

5 November 2020

Commissioners

Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability

By email: [DRCEnquiries@royalcommission.gov.au](mailto:DRCEnquiries@royalcommission.gov.au)

Dear Commissioners

### **The experience of First Nations People with Disability in Australia**

1. Women's Legal Service NSW (**WLS NSW**) thanks the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability for the opportunity to comment on the Issues Paper: The experience of First Nations People with Disability in Australia.
2. This submission particularly focuses on Questions 7 and 8 relating to the experiences of First Nations people with disability with child protection and out-of-home care systems and the impact of Government strategies, policies and practice.
3. We support the social model of disability as described by First Peoples Disability Network Australia which "*recognises that disability is produced by barriers to equality and participation for people with impairments that must be dismantled.*"<sup>1</sup>
4. In this submission we acknowledge First Nations peoples' experiences of structural violence, abuse, neglect and exploitation perpetrated by State actors through harmful and racist Government policies and practices since invasion. This, in combination with further harmful Government action, inaction or insufficient action, has resulted in impairment for many First Nations peoples. The trauma often manifests as a severe psycho-social disability which impacts on every aspect of a person's life and on their family's life, including across generations.
5. These failings constitute structural violence, abuse, neglect and/or exploitation for which Governments must be held accountable and also responsible for reparations.
6. In summary we recommend:
  - 6.1 Governments take responsibility for the disabling impact on First Nations people of structural violence, abuse, exploitation and neglect through harmful and racist Government policies and practices and further Government failings through action, inaction or insufficient action.

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<sup>1</sup> First Peoples Disability Network Australia accessed at: <https://fpdn.org.au/values-and-principles/>



- 6.2 Entrenching principles of truth telling and self-determination in all actions, with reference to the recommendations from the *Final Report of the Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples*.<sup>2</sup>
- 6.3 Reparations for the Stolen Generations should be made as a matter of urgency.
- 6.4 In seeking to address the second of five elements of the definition of reparations contained in recommendation 3 of the *Bringing them home* report, namely “guarantees against repetition”, the over-representation of First Nations children in NSW must be urgently addressed, including the implementation of *Family is Culture* recommendations.

### About Women's Legal Service NSW

7. WLS NSW is a community legal centre that aims to achieve access to justice and a just legal system for women in NSW. We seek to promote women's human rights, redress inequalities experienced by women and to foster legal and social change through strategic legal services, community development, community legal education and law and policy reform work. We prioritise women who are disadvantaged by their cultural, social and economic circumstances. We provide specialist legal services relating to domestic and family violence, sexual assault, family law, discrimination, victims support, care and protection, human rights and access to justice.
8. For over twenty years, WLS NSW has provided a state-wide First Nations Women's Legal Program (**FNWLP**). This program delivers a culturally safe legal service to First Nations women, including regular engagement with communities across NSW. We provide a First Nations legal advice line, casework services including a specialised family law service to assist First Nations women access the family law courts, participate in law reform and policy work, and provide community legal education programs and conferences that are topical and relevant for First Nations women.
9. An Aboriginal Women's Consultation Network guides the FNWLP. It meets quarterly to ensure that we deliver a culturally safe service. The members include regional community representatives and the FNWLP staff. There is a representative from the Aboriginal Women's Consultation Network on the WLS NSW Board.
10. For more than a decade WLS NSW has also provided culturally safe, specialised, family and civil law advice, casework and education services to hundreds of criminalised women across NSW, including women defending Apprehended Violence Orders, women in custody, women under supervision in the community and to women post release from custody.
11. We work in partnership with Warringa Baiya Aboriginal Women's Legal Centre and the Western Sydney Community Legal Centre to provide the Legal Education and Advice in Prison (**LEAP**) for women, which is a family and civil law program in the four Sydney women's correctional centres. WLS NSW is also available as a free phone call for advice in other correctional centres around the state. LEAP prioritises access for First Nations women. This work is unfunded and provided from core WLS NSW (and the

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<sup>2</sup> Final Report of Joint Select Committee on Constitutional Recognition relating to Aboriginal and Torres Strait Islander Peoples, November 2018, accessed at:  
[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Former\\_Committees/Constitutional\\_Recognition\\_2018/ConstRecognition/Final\\_Report/section?id=committees%2Freportjnt%2F024213%2F26675](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/Constitutional_Recognition_2018/ConstRecognition/Final_Report/section?id=committees%2Freportjnt%2F024213%2F26675)

partner community legal centre) resources and is always under threat.<sup>3</sup> The majority of referrals are made by Corrective Service NSW staff.

12. We also provide advice, casework and culturally safe services to young women in Youth Justice detention or under community supervision. Additionally, many of the clients that we work with in adult correctional centres are in the 18-24 year age range, with recent youth detention and/or child protection experiences.

### **The ongoing impacts of the forced removal of First Nations children from their families**

13. Many of our First Nations clients reflect on the impact of being forcibly removed from their families on their lives and their family's lives, including telling us that they themselves are a member of the Stolen Generations or they have family members who are part of the Stolen Generations.
14. In addition to the complex trauma experienced as a result of loss of identity, belonging, community, country connection and impact on wellbeing, many have experienced further trauma as a result of sexual and/or physical abuse, neglect and/or exploitation which was perpetrated against them following their forced removal and/or the forced removal of their children from family.
15. This is well documented in the 1997 *Bringing them home* report as well as through the work of the Royal Commission into Institutional Responses to Child Sexual Abuse.
16. The Government's multiple failings – in systemically removing First Nations children from their families through harmful and racist policies and practices; then in failing in their duty of care to protect First Nations children from repeated sexual, physical and psychological abuse often by multiple perpetrators when they were placed in out-of-home care; as well as failing to protect First Nations children from exploitation and/or neglect – are key contributors to complex intergenerational trauma within First Nations communities. We submit these failings constitute structural violence, abuse, neglect and/or exploitation for which Governments must be held accountable.
17. The trauma caused by such failings often presents as a severe psycho-social disability, impacting on every aspect of a person's life and on their family's life, including across generations.

### **Compounding trauma and exacerbating disability due to Government action, inaction or insufficient action**

18. Trauma and disability can be compounded and exacerbated by further Government action, inaction or insufficient action, including denial of wrongdoing.
19. First Nations women have described the unbearable pain and grief they've experienced over their lifetime and the lifetime of their children, grandchildren and great grandchildren as a result of forced child removals, their own personal abuse, neglect and/or exploitation and/or the abuse, neglect and/or

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<sup>3</sup> The Law Council of Australia recognised the service gap in funding for specific legal services targeted to women in prison, particularly for civil and family law matters in its consultation paper on prisoners and detainees, as part of the Justice Project: Law Council of Australia, *The Justice Project: Prisoners and Detainees Consultation Paper*, August 2017, p3, 37-40 accessed at: <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Prisoners%20and%20Detainees.pdf>

exploitation of their children, grandchildren and great grandchildren in out-of-home care, followed by further Government action, inaction or insufficient action.

20. First Nations women talk of their repeated experiences of betrayal by people they thought they could trust – carers, police, child protection workers and others – only to find that when they reported horrific child sexual, physical and psychological abuse while in out-of-home care, they were ignored, disbelieved or had insufficient action taken, which in turn enabled the abuse and the harm and trauma to continue, often for years.
21. First Nations women talk of the further experiences of betrayal and harm when they try to seek redress and are blocked every step of the way. The blocking by Government to victim-survivors seeking redress was clearly highlighted in Case study 19 in the Royal Commission into Institutional Responses to Child Sexual Abuse. Below we discuss some of the shortfalls of the National Redress Scheme.
22. First Nations women tell us of how they turn to drugs and alcohol to try to dull or escape the unbearable pain and the feelings of shame they experience and that they feel judged and blamed for doing so. They also speak of the lack of access to culturally safe, trauma informed, strengths-based healing and support services, support which may well have ameliorated their impairment and trauma.
23. Many may continue to experience sexual and family and domestic violence from multiple perpetrators – further undermining their sense of trust and self-worth. Many First Nations women also reflect on the difficulty in forming intimate or close relationships because of repeated abuse, neglect and exploitation which has so profoundly undermined their ability to trust anyone.
24. Many First Nations women reflect with deep, deep sadness, grief, anger and shame on the impact of Government policies and the compounding abuse, neglect, exploitation and trauma on their being able to parent how they would like to parent. Not only were they robbed of learning how to parent through the modelling of their parents and other family members when they were removed from family and country as children, but the further abuse they suffered throughout their lifetime, and the ongoing trauma experienced all impacted their capacity to parent. Further, rather than laying the responsibility and accountability with the perpetrators, including State actors, for this violence, victim-survivors are often blamed and left with little, if any, access to strengths-based, culturally safe, trauma informed support.<sup>4</sup>
25. Structural violence and abuse are also impacting on First Nations peoples' ability to obtain and/or maintain employment and to engage in everyday tasks. Many First Nations women, in reflecting on the impact of structural violence, abuse, neglect and/or exploitation, speak of difficulties in leaving their home, for example, to do the shopping, to engage with Government departments, to fill out forms. While they may not have an official diagnosis, they speak of feeling highly anxious, afraid and overwhelmed. They speak of finding it difficult to sleep, difficult to get up in the morning and of difficulties with concentration.
26. First Nations children grow up speaking of the anguish they feel, acknowledging the ongoing impact of the Stolen Generations and abuse of family members in out-of-home care on themselves, their mothers and fathers, aunts and uncles, grandparents, and older generations.

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<sup>4</sup> See Women's Legal Service NSW, *Submission to the Family is Culture Independent Review of Aboriginal Children and Young People in out-of-home care*, December 2017 accessed at: <http://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-Submission-Family-is-Culture-fa.pdf>

27. Below is a deidentified case study which is reflective of the experience of many First Nations women.

*Lauren\* was removed from her family as a 12 month old and placed in out-of-home care where she remained until she was 15 years of age.*

*While Lauren was in care, she was repeatedly sexually and physically abused by her carers over more than a decade. At the age of 7 years, when she tried to tell one of her carers that she was being sexually abused, this carer gave her a flogging with a leather strap and called her a liar.*

*Many years later, one of the children Lauren was living with in care told her child protection worker she was being abused. Lauren told the worker she too was being abused. Lauren and a number of the children were taken to speak to a police officer but the carer who had been abusing the children was present in the police interview with the children. After the interview with the police officer, Lauren and the other children were taken back to the home with the carer. Despite the disclosures, the children were left with the carers for many more years where the abuse continued.*

*During Lauren's time in care, Lauren's carers spoke very negatively about her parents and said they didn't want her. Lauren didn't know until she was an adult that her mother had tried to have her returned to her care.*

*When Lauren left care, she found it difficult to trust people. This was because each time Lauren reached out to people for help – her carer, her child protection worker, the police – they did not help or protect her. There were lots of opportunities for the Government bodies to step in and protect Lauren, but they failed her over and over again.*

*As Lauren was taken from her family at such a young age and repeatedly abused in care, she did not have the opportunity to learn to parent through watching good role models. Parenting was also very difficult because Lauren received very little support to help her recover and heal from decades of trauma and abuse. She has 4 children and ultimately, they were all removed from her care. Lauren has had a number of relationships where her partners were violent and abusive.*

*Lauren has engaged in many processes to try and hold the State accountable to stop this from happening to anyone else. During these processes the State put up lots of barriers to make it very difficult for Lauren to succeed in holding them accountable. The State asked her to provide more details of the abuse and tell her story again even though they already had this information. The State also challenged whether she had been injured as a result of the abuse and said too much time had passed since the abuse.*

*The repeated lack of action and/or insufficient action on the part of the State as well as the steps the State took to avoid liability have had a devastating, lasting and disabling impact on Lauren which cuts across all aspects of her life. Lauren experiences high levels of anxiety and fear and has a deep distrust of people which prevents her from leaving her home. She finds everyday tasks, such as shopping and paying bills, very difficult. She is unable to hold down employment or study. Lauren has used alcohol to dull her trauma and pain. Lauren would love to be able to get a job and have close loving relationships with her children and family, but the harm caused to her affects her capacity to relate and trust and she has received little support to help her heal.*

*The impact of compounding structural violence and abuse impacts on every part of Lauren's life and has left her severely disabled.*

*\* Not her real name.*

### *Truth telling and reparations*

28. Truth telling and reparations are vital.
29. While reparations can never undo the harm caused, the five elements of reparations are essential for healing.
30. Recommendation 3 in the *Bringing them home: The 'Stolen Children' report*. (**Bringing them home report**) defines reparations to include:
  - 30.1 acknowledgment and apology;
  - 30.2 guarantees against repetition;
  - 30.3 measure of restitution;
  - 30.4 measures of rehabilitation; and
  - 30.5 monetary compensation;

We acknowledge the importance of each of the five elements of reparations, as borne out in our work with First Nations clients. The importance is echoed in the Royal Commission into Institutional Responses to Child Sexual Abuse Redress and Civil Litigation Report.<sup>5</sup>

31. Disappointingly, this recommendation has only been partially implemented. Reparations for the Stolen Generations should be made as a matter of urgency.
32. We acknowledge the important work undertaken by the Public Interest Advocacy Centre (**PIAC**) in close consultation and collaboration with Aboriginal and Torres Strait Islander communities in NSW regarding reparations for the Stolen Generations. We endorse PIAC's recommendation to establish a Stolen Generations Compensation Tribunal.<sup>6</sup>
33. There has been insufficient action in responding to repeated calls to adequately fund culturally safe strengths-based programs – including Aboriginal and Torres Strait Islander healing programs, drug and alcohol rehabilitation programs, intensive parenting programs.
34. There has also been insufficient action in implementing culturally safe programs to help people obtain and retain employment where appropriate<sup>7</sup> and in recognising those circumstances where the impacts of psycho-social disability mean employment is not possible and the consequent need for ongoing

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<sup>5</sup> Royal Commission into to Child Sexual Abuse *Redress and Civil Litigation Report*, Sydney, 2015, p128.

<sup>6</sup> PIAC, *Submission in response to General Purpose Standing Committee No. 3 Inquiry into reparations for the Stolen Generations in New South Wales*, October 2015

<sup>7</sup> We refer to Café 64 in Walgett, a not-for-profit enterprise which has trained and employed people with disability for over 25 years as an example of good practice. See: Jessie Davies, 'Walgett's disability enterprise Cafe 64 closes due to coronavirus impacts', *ABC News*, 28 April 2020 accessed at: <https://www.abc.net.au/news/2020-04-28/walgetts-cafe-64-closes-due-to-coronavirus-impacts/12182640>

support, including through the provision of a disability support pension. This is a necessary part of reparations.

35. Government policies and practices have been significantly disabling for many First Nations people since invasion. This is compounded by ongoing racism, victim-blaming and a failure to support self-determination on the part of Government, which in turn leaves First Nations people with disability, including psycho-social disability, being denied the support they need.
36. The Government must take urgent action in partnership with First Nations communities to provide culturally safe reparations and truth telling.

### *Government's response to the Family is Culture report*

37. Other examples of insufficient action on the part of Government includes the 2020 NSW Government's extremely disappointing response to the *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-home care in NSW*.
38. Led by Professor Megan Davis, this review included a case review of over 1000 First Nations children in out-of-home care from 1 July 2015 to 30 June 2016 and included over 3000 case specific recommendations as well as a system review resulting in 125 recommendations.
39. The impetus for the review was the powerful call from Grandmothers Against Removals to stop the removal of First Nations children from their families, to critically examine the child protection system and the experience of First Nations families with the system and for self-determination.
40. The NSW Government's 4-page response, nine months after the public release of the report, failed to engage with the central issue of self-determination.<sup>8</sup>
41. While we acknowledge some positive aspects of the Government's response, including the appointment of an Aboriginal and Torres Strait Islander identified position, Deputy Children's Guardian, this statutory role only includes oversight of children and young people once they are in out-of-home care. The *Family is Culture* report recommended the establishment of an Independent Commission to have oversight of all aspects of the child protection system from early support all the way through to out-of-home care.
42. Approximately one third of the Report's recommendations relate to urgent legislative reform, including that judicial officers consider the likely harm in removing a child from their family before ordering a child's removal.<sup>9</sup> The NSW Government announced it will delay any legislative review until 2024, after the next state election. Such delay compounds and exacerbates trauma and is likely to have a disabling effect on many First Nations people.
43. These continued Government failings constitute structural violence, abuse and neglect of First Nations people for which Governments must be held accountable.

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<sup>8</sup> NSW Government, *NSW Government response to the Family is Culture Review Report*, 2020 accessed at: <https://www.facs.nsw.gov.au/download?file=784517>

<sup>9</sup> *Family is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOHC*, Sydney 2019, p285 – 292, Recommendation 64 accessed at: [https://www.familyisculture.nsw.gov.au/\\_\\_data/assets/pdf\\_file/0011/726329/Family-Is-Culture-Review-Report.pdf](https://www.familyisculture.nsw.gov.au/__data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf)

44. The recommendations of the *Family is Culture* report must be implemented in full in partnership with First Nations communities.<sup>10</sup>

### *The National Redress Scheme*

45. Where attempts are made to provide redress – such as the National Redress Scheme (**Scheme**) for victim-survivors of child sexual abuse and child abuse in institutional settings – they must be provided within a trauma informed framework and in a culturally safe way. A failure to do so can compound and exacerbate trauma and be further disabling.
46. In our submission to the Second Anniversary Review of the National Redress Scheme,<sup>11</sup> we express our strong support for the establishment of the National Redress Scheme. However, we also express concerns that in the experience of our clients, the Scheme is neither trauma informed nor culturally safe and is failing to provide equal access to justice for all survivors of institutional sexual abuse. Our clients are finding engaging with the Scheme to be highly stressful and causing high levels of anxiety. This is a further example of the disabling impacts of Government policies and practices. We include a series of recommendations as to how the Scheme can be improved in our submission to that review.

### *Interactions with police*

47. Police action and/or inaction can cause great harm and trauma.
48. Police, as with all other professionals, must be trained to have at least a basic understanding of complex trauma and how that manifests. An understanding of complex trauma is the foundation for an appropriate first response to someone who is reporting sexual, domestic and family violence. This first response is crucial a victim-survivor's recovery and to the decisions that they will make about reporting and following through with their complaint through the criminal justice process.
49. Some clients have reported to us that they have enduring high regard and appreciation for police officers who have provided respectful, believing, supportive responses to their complaints of sexual assault and who have kept in touch with them through the process and provided the support they needed to continue through the prosecution process.
50. Other clients report feeling let down and betrayed by police. Sometimes this is because they felt police made incorrect assumptions about why they reported and/or disbelieved them. In cases of historic child sexual abuse, clients report feeling that police did not prioritise their case. In other circumstances, it may have been because police were involved in their removal from their family or their children's removal or because police failed to respond appropriately to sexual, domestic and family violence.
51. We note the high rates of criminalised First Nations women who have experienced child sexual abuse, sexual assault and family violence. Their criminalisation often stems from police misidentification of the primary victim and primary/predominant aggressor, a failure to consider context and widely held stereotypes of how a victim-survivor is expected to act which takes little account of the impact of

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<sup>10</sup> Joint Letter to the Premier, Urgent reforms needed to child protection system for Aboriginal Children in NSW, 2 March 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Letter-to-the-Premier-Family-is-Culture-02.03.2020-.pdf>

<sup>11</sup> Women's Legal Service NSW, *Submission in response to the Second Anniversary Review of the National Redress Scheme*, 30 September 2020, accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/WLS-NSW-sub-second-anniversary-NRS-review-Sept-2020-fa.pdf>



complex trauma. We refer to our earlier submission to the Commission in response to the Criminal Justice System Issues Paper for further information.<sup>12</sup>

52. We further note the correlation between out-of-home care, the criminal justice system and homelessness.<sup>13</sup>
53. Each of these failings compound trauma and lead to disabling effects for First Nations communities.
54. A genuine commitment and priority to First Nations led reforms is long overdue. All laws, policies and procedures must be continually reviewed and amended to ensure that they are culturally safe, inclusive of First Nations laws and customs, committed to self-determination and not perpetuating further harm through structural racism, violence and abuse.

If you would like to discuss any aspect of this submission, please contact Dixie Link-Gordon, Senior Community Access Officer or Liz Snell, Law Reform and Policy Coordinator on 02 8745 6900.

Yours faithfully,

**Women's Legal Service NSW**

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<sup>12</sup> Women's Legal Service NSW, *Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in response to the Criminal Justice System Issues Paper*, 29 May 2020 accessed at: <https://www.wlsnsw.org.au/wp-content/uploads/Submission-to-RC-Criminal-Justice-Response-May-2020-fa.pdf>

<sup>13</sup> Australian Institute of Health and Wellbeing, *Children and young people at risk of social exclusion: Links & between homelessness, child protection and juvenile justice*, Canberra 2012.