

13 December 2022

Chair
Senator Paul Scarr
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

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

Dear Senator Scarr,

Missing and murdered First Nations women and children

1. Women's Legal Service NSW (**WLS NSW**) thanks the Senate Legal and Constitutional Affairs Committee for the opportunity to comment on Missing and murdered First Nations women and children.
2. We begin by acknowledging the Traditional Owners of the lands on which we work across NSW and on which we live. We pay respect to Elders past, present and emerging. Is, was and always will be Aboriginal land. We also acknowledge the guidance, bravery, dignity and resilience of the many First Nations women who have allowed us to walk beside them as they navigate imposed colonial laws and policies.
3. We have read and endorse the submission and recommendations by Domestic Violence NSW in their submission to this inquiry.

About Women's Legal Service NSW

4. WLS NSW is a specialist accredited women-led 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.
5. Since 1995 WLS NSW has provided a statewide 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. 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.



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6. 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.
7. We work in partnership with Wirringa 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 partner community legal centre) resources and is always under threat.¹ The majority of referrals are made by Corrective Service NSW staff.
8. 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 vulnerable 18-24 year age range, with recent youth detention and/or child protection experiences.

Introductory comments

9. Between 1 July 1989 and 30 June 2020 2,796 women were victims of homicide (murder and manslaughter) in Australia, including 449 First Nations women. This represents 16% of the total number of adult women victims of homicide. First Nations women comprise 2-3% of the adult female population over that time.²
10. During that same period, 1,107 children were victims of homicide (murder and manslaughter) 139 of whom were First Nations children. This represents 13% of all child victims of homicide.³
11. The homicide rate for First Nations women from 2005-06 to 2019-20 ranged from 3 to 12 times the rate compared with non-Indigenous women, with an average rate 8 times higher than non-Indigenous women. Similarly, First Nations children experienced higher rates of homicide, on average 3 times higher than non-Indigenous children.⁴
12. It has been reported that First Nations women make up 10% of unsolved missing persons cases.⁵

¹ 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 (2017) *The Justice Project: Prisoners and Detainees Consultation Paper*, p 3, 37-40.

² Australian Institute of Criminology (2022), Senate Legal and Constitutional Affairs References Committee Inquiry into missing and murdered First Nations women and children – *Questions on Notice*, received 15 November 2022, p 2, 4

³ Ibid, p3, 5

⁴ Ibid, p 9-10

⁵ Collard, S, Higgins, I., *Senate should investigate 'missing, murdered, maimed' Indigenous women*, Linda Burney says, *ABC News*, 9 December 2019

13. Despite the high rates of homicide of First Nations women and children and the high rates of First Nations women as missing people, there is correspondingly very little media attention and public outrage. First Nations advocates have long been raising this issue.⁶
14. We acknowledge the extraordinary role of family and community members in shining a light on the deaths of First Nations women and children and seeking accountability for these deaths. Two examples of many in NSW include the murder of Lynette Daley⁷ and the murder of the Bowraville children, Colleen Walker-Craig, Evelyn Greenup and Clinton Speedy-Deroux.⁸ But it should not take the extraordinary advocacy of family and community members to achieve accountability.
15. It is vital this inquiry provides safe opportunities for truth telling and elevates the voices of First Nations women, children and their family and community members. It is similarly important that solutions are First Nations led and properly funded.

Structural violence perpetrated by State actors through harmful and racist Government policies and practices and impact of Governments' continuing action, inaction or insufficient action

16. There must be recognition of 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 and the compounding and intergenerational trauma and harm due to Governments' continuing action, inaction or insufficient action.
17. We refer to our [submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability in response to the Issues Paper: The experience of First Nations People with Disability in Australia](#) which discusses this in more detail. This submission recommended:
 - 17.1 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.
 - 17.2 Entrenching principles of truth telling and self-determination in all actions.
 - 17.3 Reparations for the Stolen Generations be made as a matter of urgency.
 - 17.4 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 in NSW.
18. Experiences of structural violence, abuse, neglect and exploitation perpetrated by State actors against First Nations people often means there is a reluctance and mistrust by First Nations women in reporting gendered violence and abuse perpetrated against First Nations women and children to police and other government departments. First Nations women fear removal of their children, misidentification as the predominant aggressor and criminalisation often stemming from

⁶ Bronwyn Carson, [No public outrage, no vigils: Australia's silence at violence against Indigenous women](#), *The Conversation*, 16 April 2021; Marlene Longbottom, [Four Corners reveals the nation's crisis of Indigenous women missing and murdered](#), *The Mandarin*, 26 October 2022; Four Corners, [How Many More?](#)

⁷ ABC News, [Lynette Daley death: Adrian Attwater and Paul Maris jailed for brutal attack](#), 8 December 2017

⁸ SBS, [Not forgotten: the ongoing fight to solve the Bowraville murders](#), 26 August 2022

misidentification or crimes committed in the context of seeking to numb the pain of intergenerational trauma.⁹

19. We also acknowledge the intersection of gendered violence and abuse with racism and other forms of discrimination further compounding harm.
20. We further note the correlation of children and young people who have been in out-of-home care, with homelessness and interaction with the criminal legal system, noting that First Nations children in NSW are eight times more likely to be removed from their families and enter care by the age of five years compared with non-Aboriginal children and young people.¹⁰ We further acknowledge the harm caused to First Nations children and people by child sexual abuse and other forms of child abuse perpetrated against First Nations children in care.¹¹
21. First Nations women tell us of their experiences of systemic racism and poor policing response to domestic and family abuse. These experiences are also well documented, including in the report by the Aboriginal and Torres Strait Islander Social Justice Commissioner June Oscar AO *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* as well as the recent *Commission of Inquiry into Queensland Police Service Response to Domestic and Family Violence*. The recommendations of both reports must be implemented. While the *Commission of Inquiry* was focused on the Queensland Police Service and “found clear evidence of a culture where attitudes of misogyny, sexism and racism are allowed to be expressed, and at times acted upon, largely unchecked,”¹² many of the recommendations are also relevant in the NSW context.
22. We support the calls by Commissioner Oscar for:
 - 22.1 *Recruiting and retaining Aboriginal and Torres Strait Islander women in leadership roles in the police;*
 - 22.2 *Ensuring Aboriginal and Torres Strait Islander women Police Liaison Officers are available to all police forces across Australia; and*
 - 22.3 *Trauma-informed and culturally responsive training, and family violence response training be embedded across all Australian police departments which include accountability frameworks to address systematic racism.*¹³
23. We support accountability frameworks to address systemic discrimination – systemic racism, sexism and other forms of discrimination across all systems.
24. We support thorough systemic examination of homicides, such as the Domestic Violence Death Review Team in NSW which is required to publish reports every 2 years. Such mechanisms must be properly resourced with greater accountability, including greater non-government representation and the

⁹ See further Women's Legal Service NSW, *Submission to NSW Select Committee into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody on the Inquiry into the high level of First Nations People in custody and oversight and review of Deaths in Custody*, 15 September 2020

¹⁰ *Family is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOHC* (2019) p101.

¹¹ For example as outlined in Women's Legal Service NSW (2020) *Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* in response to the Issues Paper: *The experience of First Nations People with Disability in Australia*

¹² *Commission of Inquiry into Queensland Police Service Response to Domestic and Family Violence: A Call for Change (Commission of Inquiry)* (2022), p11

¹³ Australian Human Rights Commission (2020) *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, p 103 (105)

timely publishing of such reports.¹⁴ In NSW there are 23 Government members and deputy members and 4 non-government members, with currently only 3 non-government members appointed to our knowledge.¹⁵

25. We support accountability frameworks to address systemic misidentification of the person most in need of protection and predominant aggressor. We refer to the report of the Victorian independent Family Violence Reforms Implementation Monitor: *Accurate identification of the predominant aggressor* which outlines 16 concrete actions to address systemic misidentification, including a whole of system response, as well as responses from police, courts and legal services, child protection, a co-responder model with police working closely with specialist domestic and family violence services, and continuing and strengthening existing work, including engagement with First Nations peoples through “Koori Caucus and the Dhelk Dja Partnership Forum, work with the ACCO Family Violence Forum members to ensure that the solutions developed adequately respond to Aboriginal victim survivors”.¹⁶
26. We further note the work underway in Queensland to provide police and courts with legislative guidance to help identify the person most in need of protection which acknowledges resistive violence may be used in response to domestic and family abuse.¹⁷
27. We support regular independent auditing of police response to domestic and family abuse.¹⁸ In NSW we have been advocating for an independent Victims Rights Commissioner.¹⁹ The Queensland *Commission of Inquiry*, recommends the independent Victims Rights Commissioner take on additional roles of:
 - a. *assisting individual victim-survivors of domestic and family violence, including in relation to complaints about poor police responses to domestic and family violence and*
 - b. *identifying systemic trends and issues relating to police responses to domestic and family violence*²⁰

As recommended by the *Commission of Inquiry*, there must be proper resourcing to allow this work to be effectively undertaken.²¹

28. When First Nations women and children reach out for help it is vital they are recognised, heard and supported, rather than ignored, misidentified, and victim-blamed.

¹⁴ Cripps, K, [Could the Senate inquiry into missing and murdered Indigenous women and children prevent future deaths?](#) *The Conversation*, 14 October 2022

¹⁵ [List of members of NSW Domestic Violence Death Review Team](#) as accessed on 12 December 2022.

¹⁶ Family Violence Reforms Implementation Monitor (2021) *Accurate identification of the predominant aggressor*, p 6(10)

¹⁷ Recommended by the Women's Safety and Justice Taskforce, and seeking to be implemented through the [Domestic and Family Violence Protection \(Combating Coercive Control\) and Other Legislation Amendment Bill 2022 \(Qld\)](#)

¹⁸ See further [Joint Letter to all members of NSW Legislative Council and Legislative Assembly, Crimes Legislation Amendment \(Coercive Control\) Bill 2022](#), 4 November 2022

¹⁹ In NSW, one person is both Executive Director of Victims Services and Commissioner of Victims Rights. The functions of the Commissioner are outlined in Part 3 Division 1 of *the Victims Rights and Support Act* and are limited and do not include advocating for victim-survivors rights. Rather than having one person with competing roles we believe it is in the interests of victim-survivors to have an independent Commissioner who can advocate for the rights of victim-survivors.

²⁰ *Commissioner of Inquiry*, Recommendation 78

²¹ *Commissioner of Inquiry*, Recommendation 78

29. A social entrapment framework of gendered violence and abuse examines three dimensions of barriers to victim-survivors of such violence and abuse being able to access the support they need:
 - a. *the social isolation, fear and coercion that the predominant aggressor's coercive and controlling behaviour creates in the victim's/survivor's life and how the predominant aggressor's behaviour constrains the primary victim's resistance and ability to escape the abuse*
 - b. *the lack of effective systemic safety options; and*
 - c. *the exacerbation of these previous two dimensions by structural inequities including poverty, historical trauma, colonisation, disability, racism, sexuality and gender, geographic isolation.*²²
30. Adopting such a framework shifts the narrative away from victim-blaming to make visible those who need to be held accountable - individual perpetrators, systems including response systems, governments and society. It better recognises the resilience of victim-survivors and the protective actions they take.
31. We recommend the adoption of a social entrapment model in government policies and practices.
32. Alternative first responder models which are victim-survivor centric, culturally safe and a co-responder model are required.
33. There must be proper investment in regular cultural safety training developed and delivered by First Nations people and communities for all systems.
34. We note NSW has recently introduced a new stand-alone offence of coercive control which will take effect at the earliest by 1 February 2024 and by no later than 1 July 2024. It is vital that significant cultural and systems reform occurs prior to the commencement of this new offence,²³ including the cultural and systems reform outlined above. It is also important that there are community awareness and community education campaigns that are community led and tailored, including by First Nations communities to ensure an understanding of coercive control, including that it can take both physical and non-physical forms.

If you would like to discuss any aspect of this submission, please contact Gail Thorne, 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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²² Tarrant, S., Tolmie, J., & Giudice, G. (2019). *Transforming legal understandings of intimate partner violence* (Research report 03/2019). Sydney, NSW: ANROWS, p 17(21); ANROWS (2020) Supplementary submission to the Joint Select Committee on Australia's Family Law System

²³ See further [Joint Letter to all members of NSW Legislative Council and Legislative Assembly, Crimes Legislation Amendment \(Coercive Control\) Bill 2022](#), 4 November 2022