



Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

By email: FirstNationswomenchildren.sen@aph.gov.au

03 February 2023

Dear Secretariat

Missing and Murdered First Nations Women and Children

Please find enclosed the Kimberley Community Legal Services (KCLS) submission to the Senate Inquiry into Missing and Murdered First Nations Women and Children.

If you require further information, please contact me on 08 9169 3100 or grace_dudley@kcls.org.au

Yours sincerely

A handwritten signature in black ink, appearing to read "GD", is written over the typed name "Grace Dudley".

Grace Dudley
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Submission by Kimberley Community Legal Services Inc. to the Senate Inquiry into Murdered and Missing First Nations Women and Children

Date of Submission: 03 February 2023

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We acknowledge that we work on Aboriginal land, traditionally the home of the Yawuru people of the West Kimberley and Miriwoong people of the East Kimberley. We pay respect to all elders past and present

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Introduction

1. Kimberley Community Legal Services ('KCLS') is an independent, not-for-profit, multidisciplinary community legal centre operating in the Kimberley region of Western Australia. Our services include legal advice and representation on most civil law matters (including family law, child protection, tenancy, credit and debt, criminal injuries compensation and redress), intensive tenancy and family violence social support, financial counselling, and law reform advocacy.
2. We conduct regular outreach from our offices in Kununurra and Broome to Halls Creek, Fitzroy Crossing, Derby, Wyndham and more than a dozen remote communities in the Kimberley. Our practice is client centric, holistic and embedded in the community and region in which we work. Several communities are up to a 12-hour drive from the closest major centre (such as Kununurra or Broome). In the summer months, roads flood and some towns are only accessible by air.
3. KCLS offers free advice and advocacy for people affected by or at risk of family violence. Our client demographic is diverse, with 89.1% identifying as Aboriginal or Torres Strait Islander, 66% are women, and 34% of clients self-identify as experiencing family violence. Further, 9% identify as homeless or at risk of homelessness, and 88.5% identify as living in financial poverty.²

Focus and structure

4. The following terms of reference will be used to guide our submissions:
 - ◁ *the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children.*
 - ◁ *the systemic causes of all forms of violence, including sexual violence, against First Nations women and children, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children*
 - ◁ *the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children.*
5. KCLS wishes to acknowledge the families of those First Nations women and children who are missing or sadly have been murdered. We acknowledge there are a myriad of systemic causes of violence against First Nations women and children.
6. For the purposes of this submission, we confine our focus to our experiences as a community legal centre providing front line support to First Nations victim-survivors who seek support with applying for and enforcing Family Violence Restraining Orders (FVRO). As a result, our submissions will focus on:
 - a. Barriers First Nations women in the Kimberley region face in applying a FVRO, and
 - b. Barriers First Nations women in the Kimberley face in enforcing a FVRO.
7. All case studies we use are heavily deidentified to protect confidentiality.

² Kimberley Community Legal Services (2021), *KCLS Annual Report 2020-2021*, p.7.

FDV in the Kimberley region

8. The Kimberley region is twice the size of the state of Victoria, comprised of 4 local government areas and 150 Aboriginal Communities.³ Aboriginal and Torres Strait Islander people make up 41.6 percent of the population,⁴ compared to 3.2 percent of the State population.
9. There are more than 30 different languages spoken in the region.⁵ Many Aboriginal people speak English as only a second or a third language. There is inadequate funding for, and access to, Aboriginal interpreting services in the Kimberley, resulting in major barriers and chronic miscommunication.
10. First Nations Women and Children are significantly overrepresented as victims of family and domestic violence in the region. Incidence and reporting of FDV is rising, and criminal offences relating to family violence, including breaches of restraining orders, have steadily risen in Kununurra and all communities which KCLS services over at least the last seven years.⁶ This has increased the prevalence of associated legal issues that victims and survivors of FDV ('victim-survivors') may face.
11. There were 11,975 FVROs lodged WA in 2018-2019.⁷ WA Police recorded 1,204 assaults in a family context per 100,000 in regional areas, more than double the 472 assaults in a family context per 100,000 in metropolitan areas.⁸
12. It is critical to understand the systemic issues that contribute to the over-representation of family violence in communities in the Kimberley. Colonisation, dispossession, cultural dislocation and forced removal of children must be recognized as 'significant factors contributing to trauma, disadvantage, violence and the use of alcohol and other drugs in Aboriginal families and communities.'⁹ Further, family conflict, physical and emotional violence is often escalated by factors such as overcrowding, homelessness, financial poverty, and other social pressures.¹⁰
13. An interim FVRO is a temporary Court Order which protects the applicant from a specified person. An application can be made without the respondent's knowledge. If granted, the interim FVRO commences once the respondent has been notified and served with a copy of the order. The

³ REMPLAN (online) Kimberley Region. <https://remplan.co/3wZ9KQH>.

⁴ Australian Bureau of Statistics, Kimberley 2016 Census All persons QuickStats, <https://www.abs.gov.au/census/find-census-data/quickstats/2016/51001#:~:text=In%20the%202016%20Census%2C%20there,up%2041.6%25%20of%20the%20population>.

⁵ REMPLAN (online) Kimberley Region. <https://remplan.co/3wZ9KQH>.

⁶ Government of Western Australia, 'Crime in Western Australia' *Western Australia Police Force* (Web page, 28 Oct 2022) <[https://www.police.wa.gov.au/Crime/CrimeStatistics#/>](https://www.police.wa.gov.au/Crime/CrimeStatistics#/).

⁷ Western Australia Department of Communities, *Path to Safety: Western Australia's domestic violence 2020-2030* (Report, 2020) 14.

⁸ Ibid.

⁹ Department of Communities, *Family Violence in the Kimberley: Project Report – May 2015*, p.18

¹⁰ Health Info, *East Kimberley Gathering Report*, <https://healthinonet.ecu.edu.au/healthinonet/getContent.php?linkid=420130&title=Talking+family+healing%3A+East+Kimberley+gathering+report>

respondent then has 21 days to object to the order being made final. If they do object, a hearing is held, attended by both parties, and the magistrate makes a final ruling. If they do not object, the order automatically becomes a final order and often lasts for around two years.

14. While many clients may have a lack of trust in the civil and criminal justice systems, obtaining a FVRO is a common avenue to seek legal protection from a perpetrator. They are designed to be one of the most accessible Court Orders available in Western Australia. Because an interim FVRO is an emergency protective measure that is designed to be accessible, the ease with which a remote community resident can access the order is likely to be indicative of ease of access to the legal system more broadly.
15. There are several complicating factors that do not guarantee a FVRO will necessarily provide women and children with the protection they need. Our submissions will detail these barriers.

Part 1: Barriers to accessing a FVRO

16. First Nations women who live in remote communities in the Kimberley region face a range of structural, legal, and social barriers which prevent them from accessing the resources required to apply for an interim FVRO.¹²

Case Study 1

17. Beth's story represents the experience of many KCLS clients from remote communities, who often require an interim FVRO against their partners.

After a recent family violence event, Beth was brought by police to the Women's Shelter in her remote community. She is referred to a Kununurra-based lawyer by the Women's Shelter.

There is not enough reception for a video call and the phone keeps dropping out, meaning Beth must wait in the Women's Shelter office for the lawyer to call.

On the phone, the lawyer suggests Beth apply for a FVRO, and asks Beth to recount the incident that led to her stay at the Shelter. After a successful call, the lawyer asks Beth if she understands the end of the call, Beth is in tears from the trauma of having to recount her experiences.

Beth's lawyers email a form to the Women's Shelter with the assistance of the staff member. However, she needs an authorised witness to sign her statement, and there are none in town.

Further, without a signed statement, Beth is required to take the witness stand at Court and tell her story again. If she appears by telephone to a Court in Kununurra, she will sit in an empty court room with only a police officer for support (if available). If she decides to wait for Court to sit in her

¹² Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People (ALRC Report 133)* (Report, December 2017)

community, she may have to wait for up to one (1) month, during which time she will not have a FVRO for her protection.

18. As outlined in Case Study 1, Beth faces a range of difficulties she needs to complete a FVRO application. These include, and are not limited to:
- a. Remoteness and lack of access to services;
 - b. Lack of access to printers and scanners to complete the application;
 - c. Lack of internet connectivity and telephones;
 - d. Prohibitive authorised witness requirements;
 - e. Social and cultural barriers.

Remoteness and lack of access to services

19. Lawyers and social workers at KCLS provide support by providing advocacy in court, and safety planning and wrap around support after the court process is complete. However, this service is not always available to clients in remote communities.
20. In Case Study 1, Beth would ideally see a legal service provider in person at first instance. An application for an interim FVRO is administratively burdensome and retelling the abuse can re-traumatise the victim-survivor.¹³ A physical appointment would allow a lawyer to read Beth's body language and adjust their questions to reduce risk of re-traumatisation, as well as proceeding in a culturally appropriate manner. However, because there are no permanent legal service providers in her community, Beth is forced to call a lawyer from the closest regional centre, Kununurra, a 12-hour drive away.
21. In remote communities, support services do not stay in town for long, compounding a victim-survivors trust in those they need assistance from. Doctors and lawyers visit on an outreach basis and circuit courts visit some communities for a few hours every six weeks. Professionals who live there permanently often leave after one or two years. The transience of service providers in remote communities is well-observed in Australian academia. Remoteness leads to overworked staff, difficulty securing mentoring and support, a small social pool and oversharing of resources, which the service provider is unable to manage.¹⁴
22. In these contexts, there is a need for long term tenure of service providers, and more importantly an upskilling of locals to support a cultural shift away from violence and provide practical support to those seeking protection through instruments like a FVRO.

¹³ Judy Atkinson, Jeff Nelson, Robert Brooks, Caroline Atkinson & Kelleigh Ryan, 'Addressing Individual and Community Transgenerational Trauma' in Pat Dudgeon, Helen Milroy & Roz Walker (eds), *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing* (Commonwealth Copyright Administration, 2014) 300.

¹⁴ Kim Mahood, 'Kartiya are like Toyotas: White workers on Australia's cultural frontier' (2012) (Winter, 36) *Griffith Review*, 43-59.

Case Study 2

Sandy had been repeatedly physically abused by their partner in front of their young child. As there were no permanent legal services, support services, or court services that could hear an urgent FVRO matter in her community, Sandy and her child had to be flown to another town to gain access to these services. After meeting with Sandy, KCLS was able to provide legal advice and representation in Court but was nearly a week after the client was abused by their partner.

Case Study 3

Haley has two young children and has sought advice from a lawyer in Broome about a FVRO against her partner. Without completing the application, she travels 690km to Halls Creek where she has a follow up appointment with an outreach lawyer. She plans to travel to a remote town outside Balgo about 5 hours from Halls Creek, so the lawyer completes her application with her so she can take it to Balgo circuit court that week. The next day Haley finds out circuit court has been cancelled. The outreach lawyer now must figure out how to help her file her application remotely. The court will not accept her application without Haley signing an administrative form, which she cannot do from where she is staying. The next available court date is one week away if they can file the application online.

Recommendation 1: prioritise the funding and support of programs that equip local community members with skills to navigate responses to FDV and lead community responses to FDV.

Recommendation 2: fund and support service providers adequately to ensure longer staff tenure in remote communities.

Lack of access to printers, scanner to complete the application

23. An application for a FVRO requires filing an application form and an affidavit. While filing an affidavit is not compulsory, many of the victim-survivors KCLS assist find the prospect of giving oral evidence intimidating and unsafe.
24. In towns where lawyers are physically present, they are responsible for having documents signed, witnessed, and submitted. Clients like Beth from Case Study 1 must instead rely on a service provider to provide access to their computer to print her document. Making the journey to the local community centre, church, or store in town of just 150 people increases risk of public scrutiny, which means she may be unwilling to risk her immediate safety.
25. If Beth was attempting to apply for a FVRO alone and could not access or work out how to use the technology or could not go to a service provider and ask for help, she might be unable to overcome these challenges and may give up on making an application.

Lack of internet connectivity and telephones

26. The lack of legal service providers in remote communities means people seeking legal support must use the internet or a telephone to be in contact with a lawyer, be available for a phone link to court, or report an incident of violence to the police. However, many clients in the Kimberley do not have a mobile phone, or if they do, can have limited access to reliable reception. Further, phones often break or are stolen, meaning clients can be hard to contact over a longer time span.
27. In many remote communities, internet connection is patchy and there is not enough signal for video calls meaning that video linking into court from a remote court-approved video facility is not feasible. Because many KCLS clients in remote communities do not own a working mobile phone, they must be contacted through a service provider or shelter. Conversations about sensitive topics in public spaces increase the risk of violence to the victim-survivor and the risk of public scrutiny and shame.

Example

On 25 July 2022 the Federal Government announced funding for service improvement under the Regional Connectivity Program for Kalumburu and the Pilbara town of Jigalong.¹⁵ The new service includes the delivery of a community Wi-Fi network and phone services that enable residents to make free phone calls and access government websites.¹⁶ This is a significant improvement to the current model of service, as residents will now be able to call legal services and access pages like the WA Magistrate's Court website.

Despite the improvements, residents in Kalumburu remain unable to access websites such as the Legal Aid website¹⁷ Google the phone numbers of legal service providers or send and receive documents using a private email address without also relying on the current Optus coverage. To rectify this, the Regional Connectivity Program might be designed in consultation with community and broadened to include access to non-government internet sites.

Recommendation 3: improve internet connectivity and phone reception in remote communities so that First Nations women and children have reliable access to emergency and legal assistance.

¹⁵ The Hon Michelle Rowland MP, 'Australian Government delivers better connectivity in Durack' (Media Release, 25 July 2022) <<https://minister.infrastructure.gov.au/rowland/media-release/australian-government-delivers-better-connectivity-durack>>

¹⁶ The Hon Michelle Rowland MP (n 43).

¹⁷ Legal Aid Western Australia, 'How to apply – Interim FVROs' (Web Page, 5 August 2022)

<<https://www.legalaid.wa.gov.au/resources/self-help-kits-and-guides/interim-fvros/how-apply-interim-fvros>>.

Authorised witness requirements

28. As discussed at paragraph 22, obtaining an affidavit is crucial for victim-survivors because it means they do not have to testify in court. Applicants for interim FVROs must give a statement about their experiences, whether it be adduced in court through oral evidence or submitted via an affidavit.
29. While an interim FVRO application can be made by a lawyer on behalf of another person (their client), an affidavit in support of that application must be made by the witness (client) and is required to be signed by an authorised witness or the court registrar. An authorised witness can include a Justice of the Peace, a lawyer, a judge or magistrate, or a public notary.¹⁸ Many remote communities do not have consistent access to an authorised witness. Applicants must wait for a visiting lawyer or the circuit court, or, if urgent, they can ask a police officer to sign the document and hope the court accepts it. An affidavit signed by a non-authorised witness is technically non-admissible at Court.
30. However, even the act of attending a police station can be challenging for First Nations victim-survivors. Laing states that Indigenous people delay attending a police station or engaging in the court system 'given the history of Aboriginal-Police relations and concerns about deaths in custody'¹⁹.
31. A lack of authorized witnesses in remote communities means that residents can be forced to stall their application until they can travel or risk the Court denying their application.

Case Study 4

A lawyer is assisting Tania in a small remote community. Her lawyer assessed that as she was vulnerable, and nervous about giving evidence, it was more appropriate for her to provide written evidence by way of Affidavit, rather than oral evidence. Her lawyer had advised the court ahead of time as to the absence of a qualified witness to sign this Affidavit and was directed by the Registry to file an Affidavit witnessed by a police officer. Her Affidavit was later denied by a visiting Magistrate, as it had not been authorized by an appropriate witness.^[1] Tania was forced to give oral testimony in Court, by telephone, while sitting alone in her remote community. The lawyer had not prepared her to give evidence, as they had not anticipated that it would be necessary. Additionally, given the urgency of the FVRO proceedings, it was not possible to get social support to Tania for the purpose of her court appearance. Tania cried and had a lot of difficulty getting through her story.

Recommendation 4: Broaden the definition of 'authorised person' in relation to witnessed documents for the purpose of making an application for an interim FVRO

¹⁸ *Oaths, Affirmations and Statutory Declarations Act 2005* (WA) s 9(6).

¹⁹ Lesley Laing 'It's like this maze that you have to make your way through'. *Women's Experiences of Seeking a Domestic Violence Protection Order in New South Wales* (2013) *University of Sydney, Faculty of Education and Social Work Research Publications and Outputs* 23.

^[1] *Ibid.*

Section 9(6) of the *Oaths, Affidavits and Statutory Declarations Act 2009 (WA)*²⁰ may be amended to provide for people in remote communities without access to authorised persons. For example, an amendment might allow remote communities to nominate a trusted person such as an elder or a nurse to witness documents. Alternately, community members might be sponsored to obtain their Justice of the Peace qualification.

Social and cultural barriers

32. Social and cultural factors exacerbate the vulnerabilities of First Nations women and their children seeking to be protected. In an investigation into issues associated with violence restraining orders, the Western Australia Ombudsman identified that the path to obtaining a FVRO is 'not necessarily always culturally appropriate'.²¹ Involvement with police, lawyers and court involves 'a high levels of public scrutiny and shame, lack of access to information, lack of opportunity to participate fully in the processes and decision-making...'.²² All of these factors work against a person seeking to protect themselves from domestic violence.
33. The FVRO process is made more difficult in remote communities in the Kimberley because women may not speak English as their first language. The process of re-telling a story within a Western system they may distrust can be re-traumatising, highlighting the importance of providing women with a safe space to re-tell their story. Service providers must be cognizant of providing clear information on what a FVRO can provide. Further, they must be aware of 'gratuitous compliance', where the client may not understand what is being said but is too ashamed to admit it.²³
34. When making an application, language and cultural differences can also influence perspectives on time, making it difficult for some women to recount narratives in a linear form as required by the court.²⁴ While understanding the full extent of the violence and empowering the client to make informed decisions about her own safety are crucial to the process of obtaining an interim FVRO, power imbalances leave the client controlled by a process designed to protect her.
35. On top of these issues, First Nations women in the Kimberley may have other deeper systemic reasons for feeling hesitant to report and share their experience with violence. First Nations women are less

²⁰*Oaths, Affidavits and Statutory Declarations Act 2009 (WA)* s 9(6).

²¹ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (Report, 19 November 2019), 174.

²² Ombudsman WA (n 19) 174; Moore, Elizabeth, 'Not just court: Indigenous families, violence and Apprehended Violence Orders in rural New South Wales' (Conference Paper, Expanding our Horizons Conference, February 2002) 8.

²³ *Ibid*, 90.

²⁴ Richard Trudgen, *Why warriors lie down and die: Towards an understanding of the Aboriginal people of Arnhem Land face the greatest crisis in health and education since European contact - Djambatj Mala*, (Why Warriors Pty Ltd., 2000) 78, 90-91.

likely to report FDV than non-indigenous Australians for a number of reasons, including, fear of the police, retaliatory attacks from the perpetrator, fear of ‘payback’ by the offender’s family if he is charged or ends up in prison, or fear their children will be removed as a result.²⁵ Applying for a FVRO can escalate a situation rather than provide a victim protection, so it must be done in a safe and appropriate manner.

Recommendation 5: consult with remote communities about establishing alternative, trauma-informed, culturally safe courts. For example, specialist DV courts as successfully established in parts of remote Queensland.

Part 2: Barriers to enforcing a FVRO

36. Once a victim-survivor has obtained an interim or final FVRO and it is served on the perpetrator, there are many risks they face to stay safe. Without planning and appropriate support, a FVRO on its own is ‘just a piece of paper.’ Enforcing a FVRO requires safety planning, adequate police responses to reports of FDV and ongoing support to victim-survivors.

37. As a result, the effectiveness of a FVRO as a protective measure is dependent on many factors, which we explore in this section.

Systemic barriers

38. First Nations women in the Kimberley face a range of factors that contribute to difficulty enforcing the conditions of their FVRO. The WA Law Reform Commission states that for ‘many Aboriginal people, socio-economic constraints (e.g., lack of alternative accommodation), cultural constraints (e.g. connection to family and community) and geographical remoteness will mean that... if they (protection orders) are obtained, the parties [may] continue to reside together or stay in contact.’⁶⁰

Legal literacy

39. Without appropriate legal support and education, applicants and respondents may not understand the conditions and effect of a FVRO. For example, if parties make consensual contact, a breach may still occur. If police are notified the respondent may be charged. As another example, a victim-survivor (applicant) may think a FVRO only protects them from physical violence and may continue to put up with property damage by the respondent, despite this conduct also being a breach of the order. Safety planning with social workers can assist our clients map out how to practically use a FVRO.

²⁵ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (Report, 19 November 2019), 109.

⁶⁰ Law Reform Commission of Western Australia, *Enhancing Family and Domestic Violence Laws: Final Report* (Report, June 2014) 78.

40. Further, a respondent may not always understand the conditions of a FVRO or have them inadequately explained by police when they are served with the order. The FVRO document is at least three pages long and in small black and white font. While many people in the Kimberley easily understand this format, some people who do not speak English as a first language, have literacy issues or live with a disability may benefit from more accessible language and infographics to assist navigating the conditions of a FVRO.

Recommendation 6: the court system and police are to ensure FVRO documents are effective by providing easily understandable and culturally adaptive resources to applicants and respondents.

Socio-economic factors

41. A victim-survivor seeking a FVRO may have other issues in their life which FDV contributes to, such as alcohol or drug dependence, mental health issues or homelessness. These issues can lead to difficulty using the FVRO effectively and can complicate their trust in police assisting with FDV reports.

42. KCLS often assists First Nations women who require legal protection from their violent partner. However, to successfully leave the relationship and family domicile, the fleeing partner must have somewhere to go. To this end, adequate alternative housing options are required. Regional and remote locations, including communities in the Kimberley region, 'suffer an acute shortage of crisis, transitional and long-term housing.'⁶¹ In 2021, 1207 people were homeless in the Kimberley,⁶² three times the WA state average. The average wait time on the priority waitlist is one year in WA, but in our experience many clients wait more than 2 years on the priority list in the Kimberley. Tenants can expect to wait up to 10 years on the general list.

43. As a result, many First Nations women experiencing FDV are in a cycle of short stays in crisis accommodation, homelessness and having to return to an unsafe home. The provision of appropriate numbers of housing and safe accommodation is crucial to protecting women and children from violence, and from keeping families together. Meanwhile, male perpetrators of FDV might be experiencing mental health issues and alcohol dependence or might be required to leave their home due to a FVRO. Providing men with spaces to learn and rehabilitate could decrease the number of times they attempt to return to the home and continue to perpetrate violence.⁶³

⁶¹ AHURI, Understanding family violence and housing in Indigenous communities, 26 October 2022
<https://www.ahuri.edu.au/research/brief/understanding-family-violence-and-housing-indigenous-families>

⁶² Shelter WA, 2016, Unlock Housing, Heat Map Summary- Homelessness and Housing Stress 2021, p.5.

⁶³ AHURI, Understanding family violence and housing in Indigenous communities, 26 October 2022
<https://www.ahuri.edu.au/research/brief/understanding-family-violence-and-housing-indigenous-families>

Case Study 5

Hilda is an elderly woman who has been experiencing secondary homelessness for over 10 years. She has slept on the floor, in bush camps and where possible stays with her son. However, when he is escalated due to his alcohol and drug dependence, her son becomes very abusive and threatens Hilda with violence for her money. She often must escape and try to find somewhere else to stay. She has been on the priority list for housing for over 3 years. She is considering a FVRO against her son.

Recommendation 7: increased provision of safe accommodation and housing options in the Kimberley for First Nations women and children.

Recommendation 8: fund the provision of residential crisis facilities in the Kimberley for male perpetrators of FDV.

Police response to FDV

44. To legally enforce a FVRO it is necessary to report a breach to the police. The police play an important role in providing emergency responses to incidents of FDV and enforcing a FVRO through charging perpetrators with a breach. However, these roles can be impeded by poor communication with First Nations women, administrative delays, and a lack of cultural safety within their policing approach.

45. Central issues our clients face in enforcing FVROs or reporting incidents of violence include:

- a. Difficulty serving FVROs efficiently; and
- b. Inadequate response times.

Difficulty serving FVROs efficiently

46. Once a FVRO is obtained it must be served on the respondent to be enforceable. It is unfortunately our experience that there are at times significant delays between a FVRO being granted by a Magistrate and the FVRO being served on the respondent. This puts the victim-survivor at great risk.

Case Study 6

Cate got help from KCLS with obtaining a FVRO against their grandson. She is an elderly woman. Her grandson was being physically, verbally, and financially abusive to her. Based on this abuse, the Court granted her an interim FVRO. Shortly after the FVRO was granted, KCLS called the local police station to determine whether the FVRO had been served on the respondent. The local police station said that the order was with another police station in the East Kimberley. One month later, that police station said they had only just received the paperwork to serve on the respondent, but they were now having trouble locating the respondent. The respondent was only served with the interim

FVRO 3 months after the order was granted in Court. During this time, Cate was vulnerable with no protection of a FVRO.

Inadequate response times

47. First Nations women and children at high risk of FDV are often faced with a decision to stay in an unsafe place or leave their family and community to feel safe. In these times of crisis, women often obtain a FVRO and require police support to ensure they can safely gather their belongings and leave without encountering the perpetrator.
48. For many KCLS clients who do not live in a town centre, reporting an incident of family violence to the police does not necessarily mean there will be an immediate response to what can be a critical situation. For example, there are several smaller communities just outside Kununurra who are serviced by the police station in Kununurra. If a community member were to report violence they would need a working phone, good reception and then may wait at least 30 minutes to an hour for police to arrive. Similarly, some remote police stations may only have minimal (sometimes as few as two) permanent officers, in which instance response times may inflate should the officers already be engaged with another incident. In late 2022, one remote community did not have a police officer present for over three weeks.
49. KCLS often receive feedback from clients who, due to prior negative experiences asking the police for help, have little faith that contacting police to report family violence will result in a positive response. This aligns with evidence that First Nations women are less likely to report FDV than non-indigenous Australians, as they “balance the desire to stop the violence by reporting to the Police with the potential consequences for themselves and other family members that may result from approaching the police.”⁶⁴

Case Study 7

Francis was assisted by KCLS with obtaining a FVRO against their ex- partner. An interim FVRO was granted. Before the interim FVRO was served on the respondent, Francis decided to flee her town of residence out of fear for her safety and the safety of her young child. As the Francis was waiting for her bus out of town, the respondent saw Francis from across the street. She became very distressed as she thought the respondent would stop them from leaving town. Francis called the police for assistance, but they advised that they did not have capacity to send any police to the scene.

After this call, the respondent approached Francis. The respondent then verbally abused her and told Francis that he would follow them to wherever she and the child went. He then took the child

⁶⁴ Ombudsman Western Australia, *Investigation into issues associated with violence restraining orders and their relationship with family and domestic violence fatalities* (Report, 19 November 2019), 109.

away from the client. At this time a KCLS staff member called the police again. The police said they would now send police officers to the scene. As the police were approaching the scene, the respondent fled.

Francis was able to leave town with her child, however she notified KCLS that the respondent had in fact followed her to her new place of residence as he was able to find out where the client was going at the bus stop

50. This case study outlines the importance of a quick response from police where there is a real risk to the life of a First Nations women and child.

Recommendation 9: ensure police have location specific cultural awareness training, and further intensive specialised FDV training if they are sent to work in a remote community.

The cycle of violence

51. Unfortunately, in many instances the FVRO process does not provide a victim-survivor with enough protection or safeguards. This can largely come down to the toxic cycle of family violence, as partners go through a crisis or ‘blow up’ phase, a calm phase, and a tension phase.⁶⁵ It is common for KCLS clients to apply for an interim FVRO after a ‘blow up’ involving serious violence, only to cancel or vary the order after a few weeks or months when she feels things have calmed down.
52. This dynamic is further complicated by factors we have mentioned in this submission surrounding pressure from perpetrators and their family to cancel FVROs or not report FDV, or the desire to keep a family together if children are involved. It is also well documented that the time period directly after leaving a violent relationship is the most dangerous. As discussed at paragraph 39 of this document, decisively leaving a partner is difficult without any available safe housing options. In these circumstances it is tempting, but much more dangerous, for women to cancel their order.
53. The process of cancelling a FVRO is quite straightforward and involves filling out a one-page form and filing it with the court. The respondent is not required to be present at court. KCLS lawyers encourage clients, where appropriate, to vary their FVRO which requires the respondent to be present at court and provides some form of protection to the victim-survivor, albeit usually weakened.⁶⁶ Victim-survivors in some towns can speak to a FDV specialist or lawyer prior to filing the application, which can assist them navigate the complexity of a FDV relationship.

⁶⁵ The Duluth Model, Understanding the Power and Control Wheel, <<https://www.theduluthmodel.org/wheels/>>

⁶⁶ Restraining Orders Act 1997 (WA), Part 5.

Case Study 8

Klara started a FVRO application against their partner. Her partner would regularly be extremely physically abusive towards her. He would also control who she could see and what she could wear. Klara has been working with social workers at for approximately one year and often encouraged her to apply for a FVRO, and assisted with other safety planning. For some of this time she did not have a phone. Klara was adamant she wanted a non- molestation FVRO as she wanted to remain with their partner but stop him from drinking and acting violently around her. A non- molestation order was granted and turned into a final order after no objection was made. However, since this FVRO has limited restrictions, and Klara is reluctant to report any FDV to the police, she remains at great risk of FDV.

Recommendation 10: improve accessibility and availability of culturally appropriate FDV specialists at court and prior to filing an application to cancel or vary a FVRO.

Perpetrator accountability

54. The pressure on victim-survivors to apply for and use a FVRO as the only solution to violence can be overwhelming. It is KCLS' position that more focus on perpetrator accountability is necessary to address family violence early and effectively. Efforts to engage and respond to perpetrators of family violence are often intermittent, fragmented, and ineffective.⁶⁷ For example, First Nations women are often told they must obtain a FVRO to move forward with their reunification plans with Child Protection, placing less burden on the male perpetrator (and father of the child) to change their behaviour.
55. Unfortunately, in the Kimberley region there are very few consistently run men's behavior change programs which place focus on perpetrator accountability. Further, there are only two Alcohol and Drug Rehabilitation Services in the Kimberley. Often these services will not accept people with a criminal record, leaving people with violence issues with few options to try to change.

Case study 9

Ronda is in a DV relationship and is at risk of having her children removed by child protection. She has never reported any of the violence she experienced at the hands of her partner and neither does she want to leave the relationship or apply for a FVRO for fear of retribution from his family. KCLS worked closely with her to develop safety plans within the context of her intimate relationship that were practical and relevant to her circumstances. Ronda is still in a permanent relationship with her partner, and she has ended up in hospital from his violence. She still wants to stay with him, and

⁶⁷ Family Violence in the Kimberley: Project Report – May 2015, p.18

KCLS continue to discuss and implement safety plans with her. If a men's behaviour change program were available in the East Kimberley, KCLS would have made a referral and this may have averted any further injury, physical or otherwise.

Recommendation 11: fund and prioritise culturally safe, effective men's behavior change initiatives, and appropriate counseling and therapeutic programs for perpetrators of FDV across each community in the Kimberley. Service-wide support and encouragement of participation is required.

Conclusion

56. The tragic number of missing and murdered First Nations Women and Children in Australia will not be addressed without navigating the systemic causes of violence and understanding the unique barriers faced in remote and culturally diverse areas of Australia. Unfortunately, due to a lack of basic resources accessing basic protection is challenging for many First Nations women in the Kimberley region. On top of this there are many barriers, both systemic and structural, that prevent women from accessing the assistance they require.
57. More focus needs to turn to First Nations men who struggle with intergenerational trauma, alcohol, and other barriers to support. Without addressing the behavior of perpetrators of FDV, First Nations women and children will continue to be at risk.
58. KCLS supports the Federal Government's efforts to address FDV through the Aboriginal and Torres Strait Islander Action Plan which supports the National Plan to End Violence against Women and Children 2022-2032, however direct consultation with community members is absolutely priority as well as long term funding of effective programs.
59. While some barriers to accessing protection from FDV may be removed through legislative reform and infrastructure development, targeted, community-led legal reform is necessary for sustainable change. Solutions must be developed in genuine partnership with the community through culturally safe consultation and shared decision-making. First Nations women should be positioned at the fore of this decision-making process, and actions taken to remove causes of violence must be engineered and driven by these women and tailored to the specific needs of the community. Achieving change will require significant commitment and time.