual assault in relation to any of the questions raised above? If not, why not?

CAAFLU asserts that such information should be provided to organisations like ours in order to further consider where reforms should be made. If the government does not currently have the answers to such questions, then a government inquiry should be considered.

It is important to ensure that a survivor's ability to access immediate funding is as fair, attainable and efficient as possible. Providing easily accessible emergency financial assistance could mean the difference between life and death in some situations.

It is important to recognise that most Indigenous people (CAAFLU's client base) are on income management (Basics Cards). This controls their expenditure. If they have fled without their personal possessions, then there are no funds available at all. If they have fled with their basics card in hand, then there are still limitations on how money can be spent. Our clients are required to meet the rental costs in relation to their usual residence, but must also meet the entry fees for crisis accommodation in Alice Springs and other refuges in Central Australia (provided there are beds available), keeping in mind that rules apply to male children over a certain age being eligible into the refuge. If they are not eligible, then victims must secure accommodation elsewhere which could prove to be more costly or take the risk of placing their male child/ren with extended family. Additionally, there are no choices of refuges in Central Australia. Indigenous and Non-Indigenous people alike must be sheltered in the same refuge. Cultural and other considerations are not able to be fully considered for example if Indigenous victims are faced with the conflict issues in cases where family member or in-laws of the defendants are staying at the same accommodation).

13. How can we strengthen the systems that respond to sexual violence in your community and across the NT?

Police response

In 2014, the Northern Territory Police published a document titled *General Order on Sexual Assault Response and Investigation (2014)* (the **General Order**). CAAFLU understands this to be the primary police guide on this topic. Whilst CAAFLU works with clients who are directly impacted by this general order, we have only been able to access it quite recently after it became publicly available (in or around July 2019) through the Royal Commission into Institutional Responses to Child Sexual Abuse website. CAAFLU has previously attempted over recent years to gain access to it with no success.



Other guidelines referred to in the General Order, including the *NTPF - Domestic and Family Violence Strategy 2012-2014* and *NTPF - Investigation Management Guidelines*, are still not publicly available (or at least not easily accessible if they are). The difficulty in accessing these guidelines, in circumstances where it is imperative for victims to understand their rights when making reports to the police, indicates a greater problem at large. Ensuring that key guidelines such as the General Order are publicly available also assists organisations such as CAAFLU which support victims of sexual assault who are traversing the police process. To the extent that there are other guidelines for the police which CAAFLU is not aware of, CAAFLU requests to be given access to these so that we can review them accordingly and provide suggestions on areas of improvement. If the NT Government and the community at large is to get serious about stopping sexual violence, this will only occur once all relevant groups are reading from the same page. The government and police force must be open and transparent when considering reforms that will ultimately strengthen the current system and address the culture of secrecy that surrounds incidents of sexual violence. This begins by granting CAAFLU and similar organisations access to the documents that are relied on to respond to sexual violence in the Northern Territory.

When comparing the NT's 12-page General Order with guidelines available in other Australian states, we are still far behind. CAAFLU submits that when sexual violence is reported, it should be received by police officers who come from a trauma-informed perspective and will take a survivor-centric approach. We note that the "Victim Management" section of the General Order lacks the necessary detail to appropriately instruct police officers who are investigating sexual assault incidents. For example, clause 39 of NT's General Order simply states, "*Investigative interviewing techniques are designed to elicit the best information from victims of serious crime such as sexual assault and these techniques are highly recommended*", without detailing what the techniques involve or how sexual assault victims will be treated. In contrast, Victoria's 48-page equivalent police guide titled *Code of Practice for the Investigation of Sexual Crime* (2016) stipulates that "*victims can sometimes feel they are to blame so it is important for attending police to reassure the victim that they are not to blame themselves for the incident and demonstrate empathy and concern about the events*" (Guideline 7.2) and "*every effort should be made by the investigators to build rapport and gain confidence of the victim*" (Guideline 7.4.1).

CAAFLU also submits that two essential guidelines are notably absent in NT's General Order, including the requirement that victims are interviewed by police officers of the same sex and that victims are interviewed through a historically and culturally sensitive approach. The NT General Order appears to lack the recognition of culture and ethnicity which is an important factor in shaping police interviews. Given that the Indigenous victimisation rate for sexual assault was recorded as more than twice that of the non-Indigenous population in the Northern Territory in 2018,³ it is imperative for specific guidelines for interviewing Indigenous people who have experienced sexual violence.

³ Australian Bureau of Statistics, Recorded Crime - Victims, Australia 2018, Table 19
<<https://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/4510.02018?OpenDocument>>



The NT General Order should take guidance from the Victorian Code of Practice, which provides that *"police are to have regard to the complex set of barriers faced by victims within the Aboriginal community"* and outlines how a tailored response can be rendered by police in Guideline 6.1.1, including the involvement of a Victoria Police Aboriginal Community Liaison Officer, where available.

Language and understanding of sexual violence

Through our work with victims, CAAFLU maintains that police interviewing standards are not at the level that they should be when questioning victims of sexual violence. There continues to be out-dated understandings of sexual violence throughout Central Australian communities in general that is continually perpetuated through the language used by police officers and the judiciary. The systems that respond to sexual violence can only be strengthened by reshaping the language used by police, which in turn will adjust antiquated attitudes around sexual violence in the Northern Territory at large. For example, questions such as *"What were you wearing that night?"* or *"Were you enjoying it?"* can be extremely harmful to people who have experienced sexual violence and provide no evidentiary value. Examples of this language being used have occurred as recently in the last 12 months in Central Australia which demonstrates that police as a investigative fraternity are still not fully equipped to manage the interview process in an appropriate culturally appropriate way. Investigating officers must avoid framing questions in a way that directly or indirectly blames victims for the incident or attempt to infer consent from asking whether a survivor "enjoyed" the specific act.

Language used in police interviews is paramount and there needs to be detailed guidelines for front line responders to ensure that questions are asked in a manner that is sensitive to the victims' experiences and do not discourage them from reporting to the police. The principles of trauma-informed practice should be embedded in these guidelines to ensure that victims are adequately supported at the outset, including, *"consistent emphasis on safety, trustworthiness, choice, collaboration and empowerment"* and *"consistent emphasis on what may have happened to a client, rather than what is wrong with a client/s"*.⁴ For example, some interviewees may not use the word 'rape' as they may not be comfortable speaking directly about sexual violence. It is important for officers to gauge how interviewees identify themselves and their experiences and adjust their language accordingly. Questions that can be answered with "yes" or "no" should be avoided and replaced with ones that prompt the interviewee to express their experience in their own words. These can include "Please describe your experience", or "Can you tell me about..." which remain non-leading but still illicit the information required to establish if an offence has been committed.

The use of interpreters is often not actively considered by police when interviewing victims. In our experience, well-trained accredited Interpreters in around sexual assault cases are sourced at the tail end of legal proceedings throughout the court process rather than in the early stages of taking statements and providing support. This would strengthen systems and ensure that procedures from police and victim perspectives are safe.

⁴ Cathy A Kezelman and Pam Stavropoulos, Blue Knot Foundation, *Trauma and the Law: Applying Trauma-Informed Practice to Legal and Judicial Contexts*, (2016) p 5-6.



Training and toolkits for police

It is of utmost importance that victims of sexual violence trust that their experiences will be understood, believed and taken seriously by investigating officers. CAAFLU submits that in order for adequate support to be provided to victims from the outset, police officers should receive specialised training in the nature and dynamics of sexual assault, and information about the social, psychological and cultural circumstances that influence the behaviour of people who have experienced sexual violence.

The NT Police Force should consider developing innovative interview and response strategies which will encourage victims to disclose the details of the incident/s in their own manner. For example, we have seen diagrams and maps creatively employed in interviews which have allowed victims to clearly indicate where specific acts have occurred or the location of their movements on the day of the incident/s. CAAFLU would be happy to assist in guiding the Police Force towards effective reforms based on our client experience.

A toolkit for police officers and supporting organisations should also be developed to promote a trauma-informed and victim-centric approach. Due to the complexities of this area, CAAFLU believes that more guidelines should be provided to police in dealing with sexual assault victims. There are several resources that can be used in order to develop a toolkit for police officers. These should include drawing on best-practice trauma-informed interview techniques, providing hypothetical sexual assault scenarios for police officer training, and utilising other resources to develop actionable tips in order to create and maintain a safe space for discussion and effective dialogue.⁵ CAAFLU would also be happy to provide further assistance with such a project to the NT Police Force.

Further, the systems that respond to sexual violence (the Police Force, criminal justice system, counselling, sexual assault referral centres and other support services) should be coordinated and integrated, which will reduce the need for people who have experienced sexual violence to provide multiple recounts to different people and relive traumatic experiences. As a guide, the NSW Government's *Safer Pathway* program provides a "streamlined and integrated approach to safety assessment, referrals and service coordination for victims of domestic violence".⁶ This program employs a Domestic Violence Safety Assessment Tool to consistently and accurately assess the level of threat for victims, a Central Referral Point that manages case referrals, and a network of Local Coordination Points throughout NSW to arrange local responses and coordinate cases and support for the victims, including Safety Action Meeting for victims identified as being at serious threat of self-harm. CAAFLU believes that if the NT Government encourages the Police Force to reform the systems that respond to people who have experienced sexual violence, the Police Force will gain more trust from the community, which ensures that people (especially in Aboriginal communities) feel safe enough to report their incident/s.

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

⁶ Women NSW, *Safer Pathway Fact Sheet*, November 2017, <<https://www.women.nsw.gov.au/download?file=637600>> (accessed 30 July 2019).

Please let us know if you have any questions.

Yours faithfully

CAAFLU

Aboriginal Corporation

A handwritten signature in black ink, appearing to read 'Kim Raine', written in a cursive style.

KIM RAINE

Principal Legal Officer