

The Senate

Legal and Constitutional Affairs
References Committee

Missing and murdered First Nations
women and children

August 2024

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List of recommendations

Recommendation 1

- 7.17** The committee recommends that federal, state and territory governments codesign with First Nations families and communities, and on behalf of all Australians, a culturally appropriate and nationally significant way in which to recognise and remember the First Nations women and children who have been murdered or disappeared.

Recommendation 2

- 7.34** The committee recommends that the Attorney-General tasks the Police Ministers Council to review existing police practices in each jurisdiction, consider the learnings from each jurisdiction and aim to implement and harmonise best police practices across Australia by no later than 31 December 2025, with the goal of ensuring all interactions with First Nations people are consistent and of a high standard, including standards of cultural awareness and safety. In performing this role, the committee recommends that the following practices and procedures be considered:

- ongoing and mandatory cultural awareness training for all employees (that is, both sworn and civilian members);
- training courses developed and led by First Nations people, including components on lived experience, trauma-informed practice and effective communication;
- recruitment, support and promotion of First Nations people, including to senior management positions; and
- appropriate guidelines for the review of past cases involving disappeared and murdered First Nations women and children where families are seeking review. These should be replicated through the justice system as recommended by the NSW State Coroner in the inquest into the death of Mona Lisa Smith and Jacinta Rose Smith (referred to in this report).

Recommendation 3

- 7.35** The committee recommends that the Senate Legal and Constitutional Affairs Legislation Committee or the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, or such other appropriate body, monitors progress in meeting Recommendation 2 and the progress of measures to address the issues relating to discernible data gaps (paragraph 7.11).

Recommendation 4

- 7.38** The committee recommends that the Commonwealth government appoints a First Nations person with specific responsibility for advocating on behalf of

and addressing violence against First Nations women and children within the Domestic, Family and Sexual Violence Commission. Detailed consideration should be given to the way in which the position is created within the Domestic, Family and Sexual Violence Commission (for example, should it be Commissioner or Deputy Commissioner level), the powers of such position and the necessary funding for such position to maximise effectiveness.

Recommendation 5

7.43 The committee recommends that the Australian government urgently gives effect to the relevant recommendations in the Independent Review of the National Legal Assistance Partnership 2020–2025, in particular Recommendations 2–3, 9 and 11–12, and specifically addresses the need to increase the geographic spread and capacity of Family Violence Prevention Legal Services.

Recommendation 6

7.54 The committee recommends that the Department of Social Services, the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the National Indigenous Australians Agency develop, for implementation, a sustainable funding mechanism to provide ongoing support services for First Nations people, including women and children, experiencing domestic, family and sexual violence. This funding must prioritise service and program delivery by Aboriginal community-controlled organisations who demonstrate evidence-based primary prevention initiatives that are independently evaluated for efficacy, including for delivery in regional and remote areas.

Recommendation 7

7.61 The committee recommends that the Australian government empowers First Nations women to lead the design and implementation of services and supports that address violence in their communities, as consistently advocated by the Wiyi Yani U Thangani (Women's Voices) project, and reflecting the principles contained in the United Nations Declaration on the Rights of Indigenous People.

Recommendation 8

7.66 The committee recommends that:

- the Australian National Audit Office (ANAO) gives serious consideration to auditing the Attorney-General's Department (noting the independence of the ANAO), as part of its Annual Audit Work Program 2025–2026, to

assess whether the department is effectively delivering on the commitments agreed by the Australian government under the:

- National Agreement on Closing the Gap (in particular, Target 13);
 - National Plan to End Violence against Women and Children 2022–2032;
 - Aboriginal and Torres Strait Islander Action Plan 2023–25;
 - the First Nations National Plan, once in effect; and
- not later than six months after the conclusion of any ANAO audit, the Senate directs the Legal and Constitutional Affairs References Committee or the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs to consider the ANAO's findings and assess the Attorney-General's Department's response to the audit. In the event that the ANAO declines to undertake the audit, then another independent body should be tasked with conducting the audit on the basis referred to above.

Recommendation 9

- 7.71 The committee recommends that the Australian Press Council considers and reflects on the evidence given in this inquiry, with regard to how the media portrays cases of murdered and disappeared First Nations women and children, and considers how the concerns of First Nations communities and families can be positively addressed, including through the introduction of additional Standards or Advisory Guidelines or amendment of the existing Standards and Advisory Guidelines.

Recommendation 10

- 7.73 The committee recommends that the Australian government systematically considers the many recommendations and suggestions made to this inquiry. This includes recommendations relating to:
- trauma informed healing, including the recommendations made by the Healing Foundation and White Ribbon Australia;
 - implementation of a violence prevention framework for men and boys;
 - development of Aboriginal community-based support programs for men; and
 - initiatives which promote a sense of individual and community responsibility for the issue of male violence against Aboriginal women.

Acronyms and abbreviations

| | |
|-------------------------|--|
| ABC | Australian Broadcasting Corporation |
| ABS | Australian Bureau of Statistics |
| ACCO | Aboriginal community-controlled organisations |
| ACLO | Aboriginal Community Liaison Officer |
| ACPO | Aboriginal Community Police Officer |
| AFP | Australian Federal Police |
| AGD | Attorney-General's Department |
| AHRC | Australian Human Rights Commission |
| AIC | Australian Institute of Criminology |
| AIHW | Australian Institute of Health and Welfare |
| AIS | Aboriginal Interpreter Service |
| ALA | Australian Lawyers Alliance |
| ALHR | Australian Lawyers for Human Rights |
| ALO | Aboriginal Liaison Officer |
| ALRC | Australian Law Reform Commission |
| ANROWS | Australia's National Research Organisation for Women's Safety |
| ANTAR | Australians for Native Title and Reconciliation |
| ATSILS | Aboriginal and Torres Strait Islander Legal Service |
| CAAC | Central Australian Aboriginal Congress |
| CCC (WA) | Western Australian Corruption and Crime Commission |
| CCYP | Commission for Children and Young People |
| CHCP | Cultural Health and Competency Program |
| the Commission | Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence |
| the committee | the Legal and Constitutional Affairs References Committee |
| DDP | Data Development Plan |
| DDMM | Data and Digital Ministers Meeting |
| DFSV | domestic, family and sexual violence |
| DFV | domestic and family violence |
| the Dhelk Dja Agreement | <i>Dhelk Dja: Safe Our Way – Strong Culture, Strong Peoples, Strong Families</i> |
| DPP | Director of Public Prosecutions |
| DSS | Department of Social Services |
| DV | Domestic violence |
| DVO | Domestic violence order |

| | |
|---------------------------|--|
| FaCtS Study | Family and Community Safety for Aboriginal and Torres Strait Islander Peoples Study (2020) |
| FDSV | Family, domestic and sexual violence |
| First Nations Action Plan | Aboriginal and Torres Strait Islander Action Plan 2023–2025 |
| FNWLSQ | First Nations Women’s Legal Services Queensland |
| HRA | Human Rights Act |
| IBAC | Independent Borad-based Anti-corruption Commission |
| ICESCR | International Convention on Economic, Social and Cultural Rights |
| ICRR | Institute for Collaborative Race Research |
| IPV | Intimate Partner Violence |
| JPP | Justice Policy Partnership |
| Jumbunna | Jumbunna Institute for Indigenous Education and Research |
| Kunga | Kunga Stopping Violence Program |
| Law Council | Law Council of Australia |
| LECC | Law Enforcement Conduct Commission |
| MBCP | men’s behaviour change programs |
| the minister | Minister for Social Services |
| MPR | Missing Persons Registry |
| National Agreement | National Agreement on Closing the Gap |
| National Guidelines | <i>Our Watch, How to report on violence against women and their children, 2019 National Edition, 2019.</i> |
| National Inquiry | National Inquiry into Missing and Murdered Indigenous Girls and Women (Canada) |
| NJP | National Justice Project |
| National Plan | National Plan to End Violence Against Women and Children 2022–2032 |
| National Reduction Plan | National Plan to Reduce Violence against Women and their Children 2010-2022 |
| NAAFLS | North Australian Aboriginal Family Legal Service |
| NAAJA | North Australian Aboriginal Justice Agency |
| NATSILS | National Aboriginal and Torres Strait Islander Legal Services |
| NCIS | National Coronial Information System |
| NHMP | National Homicide Monitoring Program |
| NIA | National Indigenous Agency |
| NIAA | National Indigenous Australians Agency |
| NITV | National Indigenous Television |
| NLAP | National Legal Assistance Partnership |
| NMPCC | National Missing Persons Coordination Centre |

| | |
|-----------------------------|---|
| NPY | Ngaanyatjarra Pitjantjatjara Yankunytjayjara |
| NPY Women's Council | Ngaanyatjarra Pitjantjatjara Yankunytjayjara Women's Council |
| NQWLS | North Queensland Women's Legal Service |
| NTPFES | Northern Territory Police, Fire and Emergency Services |
| NTWLS | Northern Territory Women's Legal Services |
| ODPP | Office of the Director of Public Prosecutions |
| PACC | Police Aboriginal Consultative Committees |
| PACPAFV | Police and Aboriginal Community Protocols Against Family Violence |
| PASAC | Police Aboriginal Strategic Advisory Council |
| PC | Productivity Commission |
| PJC HR | Parliamentary Joint Committee on Human Rights |
| PM&C | Department of the Prime Minister and Cabinet |
| QAIHC | Queensland Aboriginal and Islander Health Council |
| QIFVLS | Queensland Indigenous Family Violence Legal Service |
| QPS | Queensland Police Service |
| REALS | Respondent Early Assistance Legal Service |
| SBS | Special Broadcasting Service |
| SCAG | Standing Council of Attorneys-General |
| UN | United Nations |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| WAS | Witness Assistance Service |
| Women's Safety Policy Forum | <i>Wiyi Yani U Thangani</i> (Women's Voices) First Nations Women's Safety Policy Forum |
| UN | United Nations |
| UNDRIP | United Nations Declaration on the Rights of Indigenous Peoples |
| VACCA | Victorian Aboriginal Child Care Agency |
| VALS | Victorian Aboriginal Legal Service |
| VP | Victoria Police |
| 2SLGBTQQA | Two-spirit, lesbian, gay, bisexual, transgender, queer, questioning, intersex and asexual |

Chapter 1

Introduction

Content warning

First Nations people should be aware that this report contains the names of deceased women and children.

Readers should also be aware that the report contains content that some people may find distressing.

If you need to speak to someone, you can contact these free support services:

- Lifeline: Ph. 13 11 14
- 13 Yarn: 13 92 76
- 1800 RESPECT: Ph. 1800 737 732
- Beyond Blue: Ph. 1300 222 636
- Kids Helpline: Ph. 1800 551 800
- Mensline Australia: Ph. 1300 789 978
- Blue Knot: Ph. 1300 657 380
- Suicide Call Back Service: Ph. 1300 659 467

Introduction

- 1.1 Every year, First Nations women and children are murdered or reported missing throughout Australia. The statistics are alarming and all Australians should rightly be concerned and outraged. It is important to remember that the statistics represent real people—sisters, mothers, aunties, grandmothers, children, grandchildren, siblings and cousins—who were and continue to be loved. It is time to acknowledge and end the violence.

Referral and terms of reference

- 1.2 On 25 November 2021, the International Day for the Elimination of Violence against Women, the Senate referred an inquiry into missing and murdered First Nations women and children to the Legal and Constitutional Affairs References Committee (the committee) for inquiry and report by 30 June 2022.¹

¹ *Journals of the Senate*, No. 129—25 November 2021, p. 4322.

- 1.3 The prorogation of the 46th Parliament on 11 April 2022 caused the inquiry to lapse, with the Senate re-referring the inquiry to the committee on 4 August 2022 for inquiry and report by 31 July 2023.²
- 1.4 The committee has endeavoured to conduct as many hearings as possible around Australia, including with First Nations families impacted by the loss of family members. In total, the committee held 16 hearings. Given that hearing dates have had to be accommodated between sitting dates and other committee hearings, it has required a considerable length of time to complete this inquiry. However, the committee was determined to provide an opportunity for all witnesses who wanted to appear and give testimony to be able to do so.
- 1.5 Given the need to conduct numerous hearings, the Senate granted the committee three extensions of time to report, first from 31 July 2023 to 7 December 2023, second from 7 December 2023 to 30 June 2024, and third, from 30 June 2024 to 15 August 2024.³
- 1.6 The terms of reference were:
- Missing and murdered First Nations women and children, with particular reference to:
- (a) the number of First Nations women and children who are missing and murdered;
 - (b) the current and historical practices, including resources, to investigating the deaths and missing persons reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children;
 - (c) the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children;
 - (d) 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;
 - (e) the policies, practices and support services that have been effective in reducing violence and increasing safety of First Nations women and children, including self-determination strategies and initiatives;
 - (f) 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;
 - (g) the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated; and

² *Journals of the Senate*, No. 7—4 August 2022, p. 193.

³ *Journals of the Senate*, No. 36—9 March 2023, p. 1073; *Journals of the Senate*, No. 60—3 August 2023, p. 1751; *Journals of the Senate*, No. 113—25 June 2024, p. 3479.

(h) any other related matters.⁴

Terminology – ‘missing’ or ‘disappeared’?

1.7 As an expression of the committee’s deep respect for First Nations’ stakeholders who have undertaken outstanding work in relation to the issues considered in this report, we first deal with the issue of the use of the word ‘missing’ in the terms of reference for this inquiry.

1.8 First Nations stakeholders raised concerns with respect to the word ‘missing’ in the terms of reference. Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research argued that Indigenous women, girls and gender diverse people are never actually ‘missing’, a passive adjective that implies that people choose to vanish:

...we do name all these women as murdered – they are violently disappeared by individuals operating within the structures of racial violence in the colony.

What is really ‘missing’ from this Inquiry, and from the dominant stories about [murdered not missing Indigenous women], are the perpetrators of violence against Indigenous women. In erasing the perpetrators, we erase the violence itself and disappeared Indigenous women are isolated from the structures that produce their brutalisation. They become ‘missing’ when in fact they are murdered and disappeared.

Indigenous women experience higher rates of violence as a direct result of this erasure of perpetrators, which creates a culture of impunity. Violence against Aboriginal and Torres Strait Islander women in Australia is not seen as sufficiently problematic to warrant proper police investigation, judicial redress or media reporting...This [is] the fundamental reason that Indigenous women, girls and gender diverse people experience all forms of violence at much higher rates than others in Australia...The cause of missing and murdered Indigenous women, girls and gender diverse people is ultimately the colonial structure of white supremacy, where a supremacist ideology valorising a white *humanitas* is operationalised by police, courts, individual predators and media. This structure creates a culture of impunity for some and terror for others.⁵

1.9 Ms Meena Singh, the Commissioner for Aboriginal Children and Young People at the Victorian Commission for Children and Young People, articulated similar concerns with the terminology of ‘missing’ or ‘absent’ First Nations children and young people in out-of-home care:

...the challenge with this terminology is that it puts the onus completely on the child—that the child has gone missing; the child is absent. It’s as if these actions of going missing and absent are somehow the decisions that are made by a child in their full capacity with no other trauma that they’re

⁴ *Journals of the Senate*, No. 7—4 August 2022, p. 193.

⁵ Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 5.

experiencing or no other life problems that they're dealing with...I see a lot of shaping of language, of service delivery, that makes it easier for the organisation or the department, whoever is providing the service, to blame the child or blame the person who is completely vulnerable, who's in the worst possible situation of their life.⁶

- 1.10 The same point was made by a number of other witnesses who appeared before the inquiry. Mrs Rachel Neary, Coordinator of the Kunga Stopping Violence Program, North Australian Aboriginal Justice Agency (NAAJA), said:

NAAJA endorses the submission titled 'Murdered not missing', by Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research, who have jointly requested that the terms of reference of this inquiry be reframed...In their joint submission, they argue that missing and murdered Indigenous women, girls and gender diverse people are never actually missing. Aboriginal and Torres Strait Islander women do not just vanish from their homes, family and country. In fact, they are disappeared. Their submission poignantly highlights the state's use of racialised stereotypes to position Aboriginal and Torres Strait Islander Aboriginal women and children in the passive language of 'going missing', conveying that what is enacted by a perpetrator—be it police, individual perpetrators, media, courts, academic research, inquiries and many other colonial institutions—is something that 'just happens' or is somehow 'by choice' and that, by choosing to be vanished, a missing person is complicit in their own victimisation.⁷

- 1.11 Across the country, Ms Nerita Waight, Chief Executive Officer of the Victorian Aboriginal Legal Service, said:

I want to echo concerns raised by a palawa woman, Maggie Blanden, who takes issue with the word 'missing' because our women continue to be violently and forcibly disappeared. The passive language of 'missing' only further compounds that level of indifference to our people.⁸

- 1.12 At the same public hearing, Ms Antoinette Gentile, Acting Chief Executive Officer of Djirra, said:

Djirra supports the comments made by Aboriginal women leaders and others previously in this inquiry who highlighted that Aboriginal women don't just go missing—they are disappeared.⁹

- 1.13 The committee notes that the terminology used in its terms of reference is consistent with that used in Canada's National Inquiry into Missing and

⁶ Ms Meena Singh, Commissioner for Aboriginal Children and Young People, Commission for Children and Young People (Victoria), *Committee Hansard*, 18 June 2024, p. 24.

⁷ Mrs Rachel Neary, Coordinator, Kunga Stopping Violence Program, North Australian Aboriginal Justice Agency, *Committee Hansard*, 18 April 2024, p. 8.

⁸ Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, p. 33.

⁹ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 2.

Murdered Indigenous Girls and Women (hereafter, the National Inquiry, see 'Background and context'). Further, that the term 'missing' has a particular meaning in the context used by many of the agencies which provided evidence to this inquiry.

1.14 For example, Dr Samantha Bricknell, Researcher at the Australian Institute of Criminology, explained that missing persons are categorised as 'lost', 'missing' or 'missing-murdered': 'lost' is a person who essentially has control over their own actions and is temporarily disoriented. 'Missing' is either voluntary or involuntarily missing and then, of course, missing-murdered' (also see paragraph 2.44).¹⁰

1.15 Dr Bricknell added that only the Northern Territory collects unit record data that allows for an analysis of why people go missing. Further, police services use different assessment tools to categorise a missing person:

There is not one uniform assessment tool that is used. So it is up to the police to determine what category that missing person or that missing person event fell into.¹¹

1.16 However, the submission made by Dr McQuire and other witnesses is very well made. Many of the heartbreaking stories conveyed to the committee during the course of this inquiry involved First Nations women and children who were clearly the subject of violence and could not be found. First Nations women and children had been 'disappeared' by perpetrators of heinous crimes. Accordingly, the committee does use the term: 'disappeared' in much of its commentary in Chapter 7. Further, the committee suggests that government agencies and other stakeholders reflect carefully on the use of terminology in relation to this very sensitive matter.

Conduct of the inquiry and acknowledgements

1.17 From the outset, the committee gave careful consideration to the conduct of the inquiry, and obtained advice from a range of experts about best practice approaches. The committee takes this opportunity to publicly thank these experts, including commissioners from Canada's National Inquiry, who provided guidance on how to conduct the inquiry in a sensitive, culturally appropriate and safe manner.

1.18 In accordance with its usual practice, the committee advertised the inquiry on its website and wrote to over 300 individuals and organisations, inviting submissions by 11 November 2022. The committee subsequently extended this date to 12 December 2022 and continued to accept submissions

¹⁰ Dr Samantha Bricknell, Researcher, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, p. 25.

¹¹ Dr Samantha Bricknell, Researcher, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, p. 25.

thereafter. The committee received 87 submissions, which are listed at Appendix 1.

- 1.19 The committee held 10 public hearings across six jurisdictions: the Australian Capital Territory, New South Wales, Western Australia, Queensland, the Northern Territory and Victoria. A list of the witnesses who appeared at these hearings is at Appendix 2.
- 1.20 The committee thanks the individuals and organisations who contributed to this inquiry, whether in a personal or professional capacity.
- 1.21 The public submissions, *Hansard* transcripts of evidence, additional information, tabled documents and answers to questions placed on notice can be accessed on the committee's website at: www.aph.gov.au/Senate/legalcon.

***In camera* hearings**

- 1.22 In addition to the public hearings, the committee held seven private (or *in camera*) hearings with First Nations families in New South Wales, Western Australia, Queensland, the Northern Territory and Victoria, to hear their lived experience.
- 1.23 The committee provided these families with information about the inquiry and the committee's approach to taking evidence. Family members decided the extent to which they participated and shared their experiences.
- 1.24 The committee endeavoured to provide a safe and respectful environment for all participants. This included Welcomes to Country and Smoking Ceremonies, informal opportunities to engage with senators (both before and after *in camera* sessions), and the attendance of counsellors and/or crisis support workers during the *in camera* hearings. This provided an invaluable opportunity to discuss concerns and issues with First Nations witnesses and their families, both before and after the giving of evidence. We recommend the practice to committees conducting future inquiries where testimony is given by witnesses who have suffered great trauma. The wellbeing of witnesses needs to be paramount.
- 1.25 The committee expresses its heart-felt gratitude to all the First Nations people who contributed to or assisted with the conduct of this inquiry. To each of the families who appeared, please know that your contributions made a profound difference to the deliberations of the committee. It would not have been possible for the committee to appreciate the human impact of this issue without hearing your evidence. The contributions from families especially helped the committee to better understand what has been happening to First Nations women and children throughout Australia. Please know that the committee was deeply and profoundly moved by the love expressed for your family members. This has underlined the importance of this inquiry in the minds of all committee members.

General note on terminology and apologies

- 1.26 The committee acknowledges that Australia's First Nations peoples comprise hundreds of groups that have their own distinct languages, histories and cultural traditions.¹² In this report, the terms 'Aboriginal and Torres Strait Islander people', 'First Nations people' and 'Indigenous people' are used. The committee does not intend any disrespect by this usage, which reflects the terminology commonly used in submissions and evidence.
- 1.27 The committee also acknowledges that, in some First Nations cultures, it is inappropriate to use the name of a deceased person. This report sometimes refers to specific women and children who are known, or suspected, to be deceased. The committee uses these names only where strictly necessary and regrets any concerns arising from such use.

Background and context

- 1.28 From 2016 to 2019, the Canadian government conducted a national inquiry into the high number of missing and murdered Indigenous women and girls in Canada (the National Inquiry).¹³
- 1.29 On 3 June 2019, the Commissioners for the National Inquiry released their final report titled *Reclaiming Power and Place*. The first overarching finding identified the cause of Canada's staggering rates of violence against Indigenous women, girls and two-spirit, lesbian, gay, bisexual, trans, queer, questioning, intersex and asexual (2SLGBTQQIA) people, as follows:

The significant, persistent, and deliberate pattern of systemic racial and gendered human rights and Indigenous rights violations and abuses – perpetuated historically and maintained today by the Canadian state, designed to displace Indigenous Peoples from their land, social structures, and governance and to eradicate their existence as Nations, communities, families, and individuals – is the cause of the disappearances, murders, and violence experienced by Indigenous women, girls, and 2SLGBTQQIA people, and is genocide. This colonialism, discrimination, and genocide explains the high rates of violence against Indigenous women, girls, and 2SLGBTQQIA people.¹⁴

¹² Australian Bureau of Statistics, 'Profile of Indigenous Australians', 7 July 2022, www.aihw.gov.au/reports/australias-health/profile-of-indigenous-australians (accessed 18 May 2024).

¹³ Government of Canada, 'Government of Canada Launches Inquiry into Missing and Murdered Indigenous Women and Girls', *News Release*, 8 December 2015, www.canada.ca/en/indigenous-northern-affairs/news/2015/12/government-of-canada-launches-inquiry-into-missing-and-murdered-indigenous-women-and-girls.html (accessed 18 January 2024).

¹⁴ National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place, Executive Summary of the Final Report*, 3 June 2019, p. 60, www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Executive_Summary.pdf (accessed 18 January 2024).

An Australian inquiry

1.30 The findings from Canada's National Inquiry attracted international attention¹⁵ and led some countries to conduct their own inquiries into missing and murdered Indigenous people.

1.31 In Australia, Linda Burney MP, a Wiradjuri woman and then Shadow Minister for Indigenous Australians, called for a Senate inquiry to understand the extent of violence against Indigenous women. Ms Burney stated that the number of Indigenous women going missing or being murdered warranted greater attention and consideration:

‘There is certainly a lack of urgency, a lack of recognition of the broader issue of violence in Australia and the amount of women who lose their lives... People need to recognise that for Aboriginal families, these are not statistics, they are real people. They’re sisters, mothers, cousins, aunties’.¹⁶

1.32 Senator Dorinda Cox, a Noongar Bibbulmen Yamatji woman, was also quoted in media, saying that there are many First Nations families wondering why their loved one's case goes unnoticed and is continually unsolved:

‘We have a justice system that does not take seriously the issues of missing and murdered First Nations women and children in this country...[An] inquiry will ask those questions for those families’.¹⁷

1.33 In her First Speech, Senator Cox stated her intention to campaign for an inquiry like that conducted in Canada, to give a voice to murdered and missing Indigenous women:

The red handprint symbol on the mask that I wore into the chamber yesterday and that I hold up today is a symbol of the bloodied hand silencing the voices of those stories. This work must be a priority to inform the already committed separate national plan on violence against First Nations women. We must prioritise and expedite a range of responses that can transform societal and cultural norms that are at the heart of the primary prevention work. A larger investment is required in primary prevention.

¹⁵ See, for example: J. Murphy, ‘Canadian national inquiry: Giving a voice to missing and murdered women’, *BBC News*, 3 June 2019, www.bbc.com/news/world-us-canada-48274410 (accessed 25 January 2024); I. Austen and D. Bilefsky, ‘Canadian Inquiry Calls Killings of Indigenous Women Genocide’, *New York Times*, 3 June 2019, www.nytimes.com/2019/06/03/world/canada/canada-indigenous-genocide.html (accessed 25 January 2024).

¹⁶ Linda Burney MP, Shadow Minister for Indigenous Australians, quoted in S. Collard and I. Higgins, ‘Senate should investigate ‘missing, murdered, maimed’ Indigenous women, Linda Burney says’, *ABC News*, 9 December 2019, www.abc.net.au/news/2019-12-09/linda-burney-wants-senate-inquiry-into-missing-indigenous-women/11773992 (accessed 25 January 2024). Also see: Senator Lydia Thorpe quoted in North Australian Aboriginal Family Legal Service, *Submission 40*, p. 17.

¹⁷ Senator Dorinda Cox quoted in G. Torre, ‘Inquiry into missing and murdered First Nations women announced’, *National Indigenous Times*, 25 November 2021, www.nit.com.au/inquiry-into-missing-and-murdered-first-nations-women-announced/ (accessed 25 January 2024).

Having trauma-led, on-country programs diverting away from the justice system will enable healing and recovery to occur. This is the foundation for change.¹⁸

- 1.34 On 25 November 2021, Senator Cox successfully moved a motion in the Senate for the referral of this inquiry to the committee.¹⁹ The government, led by the former Prime Minister, the Hon Scott Morrison MP, and the then Opposition, led by the Hon Anthony Albanese MP, supported the motion, emphasising their parties' commitment towards ending all gender-based violence in Australia.²⁰

Commonwealth government responsibilities

- 1.35 In Australia, the state and territory governments are primarily responsible for child protection and law enforcement, including policing and justice system responses to family, domestic and sexual violence (FDSV).²¹
- 1.36 The Commonwealth government recognises, however, that action is required to ensure the safety of First Nations women and children and that addressing the issue of missing and murdered First Nations women and children requires a concerted effort at all levels of government.²²
- 1.37 Accordingly, the Commonwealth government provides national leadership on a range of initiatives to respond to discrimination, inequality and gender-based violence. The three key federal initiatives are:
- the National Agreement on Closing the Gap (the National Agreement);
 - the National Plan to End Violence against Women and Children 2022–2032 (the National Plan); and
 - the First Nations Justice package announced in the 2022–23 Federal Budget.²³

¹⁸ Senator Dorinda Cox, First Speech, *Senate Hansard*, 19 October 2021, p. 6088.

¹⁹ *Journals of the Senate*, No. 129—25 November 2021, p. 4322.

²⁰ Senator the Hon Anne Ruston, Minister for Families and Social Services and Minister for Women's Safety, *Senate Hansard*, 25 November 2021, p. 6686; Senator the Hon Penny Wong, Leader of the Opposition in the Senate, *Senate Hansard*, 25 November 2021, p. 6681.

²¹ Note: the Attorney-General's Department provides national leadership on a range of matters where federal, state and territory responsibilities intersect, such as the family law/child protection and criminal justice systems: Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, Attorney-General's Department, *Committee Hansard*, 5 October 2022, p. 3.

²² National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, pp. 5–6.

²³ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 6. Note: these three initiatives are complemented by other frameworks, strategies and action plans (for example, *Safe and Supported: the National Framework for Protecting Australia's Children 2021–2031*, *Safe and Supported: Aboriginal and Torres Strait Islander First Action Plan 2023–2026*, and the proposed National Strategy to Achieve Gender Equality).

National Agreement on Closing the Gap

- 1.38 The National Agreement aims to ‘overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians’.²⁴
- 1.39 This National Agreement sets out four Priority Reforms to change the way that governments work with Aboriginal and Torres Strait Islander people to achieve its key objective.²⁵ It also establishes socio-economic targets, alongside outcomes, for all levels of government to work toward. Each target addresses a key transition point over an individual’s life, as well as the supports needed at each life stage.²⁶
- 1.40 The National Indigenous Australians Agency (NIAA) and the Attorney-General’s Department (AGD) noted that the inquiry relates to Targets 10 to 13, particularly Target 13:
- Target 13: By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50%, as progress towards zero.²⁷
- 1.41 At the Commonwealth level, the NIAA leads and coordinates implementation of the targets in partnership with the Coalition of Peaks (a representative body of more than 80 Aboriginal and Torres Strait Islander community-controlled peak and member organisations) and other First Nations partners.²⁸
- 1.42 Specifically in relation to Target 13, the NIAA works with the Department of the Prime Minister and Cabinet and the Department of Social Services. This collaborative work included the development of the National Plan and its associated Aboriginal and Torres Strait Islander Action Plan 2023–2025 (First Nations Action Plan).²⁹

²⁴ National Agreement on Closing the Gap (National Agreement), July 2020, paragraph 15, <https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf> (accessed 25 January 2024).

²⁵ Note: the four Priority Reforms are: Formal Partnerships and Shared Decision-Making; Building the Community-Controlled Sector; Transforming Government Organisations; and Shared Access to Data and Information at a Regional Level.

²⁶ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 6.

²⁷ National Agreement on Closing the Gap, July 2020, Table B, pp. 37–38.

²⁸ See: www.legislation.gov.au/C2019G00474/latest/text (accessed 25 January 2024); National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, pp. 6–7.

²⁹ Mr Ben Burdon, Group Manager, Social Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 2.

National Plan to End Violence against Women and Children 2022–2032

1.43 The National Plan, released on 17 October 2022, provides an overarching national policy framework to guide actions towards ending FDSV against women and children over the next 10 years. The plan outlines what needs to happen across four domains:

- Prevention – working to change the underlying social drivers of violence by addressing the attitudes and systems that drive violence against women and children to stop it before it starts.
- Early intervention – identifying and supporting individuals who are at high risk of experiencing or perpetrating violence and prevent it from reoccurring.
- Response – providing services and supports to address existing violence and support victim-survivors experiencing violence, such as crisis support and police intervention, and a trauma-informed justice system that will hold people who use violence to account.
- Recovery and healing – helping to reduce the risk of re-traumatisation, and supporting victim-survivors to be safe and healthy to be able to recover from trauma and the physical, mental, emotional, and economic impacts of violence.³⁰

1.44 The National Plan was developed using existing sources, such as *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children* (see Chapter 5). This resource was developed by Our Watch, a national leader in the primary prevention of violence, guided by an Aboriginal and Torres Strait Islander Women’s Advisory Group.³¹

1.45 The NIAA and the AGD noted that the National Plan aligns with Target 13 of the National Agreement, as well as the agreement’s Priority Reform 2 (Building the community controlled sector) and Priority Reform 3 (Transforming government organisations). The plan will be supported by two five-year Action Plans, and the dedicated First Nations Action Plan (see 'Aboriginal and Torres Strait Islander Action Plan 2023–2025' below).³²

1.46 The National Plan foreshadows the development of a standalone First Nations National Plan by June 2025, to address the complex and sensitive factors driving violence against First Nations women and children. In addition:

³⁰ Department of Social Services, 'The National Plan to End Violence against Women and Children 2022–2032', www.dss.gov.au/ending-violence (accessed 27 May 2024).

³¹ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 7; Our Watch, *Submission 16*, p. 4.

³² National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 7.

A deliverable under this National Plan is a dedicated action plan for Aboriginal and Torres Strait Islander family safety, which will provide the foundations for the future standalone First Nations National Plan.³³

- 1.47 The NIAA and the AGD advised that the Commonwealth government has committed \$3.4 billion to delivering the National Plan and has recently expedited efforts to progress its primary objective:

In recognition of the need to escalate collective efforts to end gender-based violence, the Prime Minister convened a National Cabinet on 1 May 2024, for the Commonwealth and all states and territories...to come together on this critical issue.

First Ministers agreed to build on and strengthen efforts currently underway under the National Plan, including strengthening accountability and consequences for perpetrators, strengthening and building on prevention work through targeted, evidence-based approaches and maintaining a focus on missing and murdered First Nations women and children.³⁴

Aboriginal and Torres Strait Islander Action Plan 2023–2025

- 1.48 On 16 August 2023, the Commonwealth, state and territory governments released the First Nations Action Plan. Development of this plan was led by the Aboriginal and Torres Strait Islander Advisory Council on Family, Domestic and Sexual Violence, a body comprised of 16 respected First Nations leaders.³⁵

- 1.49 The First Nations Action Plan sets out five Reform Areas that align with the four Priority Reforms and socio-economic targets in the National Agreement, with a specific focus on Target 13:

It is the primary mechanism through which the Australian, State and Territory governments will work to achieve Target 13 under the National Agreement. [By 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced by at least 50%, as progress towards zero].³⁶

³³ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022–2032*, 2022, p. 19, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 25 January 2024). Also see: National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 9.

³⁴ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 8.

³⁵ Department of Social Services, 'Developing the Aboriginal and Torres Strait Islander Action Plan', <https://engage.dss.gov.au/developing-the-aboriginal-and-torres-strait-islander-action-plan/> (accessed 25 January 2024).

³⁶ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 7. Also see: Commonwealth of Australia, *Aboriginal and Torres Strait Islander Action Plan 2023–2025*, 2023, p. 16, www.dss.gov.au/sites/default/files/documents/10_2023/dedicated-action-plan.pdf (accessed 25 January 2024).

1.50 In the First Nations Action Plan, the five Reform Areas are:

- Voice, self-determination and agency.
- Strength, resilience and therapeutic healing.
- Reform institutions and systems.
- Inclusion and intersectionality.
- Evidence and data eco-systems.³⁷

1.51 According to the NIAA and the AGD, the First Nations Action Plan acknowledges the need for additional culturally inclusive and tailored supports.³⁸

1.52 The First Nations Action Plan operates in conjunction with other Commonwealth, state and territory initiatives.

The Action Plan also corresponds with other existing strategies and targets for realising the rights of Aboriginal and Torres Strait Islander women and children at the Commonwealth and state/territory levels. Its activities will occur alongside a range of initiatives already being implemented by states and territories under their individual plans.³⁹

1.53 In the Federal Budget 2023–24, the Commonwealth government committed \$262.6 million to support the First Nations Action Plan, Family Violence Prevention Legal Services and ‘undertake an initial review to inform the development of a national standard for government data on lost, missing, or murdered First Nations women and children’.⁴⁰

First Nations Justice package

1.54 While state and territory governments are primarily responsible for criminal justice systems (see paragraph 1.35), the Commonwealth government has a key leadership role in achieving Targets 10 and 11 of the National Agreement:

Target 10: By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

Target 11: By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent.⁴¹

1.55 The AGD and the National Aboriginal and Torres Strait Islander Legal Services jointly lead the Justice Policy Partnership (JPP), the first of five Policy Partnerships established under the National Agreement. The partnership

³⁷ Commonwealth of Australia, *Aboriginal and Torres Strait Islander Action Plan 2023–2025*, 2023, p. 79, www.dss.gov.au/sites/default/files/documents/10_2023/dedicated-action-plan.pdf (accessed 25 January 2024).

³⁸ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, p. 8.

³⁹ Commonwealth of Australia, *Aboriginal and Torres Strait Islander Action Plan 2023–2025*, 2023, p. 16.

⁴⁰ Commonwealth of Australia, *2023–24 Federal Budget, Budget measures: Budget Paper No. 2*, p. 90.

⁴¹ National Agreement on Closing the Gap, July 2020, Table B, pp. 32–34.

is a collaboration between the Coalition of Peaks, Aboriginal and Torres Strait Islander experts, and government, which aims to achieve a joined-up approach to Aboriginal and Torres Strait Islander justice policy:

Issues canvassed at JPP meetings include the misidentification of First Nations women as perpetrators of family and domestic violence, First Nations experiences of coercive control, and eliminating systemic racism in policing and justice system institutions.⁴²

- 1.56 As part of the First Nations reform agenda, the Federal Budget 2022–2023 included a \$99 million investment over four years to implement a package of complementary measures intended to turn the tide on the overrepresentation of First Nations people in the criminal justice system. The package included, for example, \$81.5 million for community-led justice reinvestment initiatives.⁴³

Structure of the report

- 1.57 This report comprises seven chapters, as follows:

- Chapter 1 provides an introduction, background and context to the inquiry, as well as outlining government responsibilities;
- Chapter 2 examines data and related issues in relation to the number of missing and murdered First Nations women and children;
- Chapter 3 discusses the causes of and factors driving violence;
- Chapter 4 focuses on police culture and practices;
- Chapter 5 examines the acknowledgement and response to violence;
- Chapter 6 examines Commonwealth government leadership; and
- Chapter 7 sets out the committee’s conclusions and recommendations.

Note on references

- 1.58 In this report, references to the *Committee Hansard* transcript are to proof (uncorrected) transcripts. Page numbers may vary between the proof and official (corrected) transcripts.

⁴² National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 11. Also see: Attorney-General’s Department, ‘Justice Policy Partnership’, www.ag.gov.au/legal-system/closing-the-gap/justice-policy-partnership (accessed 25 January 2024).

⁴³ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, pp. 9 and 12–13.

Chapter 2

Current data

- 2.1 On 28 June 2022, the Special Broadcasting Service (SBS) aired an episode of The Feed program that examined the over-representation of First Nations women in Australia's missing persons statistics (Figure 2.1).¹

Figure 2.1 Missing persons in Australia, First Nations women



Source: SBS, 'Vanished', The Feed, 28 June 2022.

- 2.2 Nearly four months later, on 24 October 2022, the Australian Broadcasting Corporation (ABC) Four Corners program broadcast a similar episode, which examined the cases of three murdered First Nations women.²
- 2.3 Both the SBS and ABC highlighted an issue critical to this inquiry: the number of missing and murdered First Nations women and children in Australia.
- 2.4 This chapter examines the key data, whether it accurately portrays the number of missing and murdered First Nations women and children in Australia, and data improvement initiatives.³

¹ Special Broadcasting Service, 'Vanished', The Feed, 28 June 2022, www.sbs.com.au/ondemand/news-series/the-feed (accessed 28 January 2024).

² Australian Broadcasting Corporation, 'How Many More?', Four Corners, www.abc.net.au/news/2022-11-01/murdered-and-missing-first-nations-women-four-corners/101602274 (accessed 28 January 2024).

³ Note:

- 2.5 While this data is essential to understanding the extent and prevalence of missing and murdered First Nations women and children, it cannot be considered in the abstract. As expressed by Ms Christine Robinson, Chief Executive Officer of the Wirringa Baiya Aboriginal Women's Legal Centre:

...we [must] treat this issue with the dignity, respect and understanding that we are talking about individuals who have been mothers, daughters, sisters, aunts, nans, friends and colleagues. They are people and they should be treated and remembered as humans and people who played a significant part in different people's lives.⁴

[My sister] was only 32 years old when she died. She was a proud Nyoongar woman, her totem was the bindi bindi, the butterfly. She was bright and beautiful, fun and caring, artistic and brave, strong and honest, she was one of the people closest to me in this whole entire world.⁵

Key data and their source

- 2.6 In Australia, the key data relevant to this inquiry is collected by state and territory governments, and used by data collection agencies.⁶ There is a wide range of data sources, the two most relevant being the Missing Persons data and the National Homicide Monitoring Program (NHMP).⁷

Missing Persons data

- 2.7 The Missing Persons data is collected by the states and territories, and coordinated by the National Missing Persons Coordination Centre (the NMPCC, a non-operational arm of the Australian Federal Police (AFP)).⁸
- 2.8 The AFP advised that 'it is difficult to determine accurate figures of missing First Nations women and children due to data collection inconsistencies across state and territory jurisdictions'.⁹

(1) the principles outlined in the Warawarni-gu Guma Statement to not compare First Nations and non-First Nations data is not adhered to in this report.

(2) unless otherwise specified, data from several sources is provided for females (women and children), women (aged 18 years and over) and children (males and females under 18 years).

⁴ Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2024, p. 2.

⁵ Ms Alison Bairnsfather-Scott, *Submission 80*, p. 1.

⁶ Note: the key data collection agencies are the Australian Institute of Criminology, the Australian Bureau of Statistics, and the Australian Institute of Health and Welfare.

⁷ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, pp. 16–17 and Attachment A.

⁸ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 21.

⁹ Australian Federal Police, *Submission 4*, p. 7.

2.9 Mr Jason Kennedy, Commander Professional Standards at the AFP, explained that each jurisdiction has its own reporting systems, inconsistent procedures and unsearchable manual case file notes:

...in mid-2018 there was one agency that began only placing those missing more than seven days on their database; therefore, their 2018 data is not an accurate reflection of those reported missing in 2018...The way data was extracted in 2021 by one agency was different from what was undertaken in previous years...Another good example is one agency utilised one report per child to record and manage children in care that repeatedly go missing from their placement. The number of missing juveniles incidents is, therefore, significantly greater than the reports. One particular child had one report on the system but had gone missing on 80 occasions. Some agencies would report it as 80 and some agencies would report it as one.¹⁰

2.10 The National Indigenous Australians Agency (NIAA) and the Attorney-General's Department (AGD) agreed that the Missing Persons data is of variable quality,¹¹ with only four jurisdictions collecting data on Indigenous status prior to 2021 (Figure 2.2).

Figure 2.2 Number of missing First Nations women and children by state/territory, 2019–2021

| State/territory | 2019 | | 2020 | | 2021 | |
|-----------------|-------|----------|-------|----------|-------|----------|
| | women | children | women | children | women | children |
| ACT | - | - | - | - | 2 | 17 |
| NSW | 164 | 724 | 152 | 980 | 97 | 483 |
| NT | - | - | - | - | 400 | 195 |
| QLD | 246 | 3316 | 226 | 2641 | 239 | 2397 |
| TAS | 0 | 0 | - | - | 0 | 2 |
| VIC | - | - | 59 | 1848 | 81 | 1844 |
| WA | 79 | 530 | 116 | 683 | 117 | 593 |
| Total | 489 | 4570 | 1450 | 8653 | 936 | 5531 |

Source: AFP, answers to questions on notice, 29 September 2022 (received 21 October 2022), p. [3].¹²

¹⁰ Mr Jason Kennedy, Commander Professional Standards, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 30.

¹¹ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 21.

¹² Note: South Australia requested that its data be excluded from the AFP's response, as the information was to be provided direct to the committee, however, this did not occur.

- 2.11 Mr Scott Lee, Assistant Commissioner Specialist Protective Command at the AFP, said that ‘there are some challenges for [the AFP] in terms of how we collate that [inconsistent] data’.¹³ However, he noted the Police Consultative Group on Missing Persons, a forum that can facilitate data standardisation:

...we can look at the standardisation of the data and share experiences about what works and what is the most effective way for us to collect the data to make sure that we've got the best evidence base we can to inform some of this decision-making nationally. That's a really key forum for us, noting that there are still some challenges in terms of how we do that, and that's still very much an evolving space.¹⁴

First Nations women and children in the Missing Persons data

- 2.12 Submitters and witnesses also commented on the Missing Persons data. Rather than noting data inconsistencies, their arguments focussed on the high and disproportionate number of First Nations women and children captured in the data.
- 2.13 Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research advised that Aboriginal and Torres Strait Islander people are more likely to go missing and less likely to be found: ‘20 per cent of currently missing women in Australia are Aboriginal women’.¹⁵
- 2.14 The Victorian Aboriginal Legal Service submitted that First Nations children and youth are over-represented in the out-of-home care system (approximately one in 18) and are ‘markedly overrepresented in reports of missing children. These children make up 53% of missing children reports’.¹⁶
- 2.15 The Commissioner for Children and Young People (WA), Ms Jacqueline McGowan-Jones, said that, in Western Australia, First Nations children go missing for two reasons: there is no real commitment to finding them or ‘they've crossed borders and they're in out-of-home care, and one jurisdiction now doesn't know where they are’:

I recently met with Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council about the children who are missing across the tri-state region, because that's a cultural block. The state and territory borders don't mean anything to that cultural block of families. So, if a child is at risk and an open case with child protection in Western Australia, and they go to South

¹³ Mr Scott Lee, Assistant Commissioner Specialist Protective Command, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 30.

¹⁴ Mr Scott Lee, Assistant Commissioner Specialist Protective Command, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 32.

¹⁵ Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, pp. 7–8. Also see: Women's Legal Service NSW, *Submission 21*, p. 2; Aboriginal Legal Service (NSW/ACT), *Submission 25*, p. [2].

¹⁶ Victorian Aboriginal Legal Service, *Submission 59*, p. 9.

Australia, which might only be 100 kilometres across the border, the case might be closed, or they don't know the child's gone. What worries me about that is we make an assumption that they're with family, but that's not always the case and these children are at risk. They're in South Australia and then they go to the Northern Territory, and then South Australia closes the case. Yet the child is at risk. Again, we make assumptions that they've gone with family, and for most of them that is true. But children are missing from Balgo, Derby, across the Kimberley, across the Pilbara and across the tri-state area and have been for over 30 or 40 years.¹⁷

- 2.16 Ms Anne Lenton, Director of Legal Services at Djirra, argued that there must be broader consideration of the cross-jurisdictional issues:

This includes when children disappear in circumstances where child protection has been previously involved, or where there's been significant family violence, but this information is only known by one state. For example, in our work we see people who use violence across the border to avoid service for warrants of arrest, with services having an apathetic response of, essentially: 'It's across the river. It's not my problem'.¹⁸

- 2.17 Victoria's Commission for Children and Young People (CCYP) submitted that no-one really knows the full extent of the problem:

While Aboriginal children are over-represented in out of home care overall, the rate at which they are reported absent or missing from residential care is lower than for non-Aboriginal children. This gives rise to concerns that Aboriginal children going missing is under-reported.¹⁹

- 2.18 Ms Meena Singh, Commissioner for Aboriginal Children and Young People at the CCYP (Victoria), noted that most children are placed in unsupported kinship care arrangements but some of the most disturbing experiences arise from children being placed in residential care:

We see children and young people being exploited for sexual purposes by adults when they are away from these placements, and often this exploitation is for money or for drugs. They are exploited because they are vulnerable. They have significant unaddressed trauma, and they are looking for ways often to forget about their life experiences. In these experiences of

¹⁷ Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, pp. 30–31. Note: there are 248 children missing in the tri-state area: p. 33. Also see: Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 45, who commented on the lack of police follow up with missing persons reports for First Nations youth and children.

¹⁸ Ms Anne Lenton, Director, Legal Services, Djirra, *Committee Hansard*, 18 June 2024, p. 5.

¹⁹ Commission for Children and Young People (Victoria), *Submission 50*, p. 3. Also see: Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 40; Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 50, who explained the difference between 'absent' and 'missing'.

sexual exploitation and also criminal exploitation, we see children and young people let down by systems and by adults in every way imaginable.²⁰

2.19 The Queensland Family & Child Commission argued there are several system inadequacies when a child goes missing from out-of-home care, particularly in the areas of practice consistency, and data collection and sharing.²¹

2.20 Ms Seranie Gamble from the Department of Territory Families, Housing and Communities (NT) provided information about one department's data system (the 'care system'), which is separate but connected to other systems:

Across government there are different systems. If a child comes under the attention of the department, the care system captures that through a notification...The purpose of the care system is to try to have a system that can connect to the other systems across government so that if there was a need for an investigation into concerns raised about a child, there's a more streamlined way to access that information across those government systems, like through police databases, depending on what the issue is, to make it a more efficient investigation or check on what's needed to check on the wellbeing of that child. That system has been enhanced to be able to do that more effectively.²²

2.21 Ms Gamble noted that a significant amount of domestic, family and sexual violence (DFSV) data is not captured by the care system, as it involves people who might not be in that system and comprises data held by non-government agencies:

The non-government sector provides a significant amount of services and supports for victims-survivors. The alignment of the data capability outside of government isn't necessarily linked to the data systems that government holds. There are some—for example crisis accommodation and women's safe houses—that do align to a national reporting database about the types of people entering those services and accessing those services.²³

²⁰ Ms Meena Singh, Commissioner for Aboriginal Children and Young People, Commission for Children and Young People (Victoria), *Committee Hansard*, 18 June 2024, p. 22. Also see: GUMURRII Centre, Griffith University, 'Young Aboriginal Females Reported Missing to Police: Which Way for Prevention & Service', 2024 (3rd Edition), *Additional Information*, provided by Dr Catherine Demosthenous (received 20 June 2024), which examined the high incidence of First Nations girls reported missing.

²¹ Queensland Family & Child Commission, *Submission 20*, p. [2].

²² Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 50.

²³ Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 51.

Quality Missing Persons data

- 2.22 The AFP referenced the Australian Institute of Criminology (AIC) report titled *Missing persons: who is at risk?*.²⁴ This report recognised the need for quality data to better inform national and jurisdictional trend data on missing persons:

Data quality relates to the comparability of data currently collected, specifically data definitions and jurisdictional variation in the range of data items recorded in different police systems. The NMPCC use a data collection form to collate rudimentary data on missing persons from state and territory police. Data collected for this study using the NMPCC form demonstrated some of the inconsistencies in the data recorded by state and territory police, which affected compilation of trend data and, critically, national data on key variables. It also affected the capacity for police services to provide different aggregations of data depending on the analysis required.²⁵

- 2.23 The AFP noted that, following publication of the AIC report, a Missing Persons Minimum Dataset, including demographic information on the missing person, was developed by the NMPCC in conjunction with the Police Consultative Group on Missing Persons and the AIC.²⁶
- 2.24 In addition to data quality, the NIAA and the AGD argued that there is ‘a strong need for research in the missing persons sector, with only a handful of research reports dedicated to the issue in Australia’. They noted the importance of this research to understand why people go missing, which enables the identification of preventative strategies and coordinated approaches, to reduce the incidence and impact of missing persons.²⁷

National Homicide Monitoring Program

- 2.25 The NHMP collects data from state and territory police, as well as coronial records (autopsy, toxicology and coronial findings), which are repositied in the National Coronial Information System (NCIS). The program is coordinated by the AIC.²⁸
- 2.26 The NHMP has data for murdered First Nations women and children from 1989–1990 to 2022–2023. Over this period, 476 women were recorded as victims

²⁴ S. Bricknell, *Missing persons: Who is at risk?*, Australian Institute of Criminology, Research Report 08, 2017.

²⁵ S. Bricknell, *Missing persons: Who is at risk?*, Australian Institute of Criminology, Research Report 08, 2017, p. 34.

²⁶ Australian Federal Police, *Submission 4*, p. 7; Australian Federal Police, answers to questions on notice, 5 October 2022 (received 11 November 2022), Attachment 1.

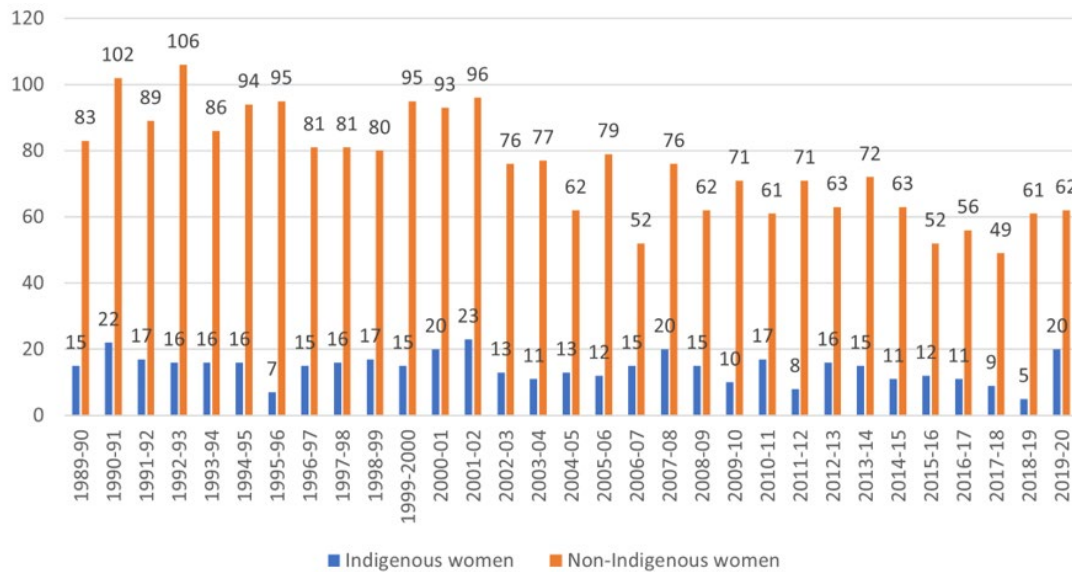
²⁷ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 16. Also see: S. Bricknell, *Missing persons: Who is at risk?*, AIC, Research Report 08, 2017, p. 29.

²⁸ Australian Institute of Criminology, answers to questions on notice, 29 September 2022 (received 30 September 2022), p. 2.

of homicide (murder and manslaughter) and 158 children were recorded as victims of homicide (murder, manslaughter and infanticide).²⁹

- 2.27 To place this data in context, First Nations women represented 16 per cent of all Australian women homicide victims (Figure 2.3), despite comprising between two to three per cent of the adult female population. Similarly, First Nations children represented 13 per cent of all child homicide victims.³⁰

Figure 2.3 Number of female victims of homicide by Indigenous status, 1989–1990 to 2019–2020



Source: AIC, answers to questions on notice, 5 October 2022 (received 18 November 2022), pp. 27–28 and 33–34.³¹

- 2.28 The AIC noted that, from 2005–2006 to 2022–2023, First Nations women consistently experienced higher rates of murder than their non-Indigenous counterparts (three to 13 times higher). Similarly, the rates of murder were higher for First Nations children, compared with non-Indigenous children (on average three times higher).³²

²⁹ Australian Institute of Criminology, updated answers to questions on notice, 23 May 2024 (received 7 June 2024), pp. 4–5.

³⁰ Australian Institute of Criminology, updated answers to questions on notice, 23 May 2024 (received 7 June 2024), pp. 4–5. Also see: Women’s Legal Service NSW, *Submission 21*, p. 2.

³¹ Note: updated Australian Institute of Criminology data for 2020–21 to 2022–23 reported 6 female First Nations and 53 female non-Indigenous victims of homicide (2020–21), 13 female First Nations and 37 female non-Indigenous victims of homicide (2021–22), and 11 female First Nations and 56 female non-Indigenous victims of homicide (2022–23): updated answers to questions on notice, 23 May 2024 (received 7 June 2024), Tables A5 and A9.

³² Australian Institute of Criminology, updated answers to questions on notice, 23 May 2024 (received 7 June 2024), p. 9. Also see: Central Australian Aboriginal Congress, *Submission 18*, p. 5, which submitted that the number of murdered non-Indigenous women has been declining, compared to First Nations women; Dr Rick Brown, Deputy Director, Australian Institute of

- 2.29 The AIC also advised that the rate of child homicide in Australia decreased by 53 per cent between 1989–90 to 2022–23. However, the rate for First Nations children varied greatly between from 2005–06 to 2022–23 and was higher most years compared to non-Indigenous children.³³
- 2.30 Change the Record and Djirra submitted that this disproportionate representation of First Nations women and children in the data, together with the policies, legislation and practices introduced at colonisation, should be recognised as genocide under Article II of the United Nations Convention on the Prevention and Punishment of the Crime of Genocide.³⁴
- 2.31 Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner commented that Australia’s denial of genocide ‘torments’ First Nations people and contrasts with Canada’s acceptance of its genocidal foundations:

Considering the similarity in the pattern of structural violence experienced by First Nations people in Australia, it is our submission that the finding of genocide in Canada makes it imperative to re-investigate the question of genocide in Australia...The National Inquiry in Canada has devised a model for understanding genocide which is in line with the Convention and attuned to Indigenous perspectives, particularly with respect to the gendered violence faced by Indigenous women and girls. We submit that this understanding be adopted as a starting point in understanding the violence First Nations women and children face in Australia. To continue to rely on Australian normative understandings of genocide is in violation of Australia’s international obligations under the Convention to prevent genocide. By adhering to these norms, the genocide of First Nations people continues to be sanctioned by Australian laws and policies.³⁵

- 2.32 The Australian Institute of Health and Welfare (AIHW) referenced data from the National Mortality Database (2018–2022) to show that remote areas and socioeconomic groups affect the rate of homicide deaths for First Nations females, including in comparison to non-Indigenous females:

Indigenous females accounted for 6% of homicide deaths in Major cities (14 of 249 deaths), compared with 27% of deaths in regional and remote areas (29 of 109 deaths) (excluding deaths where Indigenous status was unknown).

In Major cities, the rate of homicide deaths among Indigenous females was 3.3 times as high as for non-Indigenous females (1.7 compared with

Criminology, *Committee Hansard*, 5 October 2022, p. 19, who commented similarly in relation to the homicide rate.

³³ Australian Institute of Criminology, updated answers to questions on notice, 23 May 2024 (received 7 June 2024), pp. 3–4 and Tables A8 and A12.

³⁴ Change the Record and Djirra, *Submission 85*, pp. [16–17].

³⁵ Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner, *Submission 79*, p. 9.

0.5 per 100,000 population), while in regional and remote areas, the rate was 4.5 times as high (2.2 compared with 0.5 per 100,000 population) (based on crude rates).³⁶

- 2.33 In relation to socioeconomic groups, the rate of deaths due to homicide was lower among those living in the highest socioeconomic areas, for both Indigenous and non-Indigenous females:

Indigenous females accounted for 4% of total female homicide deaths among those living in the middle and 2 highest socioeconomic quintiles combined (8 of 184 deaths), 15% of homicide deaths those living in the second lowest socioeconomic quintile (11 of 72 deaths), and 24% of homicide deaths in the lowest quintile (24 of 102). The rate of homicide deaths among Indigenous females ranged between 2.3 and 4.3 times as high as for non-Indigenous females across socioeconomic groups.³⁷

Specific comment on the Northern Territory

- 2.34 The NCIS provided data on reportable deaths for First Nations women and children, for the period 1 July 2000 to 31 December 2019. Nationally, 309 women and children died from assault (Figure 2.4), with the Northern Territory recording the highest number of assault-related deaths for women (88).³⁸

Figure 2.4 Number of assault-related deaths of women and children by Indigenous status and state/territory, 2000–2019

| Category | ACT | NSW | NT | QLD | SA | TAS | VIC | WA | Total |
|-----------------------|-----|-----|----|-----|----|-----|-----|-----|-------|
| <i>Indigenous</i> | | | | | | | | | |
| Children | <4 | 16 | 10 | 21 | <4 | 0 | <4 | 15 | 66 |
| Women | 0 | 34 | 88 | 45 | 13 | 0 | <4 | 61 | 243 |
| <i>Non-Indigenous</i> | | | | | | | | | |
| Children | 4 | 145 | <4 | 93 | 27 | 10 | 65 | 49 | 396 |
| Women | 17 | 372 | 10 | 194 | 61 | 32 | 274 | 127 | 1087 |

Source: NCIS, answers to questions on notice, 29 September 2022 (received 4 October 2022), Tables 3–6.

³⁶ Australian Institute of Health and Welfare, updated answers to questions on notice, 23 May 2024 (received 14 June 2024), p. 2.

³⁷ Australian Institute of Health and Welfare, updated answers to questions on notice, 23 May 2024 (received 14 June 2024), p. 3.

³⁸ NCIS, answers to questions on notice, 29 September 2022 (received 4 October 2022), Tables 3–4, 9–10, and 13–14.

2.35 Similarly, according to the NHMP, from 1989–1990 to 2022–2023, the Northern Territory recorded the highest number of First Nations women victims of homicide (147), followed next by Western Australia (123) and Queensland (114).³⁹

2.36 The Northern Territory Women’s Legal Services (NTWLS) submitted:

30% of [murdered First Nations women] were recorded in the NT. In the same time period, 84% of all adult victims of murder in the NT were First Nations women, the highest percentage of any jurisdiction. Tragically, 76% of all children victims of murder in the NT in the same period were First Nations children; again, the largest proportion of any jurisdiction.⁴⁰

2.37 Several submitters and witnesses commented on the high and disproportionate level of DFSV in the Territory. The Office of the Children’s Commissioner, Northern Territory noted that the rate is 18 times higher than in other jurisdictions. Further:

In the Northern Territory, 91% of sexual assault victims are Aboriginal women and girls, with 51% of these victims under 19 years of age. This aligns with the proportion of victims of DFSV who are Aboriginal, which was 89%. Of those victims of DFSV, Aboriginal women are 40 times more likely than non-Aboriginal women to be hospitalised for family-violence related assaults. In total, the rate of sexual assaults in the Northern Territory is almost 50% higher than the next highest jurisdiction.⁴¹

2.38 The North Australian Aboriginal Family Legal Service (NAAFLS) stated:

There were 5,733 victims of DFSV in the Northern Territory in 2021—the number has grown by more than 2,000 in three years. On a typical day in the Northern Territory there are 61 domestic violence incidents. Close to 90% of victims of DFSV related assaults in the Northern Territory are Aboriginal. This is despite the Aboriginal population making up only 27% of the total Northern Territory population.⁴²

2.39 Ms Gamble from the Department of Territory Families, Housing and Communities (NT) advised that, since 2000, 94 Aboriginal women have been killed in the Territory as a result of domestic and family violence:

³⁹ Australian Institute of Criminology, updated answers to questions on notice, 23 May 2024 (received 7 June 2024), Table A5.

⁴⁰ Northern Territory Women’s Legal Services, *Submission 24*, p. 2. Also see: North Australian Aboriginal Family Legal Service, *Submission 40*, p. 6, which argued that Aboriginal women’s experiences in the Territory are compounded by additional barriers and challenges (such as limited infrastructure, inadequate housing, financial insecurity, etc.).

⁴¹ Office of the Children’s Commissioner Northern Territory, *Submission 17*, p. 1.

⁴² North Australian Aboriginal Family Legal Service, *Submission 40*, p. 6. Also see: Northern Territory Council of Social Service, *Submission 66*, p. [3].

The domestic and family violence related homicide rate in the Northern Territory is seven times higher than the national average. The domestic and family violence related assault rate in the Northern Territory is four times higher than the national average. The sexual assault rate in the Northern Territory is 1.2 times higher than the national average.⁴³

- 2.40 According to the Central Australian Aboriginal Congress, Alice Springs has some of the highest rates of family violence in the country:

In 2013, Aboriginal women were 3.6 times more likely to experience domestic-related assaults in Alice Springs than the rest of the NT. In 2007, prior to the introduction of the first significant alcohol supply measures, Alice Springs surgeon [redacted] went public with findings that suggested Alice Springs was the 'stabbing capital of the world': over a seven-year period (1998 to 2005) there were 1,550 stabbing injury admissions to Alice Springs Hospital, more than 200 a year, or more than one stabbing every two days. Just over half of the victims were women.⁴⁴

- 2.41 Some submitters commented on the number of First Nations women killed due to intimate partner violence (IPV). Australian Lawyers for Human Rights submitted, for example:

According to the [AIC's NHMP], during 2012-14, two in five Indigenous homicide victims were killed by a current or previous partner, compared with one in five non-Indigenous homicide victims...Over three-quarters of all female Indigenous victims compared with almost two-thirds of all female non-Indigenous victims were victims of domestic or family homicides. Data from the NHMP 1989-90 to 2011-12, also suggested that Indigenous women were less likely to be killed by a stranger than non-Indigenous women.⁴⁵

- 2.42 The Victorian Aboriginal Child Care Agency and Domestic Violence NSW highlighted that more First Nations women are killed by IPV, compared to non-Indigenous women. The latter submitted that, from 2000-2019, First Nations women accounted for 14 per cent of women killed by IPV in NSW, while comprising only 2.9 per cent of the state's population.⁴⁶

⁴³ Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 49.

⁴⁴ Central Australian Aboriginal Congress, *Submission 18*, p. 6.

⁴⁵ Australian Lawyers for Human Rights, *Submission 39*, p. 6. Also see: ANROWS, *Submission 23*, p. 2.

⁴⁶ Domestic Violence NSW, *Submission 37*, p. 7. Also see: Victorian Aboriginal Child Care Agency, *Submission 65*, p. 8.

Comment from the Commonwealth government and AIC

2.43 The NIAA and the AGD described the NHMP as ‘Australia’s only national system with the capacity to monitor homicide incidents, victims and offenders and facilitate detailed analysis of homicide types and trends’.⁴⁷

2.44 Dr Rick Brown, Deputy Director of the AIC, said that the data in the NHMP is probably ‘pretty good’ where there is a known homicide incident. However, it becomes more complicated where there is a ‘missing’ murder case:

It does vary from state to state as to whether it'd be classified and included [as a homicide]...South Australia is the only [jurisdiction] that would provide data on cases of 'missing' and would classify them as homicides in the data...[T]he South Australian perspective is purely because there is legislation that requires that classification of 'missing and presumed murdered'...[T]hat legislative requirement doesn't exist anywhere else...[Elsewhere] really doesn't pick up those cases of individuals that are missing—maybe long-term missing—and murdered but don't make their way into the collection.⁴⁸

2.45 The NIAA and the AGD foreshadowed the release of a new intimate partner homicide dashboard:

The dashboard will provide accurate, verified and closer to real-time data with cumulative, quarterly updates on incidents of intimate partner homicide. This will allow police, governments and policymakers a better understanding of the scale and detail of violence and drive action to end gender-based violence.⁴⁹

2.46 On 26 June 2024, the Commonwealth government announced the release of the dashboard, which states that, from 1 July 1989 to 31 March 2024, there have been 1700 female victims of intimate partner homicide.⁵⁰

⁴⁷ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 16.

⁴⁸ Dr Rick Brown, Deputy Director, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, pp. 20 and 25. Also see: Dr Samantha Bricknell, Researcher, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, pp. 19–20, who commented that the NHMP sometimes records deaths as murders, which is subsequently found to be incorrect when the information is cross-referenced with the NCIS.

⁴⁹ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 22.

⁵⁰ Australian Institute of Criminology, ‘Homicide in Australia, Intimate partner homicide dashboard’, www.aic.gov.au/statistics/homicide-in-australia (accessed 1 July 2024). Also see: Senator the Hon Katy Gallagher, Minister for Women, Hon Amanda Rishworth MP, Minister for Social Services, Hon Mark Dreyfus KC MP, Attorney-General, ‘Quarterly intimate partner homicide dashboard set to make essential insights more timely’, *Media Release*, 26 June 2024, <https://ministers.ag.gov.au/media-centre/quarterly-intimate-partner-homicide-dashboard-set-make-essential-insights-more-timely-26-06-2024#:~:text=The%20dashboard%20will%20allow%20for,issue%20and%20develop%20priority%20responses> (accessed 1 July 2024).

Data – the complete picture

- 2.47 Ms Dixie Link-Gordon, Program Coordinator with the NSW Aboriginal Women's Advisory Network, provided a personal illustration of how official information can be incorrectly recorded and misleading:

I grew up with the oral story of my own grandmother repeatedly telling me, 'Never let a man hit you. My father killed my mother.' My sister went back and did our history and looked at our records. She said, 'Oh, no. Great gran died having a baby.' She didn't. What do I believe – what has been written by the hospital or my grandmother's story of her? I know what I believe. I think it has to change. How our abuse is recorded has to change... That whole narrative of how our stories are written as Aboriginal women has to change. It will start with us and our truth telling.⁵¹

- 2.48 Many submitters and witnesses raised concerns about what is not shown in the Missing Persons data and the NHMP. This section of the report outlines two issues: under-reporting of First Nations status and the barriers to reporting.

Under-reporting of First Nations status

- 2.49 The Victorian Aboriginal Legal Service commented on inconsistencies in the Missing Persons data, with its submission highlighting the non-recording of Indigenous status as a common concern:

Data across the jurisdictions is inconsistent. Rates of missing peoples differ across states and territories and there is no singular qualified source of data available that provides a true representation of the number of First Nations women and children who are missing or murdered. Further, only some jurisdictions record whether a missing person is Indigenous. In Victoria, 71% of people missing are listed as 'unknown Indigenous status'. There are also no consistent data records on First Nations children who go missing from out-of-home care.⁵²

- 2.50 Ms McGowan-Jones stated that Aboriginality is 'hugely under-recorded' for two reasons: people are 'not shown how to ask that question in a way that is likely to get a response', and 'many of our people will not identify because of racism'.⁵³
- 2.51 Dr Fadwa Al-Yaman, Group Head of Indigenous Groups at the AIHW, said that, 10 years ago, the AIHW developed best practice guidelines for collecting Indigenous status information in key datasets. She noted the importance of asking the question in a non-confrontational manner and at the

⁵¹ Ms Dixie Link-Gordon, Program Coordinator, NSW Aboriginal Women's Advisory Network, *Committee Hansard*, 28 July 2023, p. 6.

⁵² Victorian Aboriginal Legal Services, *Submission 59*, p. 16.

⁵³ Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, p. 32.

right time. Dr Al-Yaman emphasised that responses should always be voluntary.⁵⁴

- 2.52 The NIAA and the AGD acknowledged that there are ‘gaps and deficiencies’ with the quality and availability of data on violence affecting First Nations people.⁵⁵ AGD representative Ms Esther Bogaart reiterated that the AFP and the AIC rely on state and territory information.⁵⁶
- 2.53 AIC representative Dr Bricknell advised that the AIC will not report Indigeneity unless both police and the NCIS ‘cross-refer’. However, she noted that the NCIS does not report Indigenous status if its sources are contradictory.⁵⁷

Barriers to reporting violence

- 2.54 Australia’s National Research Organisation for Women’s Safety (ANROWS) estimated that up to 90 per cent of violence against First Nations women is undisclosed and therefore not reported:

This underreporting is driven by a myriad of factors, including distrust of the police and legal systems, fears of repercussions from community, cultural norms and the availability and appropriateness of services.⁵⁸

- 2.55 Multiple submitters and witnesses agreed that First Nations women do not trust the police and legal systems, due to a history of government policies, legislation and practices that have resulted in, among other things, victim-blaming, incarceration and child protection interventions.⁵⁹

⁵⁴ Dr Fadwa Al-Yaman, Group Head, Indigenous Groups, Australian Institute of Health and Welfare, *Committee Hansard*, 5 October 2022, p. 21.

⁵⁵ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 17.

⁵⁶ Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, Attorney-General’s Department, *Committee Hansard*, 5 October 2022, p. 6.

⁵⁷ Dr Samantha Bricknell, Researcher, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, p. 20.

⁵⁸ Australia’s National Research Organisation for Women’s Safety, *Submission 23*, p. 2. Also see: Northern Territory Council of Social Services, *Submission 66*, p. [3]; Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, p. 2, who was not aware of any comparative Australian studies.

⁵⁹ See, for example: Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 15; North Queensland Women’s Legal Service, *Submission 13*, p. 10; Carrie’s Place, *Submission 31*, p. 4; Australian Human Rights Commission, *Submission 34*, p. 8; First Nations Women’s Legal Services Queensland, *Submission 38*, p. 9; Change the Record and Djirra, *Submission 85*, p. 22; Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 4 October 2023, p. 39.

2.56 According to Antoinette Braybrook, Chief Executive Officer of Change the Record:

Family violence is the single biggest driver of Aboriginal child removal, with 88% of Aboriginal children in care having experienced family violence. We need to see a transformation in how the system supports Aboriginal mothers experiencing family violence as a fundamental starting point in intervening earlier to keep our children safe in their family's care...[B]oth mum and children are victims of family violence—kids aren't collateral damage to violence against mum; and mums aren't to blame for the violence they endure.⁶⁰

2.57 The Law Reform and Social Justice Research Hub at the Australian National University submitted that Australia's tough-on-crime approach to violence against women also impacts First Nations women's willingness to report:

The criminal justice system is how we demonstrate that society takes something seriously, but when read alongside First Nations communities' historical and present experiences with the criminal justice system, it is understandable that women see reporting as a last-resort measure...[The current approach suggests that the solution to violence] necessitates the separation of women and their children from violent (male) partners. A system that forces women to separate from First Nations men bears stark and no doubt traumatising resemblance to colonial welfare policies that separated First Nations children from their families. The fact that First Nations men have been disproportionately killed whilst in custody and incarcerated, for which no police officer has ever been held accountable, further erodes the confidence that First Nations women and their communities have in Australia's justice system.⁶¹

2.58 Other submitters highlighted that First Nations women fear for their safety should they report a DFSV incident to the police, especially in small remote communities. The Queensland Indigenous Family Violence Legal Service (QIFVLS) noted, for example, 'fear of payback by the offender's family, stigmatisation or ostracization from the community'.⁶²

⁶⁰ Ms Antoinette Braybrook quoted in Change the Record, *Pathways to Safety*, 2021, p. 14, <https://s3-ap-southeast-2.amazonaws.com/raisely-images/change-the-record/uploads/pathways-to-safety-report-final-pdf-adf88a.pdf> (accessed 15 February 2024). Also see: Australian National University, Law Reform & Social Justice Research Hub, *Submission 2*, p. [4]; Change the Record and Djirra, *Submission 85*, p. 21, which highlighted that there are mandatory reporting requirements for exposure to family and domestic violence as a factor for risk of significant harm.

⁶¹ Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, pp. 11–12. Also see: First Nations Women's Legal Services Queensland, *Submission 38*, pp. 9–10.

⁶² Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 16. Also see: Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, p. 12, which added that reporting can be seen as a defiance of culture and traditional authority.

- 2.59 Similarly, the NAFLS submitted that there is ‘community hesitation’ to report violence to police where the perpetrator is related or known to everyone in the community:

...they are in “*small, interconnected and isolated communities where anonymity cannot be maintained*”. There is a fear that reporting will lead to an escalation of violence or that when the perpetrator is released from prison or a rehabilitative program, he will return vengeful. This hesitation has meant that some Aboriginal women have developed a high tolerance toward violence. There is a deep mistrust of police held by many Aboriginal victim-survivors, to the point that they will fail to report violence and/or refuse to make a statement to police because they do not believe that the police will protect them.⁶³

- 2.60 The North Queensland Women’s Legal Service submitted that family and community influence can also impact the maintenance and prosecution of complaints (also see Chapter 3):

Many times we have heard from First Nations women who wish to give evidence in criminal matters being intimidated, harassed and/or threatened by the other party’s family members outside of court and when arriving at court. Bail conditions may prohibit the perpetrator from contact with the victim, but do not preclude the perpetrator’s family and supporters from victim blaming and shaming, blaming the victim for the involvement of the police and courts, and intimidating the victim and attempting to pressure them to withdrawing complaints.⁶⁴

- 2.61 In addition to historical interactions (see Chapter 3), some submitters and witnesses noted contemporary concerns with police as a key reason for the under-reporting of violence against First Nations women and children. The QIFVLS, for example, submitted that there is an entrenched culture within the Queensland Police Service (QPS) which treats complaints from Indigenous women with disregard:

Queensland’s history is marked by, among other things, the state’s historical use of the police as an agent of colonisation...Entrenched cultures within the QPS have historically, and to the present day, shaped the way some police officers respond to acts of violence, particularly family violence and sexual violence, in indigenous communities. QIFVLS routinely receives reports from women that even when they have found the courage to report abuse, it has been overlooked or not taken seriously.⁶⁵

⁶³ North Australian Aboriginal Family Legal Service, *Submission 40*, pp. 11–12. Also see: North Queensland Women’s Legal Service, *Submission 13*, p. 4; Western NSW Community Legal Centre and Western Women’s Legal Support, *Submission 19*, p. 7; Carrie’s Place, *Submission 31*, p. 5; First Nations Women’s Legal Services Queensland, *Submission 38*, p. 18.

⁶⁴ North Queensland Women’s Legal Service, *Submission 13*, p. 10.

⁶⁵ Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 16.

- 2.62 Chapters 3 and 4 discuss in greater detail institutional (police, prosecutors and coroners) responses to the violence experienced by First Nations women and children.

Comment from the Commonwealth government

- 2.63 The NIAA and the AGD recognised that the under-reporting of violence against First Nations women and children exacerbates data gaps, which they acknowledged do exist:

There are data gaps that prevent a complete understanding of the experiences of First Nations women and children. Improving the quality of Indigenous identification across all relevant data sets continues to be a priority in order to provide more complete information about family and domestic violence amongst First Nations Australians.⁶⁶

- 2.64 AGD representative Ms Alana Fraser, Assistant Secretary of the Criminal Justice Reform Taskforce, affirmed that there are ongoing efforts to improve the data relevant to murdered and missing First Nations women and children (see 'Data improvement initiatives' in the following section).⁶⁷

- 2.65 Mr Ben Burdon, Group Manager of Social Policy and Programs at the NIAA, agreed that, with time, there will be better data available to inform policy and program evaluations:

...our processes are maturing and we have a better sense of the types of data we need to inform the decisions we need to make to improve against the measures under Closing the Gap, to make genuine improvements against the targets. But that data doesn't appear overnight...[O]nce you have a collection of datasets over time you can start to see the trend analysis and make better-informed decisions against that data.⁶⁸

- 2.66 Ms Fraser advised that the Justice Policy Partnership (JPP), which includes the responsible state and territory governments, has identified foundational activity

⁶⁶ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 8. Also see: Ms Kaylene Zakharoff, First Assistant Secretary, Office of Women, Department of the Prime Minister and Cabinet, *Committee Hansard*, 5 October 2022, p. 15, who said that the Department of the Prime Minister and Cabinet has 'a reasonably good suite of data...in relation to gender issues, but it's thin'.

⁶⁷ Ms Alana Fraser, Assistant Secretary, Criminal Justice Reform Taskforce, Attorney-General's Department, *Committee Hansard*, 5 October 2022, p. 14. Also see: Ms Esther Bogaart, First Assistant Secretary, First Nations and Justice Policy Division, Attorney-General's Department, *Committee Hansard*, 5 October 2022, p. 14, who said 'there is definitely an improvement in the focus on the importance of data'.

⁶⁸ Mr Ben Burdon, Group Manager, Social Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 15.

around data as an area for action. Although identified as part of the 2021–22 work plan, the department did not indicate any timeframes for completion.⁶⁹

Data improvement initiatives

2.67 The NIAA and the AGD acknowledged that ‘effective data collection and use of data is required to guide meaningful decision-making and evidence-based policy development’. Their submission outlined government-led initiatives and commitments to improve data collection, and facilitate and support better data sharing and linkages.⁷⁰

2.68 As recognised in the National Plan to End Violence against Women and Children 2022–2032, building a strong evidence base is central to ending violence against women and children:

Our ability to provide quality responses to victim-survivors, hold perpetrators accountable and keep women and children safe is predicated on addressing data gaps and building strong data-sharing mechanisms.⁷¹

Data collection

2.69 The National Agreement on Closing the Gap (the National Agreement) committed Commonwealth, state and territory governments to establish a data development plan, which was finalised in August 2022 (the Data Development Plan 2022–2030, the DDP):

The DDP outlines and prioritises the data development actions under each target of the National Agreement. It is intended to facilitate a richer array of high-quality data sources attached to all targets over the life of the National Agreement.⁷²

2.70 For Target 13 (see Chapter 1 at paragraph 1.40), the DDP gave high priority to developing a data item for ‘consistency in identification, capturing and counting procedures between different data sets across jurisdictions’, to be delivered 2022–2024.⁷³

⁶⁹ Ms Alana Fraser, Assistant Secretary, Criminal Justice Reform Taskforce, *Committee Hansard*, 5 October 2022, p. 10.

⁷⁰ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 8 and pp. 16–20.

⁷¹ Commonwealth of Australia, National Plan to End Violence against Women and Children 2022–2032, p. 27, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 29 May 2024).

⁷² National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 16. Also see: National Agreement on Closing the Gap, July 2020, paragraph 92, <https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf> (accessed 29 May 2024).

⁷³ Data Development Plan 2022–2030, p. 30.

2.71 On 7 November 2023, the Minister for Social Services (the minister), the Hon Amanda Rishworth MP, announced, as part of the Aboriginal and Torres Strait Islander Action Plan 2023–2025, a \$15 million investment in First Nations-led research on domestic, family and sexual violence:

The \$15 million research investment will be delivered over five years and aims to develop a data set that can show a national picture for First Nations women and children, whilst being nuanced for community differences and embedding culturally sensitive data collection and reporting practices.⁷⁴

2.72 The minister acknowledged that current data collection is not sufficient to measure progress in respect of Target 13 and she stated that the funded measure will incorporate Indigenous data sovereignty principles.⁷⁵ These principles were supported by submitters such as Change the Record, Djirra and the Victorian Aboriginal Legal Service.⁷⁶

2.73 The NIAA and the AGD highlighted Priority Reform 4 of the National Agreement (Shared Access to Data and Information at a Regional Level), with the following outcome:

Aboriginal and Torres Strait Islander people have access to, and the capability to use, locally-relevant data and information to set and monitor the implementation of efforts to close the gap, their priorities and drive their own development.⁷⁷

2.74 The NIAA and the AGD submitted:

The measure addresses the need for community-led projects to assess [DFS] in a culturally safe and sensitive manner. Research projects under this measure will consider information beyond prevalence statistics to provide insights into the causes of different types of violence experienced.

Successful projects will provide both the community and government with guidance to build appropriate prevention, early intervention, response,

⁷⁴ Hon Amanda Rishworth MP, Minister for Social Services, 'First Nations-led data research on family, domestic, and sexual violence', *Media Release*, 7 November 2023, <https://ministers.dss.gov.au/media-releases/13016> (accessed 13 June 2024).

⁷⁵ Hon Amanda Rishworth MP, Minister for Social Services, 'First Nations-led data research on family, domestic, and sexual violence', *Media Release*, 7 November 2023. Also see: *Maiaam nayri Wingara*, 'Maiaam nayri Wingara principles', www.maiaamnayriwingara.org/mnw-principles (accessed 13 June 2024), which sets out the five principles, for example, that First Nations people exercise control of the data ecosystem including creation, development, stewardship, analysis, dissemination and infrastructure.

⁷⁶ Victorian Aboriginal Legal Service, *Submission 59*, p. 17; Change the Record and Djirra, *Submission 85*, p. [9].

⁷⁷ National Agreement on Closing the Gap (National Agreement), July 2020, paragraph 17, <https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf> (accessed 13 June 2024).

and recovery and healing efforts to reduce prevalence of violence against Aboriginal and Torres Strait Islander women and children.⁷⁸

- 2.75 The National Agreement also committed the Productivity Commission (PC) to developing and maintaining a publicly accessible dashboard comprising data and associated supporting materials to inform the reporting on progress under the agreement (the Closing the Gap Information Repository).⁷⁹
- 2.76 Consistent with the minister's comment (see paragraph 2.72), the Closing the Gap Information Repository cannot yet report progress on Priority Reform 4 or Target 13 of the National Agreement.⁸⁰

Data sharing and linkages

- 2.77 The NIAA and the AGD submitted that the Commonwealth government facilitates and supports interjurisdictional data sharing: 'data should be shared as [a] default, where appropriate, between government agencies, non-government organisations and community organisations for collaborative purposes'.⁸¹
- 2.78 The NIAA and AGD again noted Priority Reform 4 of the National Agreement and advised that the Commonwealth government has partnered with First Nations organisations to 'support data access and use by First Nations communities, and strategies to make data more transparent'.⁸²
- 2.79 Data sharing was explicitly endorsed by the Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, which provides services to Anangu (Aboriginal) women across a tri-state region:

The women we service are not bound by state borders and the lack of information sharing between states and territories creates a gap in information for the safety of women.⁸³

- 2.80 Similar comments were made by Ms McGowan-Jones in respect of First Nations children in out-of-home care (see paragraph 2.15).

⁷⁸ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 22.

⁷⁹ National Agreement on Closing the Gap, July 2020, paragraph 92. See: www.pc.gov.au/closing-the-gap-data/dashboard.

⁸⁰ Productivity Commission, 'Closing the Gap, Information Repository, Socio-economic outcome area 13', www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area13 (accessed 29 May 2024).

⁸¹ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 18.

⁸² National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 18.

⁸³ Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, *Submission 56*, p. [2]. Also see, for example: Victorian Aboriginal Child Care Agency, *Submission 65*, p. [5].

2.81 NIAA representative, Mr Burdon, recognised that government ‘can always be better informed.’⁸⁴ The NIAA and the AGD stated that they and certain data collection agencies are currently working on data linkage projects.⁸⁵

⁸⁴ Mr Ben Burdon, Group Manager, Social Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 6.

⁸⁵ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, p. 24.

Chapter 3

Causes of and factors driving violence

...violence against Aboriginal and Torres Strait Islander women is not a part of traditional culture. When violence occurred prior to colonisation, it was regulated and controlled, and bore no resemblance to the kinds of violence and abuse seen today. Many aspects of traditional culture and customary law were respectful and protective of women. As custodians of some of the longest surviving cultures in the world, Aboriginal and Torres Strait Islander people successfully managed interpersonal, family and community relationships for over 60,000 years prior to colonisation.¹

- 3.1 Our Watch submitted that there are three sets of factors driving violence against First Nations women: the ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people, families and communities; the ongoing impacts of colonisation for non-Indigenous people and society; and gendered factors — both general, and specific to the intersection of racism and sexism and the impacts of ‘colonial patriarchy’.²
- 3.2 Our Watch advised that ‘none of these factors operates in isolation’ and ‘there is no one cause of this violence’. Instead, ‘it is the combination, or intersection of these various factors that drives such high rates of violence against First Nations women’.³
- 3.3 The committee acknowledges that there are multiple factors driving the violence against First Nations women and children. This chapter focuses on the ongoing impacts of colonisation for First Nations people, families and communities, before moving to examine institutional responses.

Ongoing impacts of colonisation

- 3.4 Professor Tom Calma AO, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, has identified colonisation and related violence perpetuated by intergenerational trauma and the undermining of traditional

¹ Our Watch, *Submission 16*, pp. 7–8. Also see: Australian Human Rights Commission, *Submission 34*, p. 8.

² Our Watch, *Submission 16*, pp. 8–9. For further details on the three sets of factors, see: Our Watch, *Changing the picture, Background paper: Understanding violence against Aboriginal and Torres Strait Islander women and their children*, 2018, pp. 50–66, <https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/09/20231756/Changing-the-picture-Part-1-AA.pdf> (accessed 29 May 2024).

³ Our Watch, *Submission 16*, p. 9. Also see: Australian Human Rights Commission, *Submission 34*, pp. 12–13.

gender structures as the root cause of domestic, family and sexual violence (DFSV).⁴

- 3.5 Multiple submitters and witnesses shared this view. They argued that colonisation and its ongoing effects are critical drivers of violence against First Nations women and children.⁵

- 3.6 The North Australian Aboriginal Family Legal Service (NAAFLS) submitted:

Aboriginal and Torres Strait Islander people had been thriving in this country for over 60,000 years before the arrival of European colonial settlers who perpetrated heinous crimes against Aboriginal peoples, cultures and lands. This truth must be acknowledged before meaningful conversation on the crisis of DFSV and missing and murdered Aboriginal women in this country can take place.

...

Settler interference in Aboriginal communities continues to result in the dispossession of land and culture, breakdown of families, rising poverty, structural racism and continued disempowerment. The policies, laws, processes and structures of the settler state that are imposed as 'solutions' has only worked to further embed disadvantage. Aboriginal family structures continue to be eroded by the state removal of children and over-policing of communities. Aboriginal people are inadequately housed, impoverished, unemployed, face poor health outcomes and die in custody. These are all interrelated drivers of violence and are directly linked to settler interference.⁶

- 3.7 Similarly, the Aboriginal Legal Service (NSW/ACT) commented:

The killings and disappearances of Aboriginal and Torres Strait Islander women and children should be considered through the lens of settler colonialism. In Australia, settler colonialism is an ongoing and active occurrence. It began at colonisation when the State first sanctioned violence against Aboriginal men, women and children. It has perpetuated through hundreds of years of racist policies, laws and practices. It continues today in a system that prioritises the lives of non-Aboriginal people over the lives of its First Nations people.⁷

⁴ J. Guthrie et al, *'The answers were there before white man come in', Stories of strength and resilience for responding to violence in Aboriginal and Torres Strait Islander communities*, Family and Community Safety for Aboriginal and Torres Strait Islander Peoples Study Report, 2020, p. 7. Also see: The Healing Foundation, *Submission 10*, p. 4.

⁵ See, for example: First Nations Women's Legal Service Queensland, *Submission 38*, p. 7; Women's Legal Services Australia, *Submission 41*, p. [2]; Kimberley Community Legal Service, *Submission 53*, p. 4; Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 62*, p. [6].

⁶ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 4. Also see: Queensland Aboriginal and Islander Health Council, *Submission 7*, p. 5.

⁷ Aboriginal Legal Service (NSW/ACT), *Submission 25*, p. [1]. Also see: Commission for Children and Young People (Victoria), *Submission 50*, p. 1.

- 3.8 The Law Reform and Social Justice Research Hub at the Australian National University argued that historical trauma—which has morphed into intergenerational trauma—is the most common cause of violence against First Nations women:

The legacy of trauma from experiences sustained as children removed during the Stolen Generation, as the children of parents who were removed and the reality of the destitution caused by colonising policies not only increased First Nations men’s likelihood to resort to violence but also reduced women’s abilities to prevent it. The trauma and oppression that have resulted from colonialism have been transmitted forward, across generations.⁸

Forced removal of children

- 3.9 Submitters and witnesses commented on the forced removal of children from their families and communities, both as an historical and contemporary practice. The Victorian Aboriginal Child Care Agency submitted, for example:

The act of removing Aboriginal children began immediately after invasion, with missionaries, colonial agents, and squatters taking children into their homes who they had deemed to be orphans. This practice would become official colonial policy in 1869 when the Victorian colonial parliament passed the *Aborigines Protection Act* which officially established the Aborigines Protection Board. From that point on First Nations peoples began to 'live under the act' where their lives were controlled, and any form of self-determination or cultural agency was denied. Parents who attempted to stop their children from being removed were threatened with expulsion from the mission or denial of rations...[W]e are not only talking about the historical period, this in an ongoing and far-reaching process of colonisation, systemic racism and genocide.⁹

- 3.10 Change the Record and Djirra referenced the 1997 National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children report (*Bringing them home*), which concluded:

The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international law. Yet it continued to be practised as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.¹⁰

⁸ Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, p. [8]. Also see: Thunderbird Partnership Foundation, AFN Mental Wellness Forum 2019, 'Indigenous Knowledge and Epigenetics', p. 4, www.afn.ca/wp-content/uploads/2019/04/Indigenous-Knowledge-Epigenetics.pdf (accessed 30 May 2024), where epigenetics researchers posit that intergenerational trauma results from structural changes to DNA as a result of external stimuli.

⁹ Victorian Aboriginal Child Care Agency, *Submission 65*, p. 16.

¹⁰ Human Rights and Equal Opportunity Commission, *Bringing them home*, 1997, p. 231, https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf (accessed 15 February 2024). Also see: Change the Record and Djirra, *Submission 85*, p. 16.

- 3.11 Adjunct Professor Muriel Bamblett AO also commented on the *Bringing them home* report, which made 54 recommendations to support healing and reconciliation for the Stolen Generations, their families and the Australian community:

Many [of these recommendations] have not been taken up or implemented by either the Commonwealth or jurisdictions. Even Mick Dodson, when he put that report out 25 years ago, said that, if we don't do something, the numbers of children will dramatically increase. Sadly, at that time, 25 years ago, there were 379 children. Today there are 2,000 in Victoria, so these numbers are increasing.¹¹

- 3.12 The Women's Legal Service NSW referred to the disproportionate number of First Nations children who are currently placed in out-of-home care in NSW:

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.¹²

- 3.13 According to the NAAFLS, the Northern Territory rate of removal is 12.2 times higher for First Nations children than it is for non-Indigenous children, and there are three jurisdictions with even higher rates:

Indigenous children in the Northern Territory are 12.2 times more likely to be removed from their families by child protective services than non-Indigenous children, the fourth highest rate across all states and territories, and higher than the national average of 9.7 times. Despite out-of-home care and protection laws mandating that efforts are made to place Aboriginal children with family and/or kin, the Northern Territory has the nation's lowest placement of Aboriginal children with kin (36.9% versus 63.9% nationally). This points towards increasing systemic bias against placing Aboriginal children with their Aboriginal kin.¹³

- 3.14 Australian Lawyers for Human Rights similarly observed that the over-representation of First Nations children in child protection and out-of-home care systems, compared to non-Indigenous children, is partially due to systemic racism:

This is, in part, because systemic racism proliferates all facets of Australia's child protection systems; from the care workers who initially remove the

¹¹ Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 41.

¹² Women's Legal Service NSW, *Submission 21*, p. 4.

¹³ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 14. Also see: Name Withheld, *Submission 84*, p. 2, which argued that child protection responses are generally characterised by ambivalence toward children and young people in care, with little effort made to find suitable placements; Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 45, who said there is low compliance with the Indigenous child placement principle.

children, to the police and teachers who make the first call to child protection to notify of alleged abuse or neglect. Like the criminal justice system, systemic racism abounds in 'care' and 'protection' systems where the State assumes the role of the parent. This reflects a form of racism that privileges white, Western ways of parenting and disregards Aboriginal and Torres Strait Islander child rearing norms.¹⁴

Safe housing and safe havens

3.15 Several submitters and witnesses highlighted one particular risk factor: there are few, if any, safe alternatives for First Nations women who want to leave an abusive relationship, including government and non-government supports, particularly in remote Aboriginal communities.¹⁵

3.16 Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser with the First Nations Women's Legal Service Queensland (FNWLSQ), noted that housing, one factor that drives violence against First Nations women and children, is a critical issue:

The housing crisis is everywhere, including Palm Island...We have on average 15 people per house. We have 4,000 people and 350 homes. Of course there's going to be somebody in the household that drinks. A lot of our domestic violence is attributable to alcohol and drugs.¹⁶

3.17 Ms Kyle-Sailor gave evidence that domestic violence (DV) orders usually require a respondent to find accommodation separate to the family home. However, 'we don't have a men's shed or men's accommodation on Palm, so they've got to go live with family' or return home in breach of the order.¹⁷

3.18 Mr Lachlan Withnall, Principal Solicitor, East Kimberley, with the Kimberley Community Legal Services, said:

...when there is an incident of violence and there is a police response, we find on many occasions that it's the mother and the children, rather than the perpetrator, who are required to leave the home...[W]hat we've envisioned is that there may be an appropriate facility available in the various regions which would allow the male perpetrator to go and cool down, as it were, so that the mother and the children might remain in the

¹⁴ Australian Lawyers for Human Rights, *Submission 39*, p. 17. Also see: Name Withheld, *Submission 84*, p. 3, who agreed that 'the child protection system is institutionally racist and is weaponised against First Nations people'.

¹⁵ North Australian Aboriginal Family Legal Service, *Submission 40*, pp. 14–15.

¹⁶ Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser, First Nations Women's Legal Service Queensland, *Committee Hansard*, 2 November 2023, p. 4.

¹⁷ Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser, First Nations Women's Legal Service Queensland, *Committee Hansard*, 2 November 2023, p. 7.

home. At present, there are no men's [family and domestic violence, FDV] related residential facilities operating in the Kimberley.¹⁸

- 3.19 Other witnesses made strong submissions that First Nations women and children need greater access to safe havens. Ms Rachael Hill, Senior Partnership and Advocacy Officer from the NAAFLS, said, for example:

NAAFLS services 49 communities, excluding homelands and outstations, but only 19 have safe houses and only three are Aboriginal controlled organisations. These are chronically underfunded, understaffed and undervalued. Yet, when properly funded, they were a source of employment, a symbol of women's rights and a source of community pride—such as the Galiwin'ku Women's Space...[S]afe houses, men's programs, dispute resolutions and interpreter services [are] integral to addressing violence against women in remote Aboriginal communities.¹⁹

- 3.20 With specific reference to Katherine, Ms Hill added:

...they have one safe house there that services everyone that comes in from those communities, and that's not enough. Some of these safe houses won't have young boys over the age of 10. So mums are expected to leave community because of that violence but leave that child with that perpetrator in the community. Then Territory Families would see that as putting that child in danger.²⁰

- 3.21 Information provided to the inquiry referred also to the position of First Nations women released from prison without safe housing options and other support services. Australia's National Research Organisation for Women's Safety (ANROWS) noted that many of these women return to unsafe housing, which places them and their children at risk, and perpetuates the cycle of violence.²¹

- 3.22 Ms Dixie Link-Gordon, Program Coordinator at the NSW Aboriginal Women's Advisory Network, similarly advised that there is 'very limited support' for

¹⁸ Mr Lachlan Withnall, Principal Solicitor, East Kimberley, Kimberley Community Legal Services, *Committee Hansard*, 4 October 2023, p. 43.

¹⁹ Ms Rachael Hill, Senior Partnership and Advocacy Officer, North Australian Aboriginal Family Legal Service, *Committee Hansard*, 18 April 2024, p. 9. Also see: Ms Stephanie Monck, Principal Legal Officer, Women's Legal Service WA, *Committee Hansard*, 4 October 2023, p. 43; Ms Siobhan Mackay, Chief Executive Officer, Katherine Women's Information and Legal Service, *Committee Hansard*, 18 April 2024, p. 21, who said that all five safe houses in Katherine are run by the government.

²⁰ Ms Rachael Hill, Senior Partnership and Advocacy Officer, North Australian Aboriginal Family Legal Service, *Committee Hansard*, 18 April 2024, p. 17.

²¹ Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 4. Also see: Seeds of Affinity - Pathways for Women Inc., *Submission 1*, p. 1. Also see: Ms Anna Davis, Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 54. Also see: Ms Sara Rowe, Acting Deputy Managing Lawyer, North Australian Aboriginal Justice Agency, *Committee Hansard*, 18 April 2024, p. 16.

First Nations women in prison and following their custodial release. She outlined the two services available in Sydney:

...these women may not necessarily have been engaged in some sort of healing [while incarcerated]...We have two very small services that do that for women in metropolitan Sydney. They try to do some stuff at Nelly's place and Women's Justice Network. They are very small, very under-funded organisations that try to provide that post release stuff for women coming out of custody...We just don't have it.²²

- 3.23 In Central Australia, Mrs Rachel Neary, Coordinator of the Kunga Stopping Violence Program (Kunga) at the North Australian Aboriginal Justice Agency (NAAJA), highlighted the Kunga program, a voluntary through-care program at the Alice Springs Correctional Centre:

The [20-day therapeutic] program covers themes of grief, loss, trauma, pain and anger, and, when women complete the program, they have access to ongoing case management support for up to two years post release.²³

Government responses

- 3.24 The National Partnership Agreement on Remote Indigenous Housing (2008–2018) funded states and the Northern Territory to provide housing for Indigenous people in remote communities, to address overcrowding, homelessness, poor housing conditions and severe housing shortages in remote Indigenous communities.²⁴
- 3.25 From 2018, the Commonwealth government continued to fund new housing in the NT only, under the National Partnership for Remote Housing NT (2018–2023). Over five years, the government provided \$550 million, with a one-year extension of \$111.7 million in 2023–24 (Remote Housing Agreement).²⁵
- 3.26 In the Federal Budget 2024–2025, the Commonwealth government committed \$839.4 million over five years from 2023–24 (and \$2.1 billion over ten years from 2024–25) to accelerate housing delivery in remote Northern Territory communities and increase investment in homelands. The NT Government has

²² Ms Dixie Link-Gordon, Program Coordinator, NSW Aboriginal Women's Advisory Network, *Committee Hansard*, 28 July 2023, p. 8.

²³ Mrs Rachel Neary, Coordinator, Kunga Stopping Violence Program, North Australian Aboriginal Justice Agency, *Committee Hansard*, 18 April 2024, p. 7.

²⁴ Federal Financial Relations, 'National Partnership Agreement on Remote Indigenous Housing', <https://federalfinancialrelations.gov.au/agreements/national-partnership-agreement-remote-indigenous-housing> (accessed 1 June 2024).

²⁵ Federal Financial Relations, 'Remote Housing Agreement', <https://federalfinancialrelations.gov.au/agreements/northern-territory-remote-housing> (accessed 1 June 2024); T. Rossiter and J. Houghton, '2024–25 First Nations Budget Measures', *Parliamentary Library*, p. [2].

committed to match the Commonwealth's remote housing investment, bringing the total investment to \$4.0 billion.²⁶

- 3.27 Specifically in relation to safe havens, Ms Seranie Gamble, Executive Director of the Domestic, Family and Sexual Violence Reduction Division at the Department of Territory Families, Housing and Communities (NT), advised that there are no additional commitments from the NT Government. The territory government is, however, working to transition existing safe houses to Aboriginal community control: 'there's active work being done to look at how we can provide those services more effectively in remote communities'.²⁷

Harmful institutions and structures

- 3.28 The Australian Human Rights Commission (AHRC) submitted:

The disproportionate level of violence faced by First Nations women and girls is not a result of a deficit located within First Nations cultures in Australia and around the world. Rather, it is the result of systemic exclusion, inequalities [and] intersecting discriminations including racism and sexism.²⁸

- 3.29 The AHRC identified harmful institutions and structures as 'structural forces' that help to create intersectional discrimination. In the context of this inquiry, submitters and witnesses particularly commented on the harm caused by police forces, and prosecutorial and coronial processes.

- 3.30 The AHRC submitted, for example, that policing and justice systems throughout Australia have engaged in discriminatory treatment of First Nations women and children. It argued that this treatment has manifested as a range of acts and omissions that undermine the equal enjoyment of human rights:

Within this, there are clear and documented instances where discrimination has taken the form of substandard investigations into missing and murdered First Nations women and children.²⁹

- 3.31 The National Justice Project (NJP), a not-for-profit human rights legal service that works to eradicate institutional discrimination, concurred:

Systemic prejudice, bias and racism against First Nations peoples in the justice system is rife. The failures to properly investigate the deaths or disappearances of First Nations women and children are a very clear and direct denial of justice for communities and families. These failures leave

²⁶ Commonwealth of Australia, *2024–25 Federal Budget, Budget measures: Budget Paper No. 2*, pp. 160–161.

²⁷ Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities, *Committee Hansard*, 18 April 2024, p. 55. Note: Ms Gamble noted that this does not resolve the funding, only the cultural safety, issues.

²⁸ Australian Human Rights Commission, *Submission 34*, p. 7.

²⁹ Australian Human Rights Commission, *Submission 34*, p. 7.

loved ones without closure. The justice system, including the police and the criminal and coronial jurisdictions, has a responsibility to protect First Nations women and children, to investigate violence and harm, to hold perpetrators accountable, and to identify preventative actions. The realisation of justice is critical in order to honour and commemorate lives lost to violence. Without justice, closure is not realised and commemoration is fraught.³⁰

- 3.32 Later sections of this chapter outline the experience of three families (two in New South Wales and one in Western Australia). The cases are heart-breaking. The committee acknowledges that there are, tragically, many more families whose loved ones have been murdered or disappeared, and intends no disrespect by focusing on these few families.

WARNING: Please be aware that the following sections of this chapter contain the names of deceased people and content that is confronting and may be distressing to some readers.

Police forces

- 3.33 In 1991, the Royal Commission into Aboriginal Deaths in Custody reported that, historically, relations between First Nations and non-Indigenous Australians have been influenced by racism:

What Aboriginal people have largely experienced is policies nakedly racially-based and in their everyday lives the constant irritation of racist attitudes. Aboriginal people were never treated as equals and certainly relations between the two groups were conducted on the basis of inequality and control.

But there was one aspect of the relations between Aboriginal people and non-Aboriginal people which was very important for all the others and where the relationship was at its worst; that is, the relations between Aboriginal people and the police forces of the dominant society.

Police officers naturally shared all the characteristics of the society from which they were recruited, including the idea of racial superiority in relation to Aboriginal people and the idea of white superiority in general; and being members of a highly disciplined centralist organisation their ideas may have been more fixed than most; but above and beyond that was the fact that police executed on the ground the policies of government and this brought them into continuous and hostile conflict with Aboriginal people. The policeman was the right-hand man of the authorities, the enforcer of the policies of control and supervision, often the taker of the children, the rounder up of those accused of violating the rights of the settlers.

³⁰ National Justice Project, *Submission 78*, p. 4.

Much police work was done on the fringes of non-Aboriginal settlement where the traditions of violence and rough practices were strongest.³¹

- 3.34 The National Aboriginal and Torres Strait Islander Legal Services (NATSILS) submitted that ‘it should not be supposed that issues of racism within police forces are a thing of the past’. Further:

Given the long and difficult history between the First Nations people and the executive arm of government, it is perhaps not surprising that ongoing issues of racism, both overt and subliminal, continue to impede a constructive, co-operative, and compassionate relationship. This ongoing distrust has a deleterious effect upon both the reporting and response to First Nations issues relating to missing and murdered women and children.³²

Western Australia: lived experience

- 3.35 The NJP, with permission, shared the experience of the Mullaley family, whose beloved son and grandson was murdered in Western Australia:

On 19 March 2013, [mum] Tamica was attacked by her then partner, Mervyn Bell (‘Bell’), on her way home from an event, following an argument with Bell. Bell stripped Tamica of her clothes and left her bashed and bleeding by the side of a road in Broome, Western Australia. A witness at the scene provided a fitted sheet to Tamica for cover and called police to report the domestic violence incident.

When police arrived at the scene, they treated Tamica as a problem rather than a victim. This treatment continued when her father, Ted Mullaley arrived to assist her. Instead of providing medical care and considering Tamica’s welfare, police continued to escalate the situation, which resulted in a physical altercation, with the police arresting both Ted and Tamica at the scene.

Baby Charlie was present when the police arrived and as the police confrontation escalated Baby Charlie was handed to witnesses. At no point during the incident did police attempt to ensure the welfare of Baby Charlie, despite arresting his mother and legal guardian and taking her away. Baby Charlie was simply left at the scene.

Following her arrest, Tamica was taken to hospital to treat her extensive injuries, a lacerated kidney and ruptured spleen, which was the result of the assault by Bell. Ted accompanied Tamica as a support person to ensure that she was taken to hospital and properly treated.

³¹ Royal Commission into Aboriginal Deaths in Custody – National Report – Volume 1 (A Pp 1991 No. 126) [1991] AURoyalC 1 (9 May 1991), p. 10, www.austlii.edu.au/au/other/cth/AURoyalC/1991/1.pdf (accessed 17 February 2024).

³² National Aboriginal and Torres Strait Islander Legal Services, *Submission 81*, pp. [6–7]. Also see: Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, p. 30, who added that racism discourages First Nations people from seeking access to services, including police, when needed.

While Tamica and Ted were at the hospital, Bell returned to the scene and abducted Baby Charlie. When Ted found out, he went straight to police to report the abduction, but the police refused to take his reports seriously and threatened him with retribution if he made more reports. It took nine hours for WA Police to initiate a search for Baby Charlie. By that time, Bell had taken Baby Charlie hundreds of kilometres away and had tortured him.

Fourteen hours after the abduction, Bell brought Baby Charlie's body into a Karratha roadhouse and he was pronounced dead shortly after. Bell was found guilty of Baby Charlie's murder and convicted in 2014.

In the year after Baby Charlie was murdered, WA Police persisted with the charges against Ted and Tamica. Tamica was found guilty of assaulting a police officer and Ted was found guilty of obstruction for the events that occurred on 19 March 2013. In 2022, following years of advocacy, the WA Attorney-General pardoned these charges in a public apology that acknowledged WA Police and Government failures and mistreatment of the Mullaley Family.

The events of 19-20 March 2013 and the subsequent investigations into those events, reveal the multiple ways in which the Mullaley Family [was] subject to interpersonal, institutional, and structural racism at the hands of the WA justice system.³³

- 3.36 Disappointingly, the WA Police Force declined to speak to the inquiry in Perth, depriving itself of the opportunity to respond to these issues and other matters raised throughout the inquiry.³⁴
- 3.37 In subsequent media, the WA Police Minister, the Hon Paul Papalia MLA, stated:

“I don't believe the inquiry is actually making much of a contribution. They're looking at something that happened 10 years ago...The Western Australian Police Force has completely changed its approach (since then)”.

³⁵
- 3.38 Unfortunately, the failure of the WA Police Force to engage with the inquiry deprived the committee of a meaningful opportunity to assess what reforms have been implemented by the WA Police Force.
- 3.39 The lack of engagement with the inquiry by the WA Police Force sharply contrasted with the assistance provided to the committee in New South Wales, Queensland and the Northern Territory. In good faith and with all due respect, the committee hopes that this is a cause for reflection on the part of the WA Police Minister. If the issues considered by the committee in this inquiry are to be addressed, it requires the cooperation and commitment of all levels of

³³ National Justice Project, *Submission 78*, p. 9. Also see: pp. 10–13, which further detail the interactions between the WA Police Force and the Mullaley family.

³⁴ Senator Paul Scarr (Chair) and Senator Dorinda Cox, *Committee Hansard*, 4 October 2023, pp. 1–2.

³⁵ Hon Paul Papalia CSC MLA, Minister for Police (WA), quoted in J. Dietsch, 'Police Minister Paul Papalia defends police absence at missing and murdered First Nations inquiry', *The West Australian*, 5 October 2023.

government working together – a commitment to learn from the experiences of others and to implement reforms for the common good.

New South Wales: lived experience

- 3.40 In New South Wales, the Jumbunna Institute for Indigenous Education and Research (Jumbunna) represents the families of three children murdered by a serial killer at Bowraville over a six-month period (September 1990 – February 1991) (the Bowraville murders):

We have seen firsthand the pain and trauma felt by the families and communities in relation to the way in which these murders have been investigated...[R]acist stereotypes held by investigating police officers in the initial investigation (Original Investigation) (including Aboriginal people as inherently criminal, as deficient parents, as, in short, inferior to non-Indigenous people) poisoned the efficacy of the Original Investigation in 1990 and 1991...[T]he racism and associated deficiencies of the Original Investigation have plagued every subsequent attempt by police and the families to achieve justice in this case.³⁶

- 3.41 The Bowraville murders have been the subject of multiple judicial proceedings, coronial inquiries, criminal trials and media coverage, as well as two separate NSW parliamentary inquiries, including the NSW Legislative Council Standing Committee on Law and Justice inquiry into the family response to the murders in Bowraville.³⁷ According to Jumbunna, the report of that committee:

...demonstrates exactly how implicit bias within a state institution can destroy prospects of justice and continue to traumatise generations. In this case, the direct consequence of the racism at the heart of the Original Investigation has been that the sole suspect (the suspect), whom police believe committed the murders, has never been criminally tried for all three crimes before a jury presented with the evidence that was available at the time of the murders. A senior criminal barrister has stated that there is a reasonable prospect that a properly instructed jury would convict the suspect on that body of evidence. This has led to a community perception that a serial killer of three children has walked free.³⁸

- 3.42 Jumbunna especially noted section 100 of the *Crimes (Appeal and Review) Act 2001* (NSW), which allows the NSW Court of Criminal Appeal to order the retrial of a person acquitted for a life sentence offence in certain circumstances. Jumbunna submitted that the failure to define a key legislative term has frustrated justice:

...the suspected serial killer of children obtained a permanent statutory protection against being retried. It is unthinkable that a case involving the multiple murder of white children in the eastern suburbs of Sydney would

³⁶ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 27.

³⁷ See: www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2131#tab-termsreference (accessed 17 February 2024).

³⁸ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, pp. 27–28.

have been selected with such attenuated risks. The meaning of ‘adduced’ would have been resolved in advance. For the families and community it is deeply frustrating that a law which was supposedly amended to change the legal status of the Bowraville cases, has now been interpreted in a manner which forecloses their capacity to finally achieve justice.³⁹

- 3.43 Professor Larissa Behrendt AO, Professor of Law and Director of Research at Jumbunna, emphasised the contradiction between First Nations peoples’ protection and over-representation in the criminal justice system:

The experience of the Bowraville families is an important and potent case study in how Aboriginal and Torres Strait Islander people, when they are victims of crime, are not supported by the same system that is so quick to lock them up...[T]his has been a case where the families and the victims have been ill served by both the police and the court system; but also their experiences in trying to get some changes of legislation and other approaches that they've made would argue that in many instances they've also been let down by the political process as well.⁴⁰

- 3.44 Multiple submitters and witnesses highlighted cases throughout Australia where First Nations women and children have been murdered or disappeared and, they argued, the police response has been inadequate and/or demonstrated systemic racism.⁴¹

The legal system

- 3.45 In 2017–2018, the Law Council of Australia (Law Council) conducted a comprehensive, national review into the state of access to justice in Australia (the Access to Justice project). Its final report made numerous findings in respect of First Nations people, including:

A history of marginalisation and discriminatory justice responses has affected Aboriginal and Torres Strait Islander peoples’ confidence in the justice system. Many are now reluctant to engage with it. To address existing distrust, and to bridge cultural and communication divides, ongoing, regular cultural competence training—informed and led by Aboriginal and Torres Strait Islander people and organisations—is required across the justice sector.⁴²

³⁹ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 44. Also see: pp. 41–45.

⁴⁰ Professor Larissa Behrendt, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2023, p. 10.

⁴¹ See, for example: Victorian Aboriginal Legal Service, *Submission 59*, pp. 7–8; North Australian Aboriginal Justice Agency, *Submission 77*, pp. 10–11; National Aboriginal and Torres Strait Islander Legal Services, *Submission 81*, pp. [7–9]; Indigenous Law and Justice Hub, University of Melbourne, *Submission 82*, pp. 7–13; Change the Record and Djirra, *Submission 85*, p. 13.

⁴² Law Council of Australia, *The Justice Project, Final Report, Introduction and Overview*, August 2018, pp. 24–25, <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20%20Final%20Report%20in%20full.pdf> (accessed 22 February 2024).

3.46 ANROWS agreed that many First Nations people view the legal system as a 'direct source of harm to themselves, their families and their communities'.⁴³ First Nations families described how the system's failure to deliver justice for their loved ones has created, and creates, distrust, pain and suffering.

3.47 Ms Leonie Duroux, sister-in-law of one of the murdered Bowraville children, submitted that, over 30 years, the families have been constantly retraumatised by 'the ones that refuse to do what they can to ensure that justice is done'. Ms Duroux specifically referenced the NSW Court of Criminal Appeal decision (see paragraph 3.42):

The date for the judgement to be handed down was set on the date of the anniversary of [one child's] disappearance. In the back of my mind I kept hoping we were going to get across the line, because 'surely they weren't that heartless'. It was delivered in a manner that gave no thought to the families, particularly to the parents. How dare they expect the families, but particularly [her] family to travel mostly hours to be there on that day, so that they, in their superiority, could deliver this news in a way nobody really understood what was going on. [Another child's] mum didn't know what had happened, except she knew it wasn't good. [That child's] dad took off into Hyde Park. While they said they cared, they clearly didn't. There was absolutely no care taken. Clearly actions speak louder than words. Court dates can be changed, things can and do get rearranged. Hearings get vacated and things get slotted in. They should never [have] delivered this news on the 13 September. When is something going to change, when are the families going to stop receiving lip service?⁴⁴

3.48 Mr Marbuck Duroux, nephew of the murdered youth, described the ongoing (intergenerational) trauma that has affected him, his family and his community in their never-ending quest for justice:

All my life I have been watching my family fight for justice and I'm worried this is going to become my fight for an uncle I have never even had the chance to meet. Something should have already been done and something needs to be done before they see it happen again and before it is ignored all over again...I've grown [up] in a broken community and at times a broken family and for the most part this is a consequence of trauma from these murders.⁴⁵

3.49 Mr Elijah Duroux, younger brother of Mr M. Duroux, and also a nephew of the murdered youth, similarly described the resultant trauma but emphasised that the families will never cease in their efforts to achieve justice:

The ongoing problems, setbacks and obstacles that our families have faced have been unbearable at times...[W]hilst there is still a breath in my or my brother or the next generations of these families for that matter,

⁴³ Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 3.

⁴⁴ Ms Leonie Duroux, *Submission 46*, p. 2.

⁴⁵ Mr Marbuck Duroux, *Submission 47*, p. [2].

we will never give up...I'd like to say thanks to the NSW Government for nothing.⁴⁶

- 3.50 The Law Council submitted that First Nations women and children frequently cannot access justice. Echoing Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), the Law Council highlighted that this discourages women from relying on the justice system as a tool to avert violence, leaving them and their children vulnerable and at risk:

The interactions of First Nations women and children within the legal system are foundational to their trust in the justice system broadly and their access to justice services when they experience violence. This is relevant to their right to an effective remedy and to perpetrators being held accountable.⁴⁷

Prosecutorial processes

- 3.51 The committee received evidence from the Director of Public Prosecutions (DPP) in four jurisdictions: New South Wales, Western Australia, Queensland and the Northern Territory. The committee appreciates and thanks the DPPs for their assistance in understanding how they communicate with and assist First Nations families who interact with the criminal justice system.

- 3.52 Dr Hannah McGlade, Associate Professor of the Law School at Curtin University and member of the United Nations Permanent Forum on Indigenous Issues, advised that 'many Aboriginal women who do come forward to police...never see any charges laid'. Dr McGlade indicated that this is due to women being persuaded not to proceed with charges, particularly in small communities.⁴⁸

- 3.53 Mr Lloyd Babb SC, DPP in the Northern Territory, said that there are multiple and complex reasons why witnesses who do proceed subsequently disengage with the legal system:

...the pressure, coming from either the offender or the offender's family, on victims of domestic violence to not give evidence is enormous, particularly if the victim is still in a relationship with the offender...[I]f you're coming from a small remote community where most people are known to each other there might be pressure from the broader community to not cause trouble. Then there's just a general fear of the criminal justice system from people who probably have good reason to be concerned about involvement with

⁴⁶ Mr Elijah Duroux, *Submission 45*, p. 1.

⁴⁷ Law Council of Australia, *Submission 12*, p. 14. Note: the Access to Justice project identified multiple barriers to accessing justice for First Nations people: Law Council of Australia, *The Justice Project, Final Report, Introduction and Overview*, August 2018, pp. 25–27.

⁴⁸ Dr Hannah McGlade, Associate Professor, Curtin Law School, Curtin University, *Committee Hansard*, 4 October 2023, p. 15.

the criminal justice system, where most of their involvement has been negative.⁴⁹

- 3.54 DPPs explained their approach to victims of crime and family support services. In Western Australia, DPP Mr Robert Owen advised that there is a multiagency and well-coordinated response to provide victim support to a deceased person's family: the Office of the Director of Public Prosecutions (ODPP) is responsible for explaining prosecutorial aspects. However, Mr Owen recognised that there are some structural gaps in the provision of support services, such as in continuity between the point of charge and time to trial (a 12 to 18-month period):

...if somebody disengages because they haven't heard from someone in the justice system and they have concerns about the accused who may be on bail, they have concerns about what to do in court or they have concerns about any pressures they may be feeling or are being felt by family members around them for intrafamilial prosecutions, those sorts of issues don't manifest in conversations with my office where somebody will explain that to me. They'll just ring up and say, 'I don't want to do this anymore.'...When something is presented to us, we may try to engage services to ensure the best possible chance of this witness giving true and frank evidence in court to facilitate the justice system. There's only so much that we can do as a prosecuting agency and independent participant in the justice system, and more can be done there to inform victims of their rights and support them in a continuous way.⁵⁰

- 3.55 DPP Ms Sally Dowling advised that the NSW ODPP has a Witness Assistance Service (WAS), which provides a high level of support to First Nations witnesses and complainants:

WAS officers are included in all important legal decision-making made during the life of the prosecution and, in particular, that they're at all important conferences with the complainants and have input into the way in which our office communicates and reaches out to Aboriginal witnesses and complainants.⁵¹

- 3.56 In the Northern Territory, where the DPP also operates a WAS, the NAAFLS highlighted that such services need to be adequately resourced:

...the DPP website forewarns that "[g]iven the large volume of cases going to court, the Witness Assistance Service cannot have an officer allocated to

⁴⁹ Mr Lloyd Babb SC, Director of Public Prosecutions (NT), *Committee Hansard*, 18 April 2024, p. 30.

⁵⁰ Mr Robert Owen, Director of Public Prosecutions for Western Australia, Office of the Director of Public Prosecutions for Western Australia, *Committee Hansard*, 4 October 2023, p. 25. Also see: pp. 18 and 24.

⁵¹ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 39. Also see: Mr Lloyd Babb SC, Director of Public Prosecutions (NT), *Committee Hansard*, 18 April 2024, p. 29, who also has witness assistance officers within his office.

every case". Lack of funding and supports for programs such as WAS only entrench disadvantage for Aboriginal victim-survivors.⁵²

- 3.57 Queensland DPP Mr Todd Fuller KC commented that, about 2009, the Queensland government decided to fund certain organisations to provide victim support (such as the Queensland Homicide Victims' Support Group). He explained that the ODPP engages directly with individuals to determine their support needs and refer them to the right organisations:

From our perspective, it's about identifying what the need is with respect to the victims and their family, and identifying what groups can assist with respect to that. Then it's actually a cascading level of information. There are some people who have a significant distrust of government organisations and want to minimise their interaction and contact with respect to us. There are others who have a healthy relationship with the police such that they want to receive their information and engage through that. And there are others who have their own support networks or engagement that they wish for us to provide that information through.⁵³

- 3.58 Ms Dowling referenced the NSW ODPP's *Prosecution Guidelines* (2021) and the *Victims Right of Review Policy* (2021), which set out a framework for interactions with victims of crime:

The overarching objective is to ensure that victims of crime are dealt with with dignity, compassion and respect, and that they understand the decisions that are being made about them and for them in the prosecution process. It is mandatory under our prosecution guidelines that victims' views are sought in relation to important prosecution decisions and that the way in which we communicate with them is acceptable to them...It is critically important that the complainants who we are working with feel ownership of the process, that they understand what is going on, that they feel that they have agency and that they are treated with dignity.⁵⁴

- 3.59 Ms Dowling outlined the NSW ODPP's three-stage decision-making process, including in respect of decisions that there be no further proceedings. She advised that 'no decisions of that level of significance are made without the victim's views—or those of the next of kin, if it's a homicide'.⁵⁵
- 3.60 Similarly, Mr Owen referred to the WA DPP *Policy and Guidelines for Victims of Crime* (2022), which sets out victim rights, including a right to review where a

⁵² North Australian Aboriginal Family Legal Service, *Submission 40*, p. 20.

⁵³ Mr Todd Fuller KC, Director of Public Prosecutions, Office of the Director of Public Prosecutions, Department of Justice and Attorney-General (Qld), *Committee Hansard*, 20 February 2024, p. 27.

⁵⁴ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 40. Also see: Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, pp. 17–18, who commented that First Nations family are often not kept informed about police investigations.

⁵⁵ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 39.

prosecution has been discontinued or significantly changed. He detailed when and how the ODPF informs victims of these rights, including, for example, when charges are downgraded, which evidence indicated is a matter of great concern to the families of victims:

If the phone is the only mechanism available, then it may be the first instance of how a victim or a secondary victim, as it relates to homicide, may be aware of the contemplation of our decision. That is a very complex conversation to have in respect of a downgrading charge because, not only legally but probably more importantly for the victims, it is a very sensitive conversation to have, and trauma informed practices require best practice to be in person at the very least...When I say 'best practice', I'm talking in person, but there is best practice in how we can operate in our current framework...The conversation...will occur by the prosecutor reaching out to remote and regional areas to find the appropriate victims and facilitate conversation through video link conversations at police stations.⁵⁶

- 3.61 Mr Lloyd Babb SC, Director of Public Prosecutions (NT), reflected that it can be hard to effectively communicate with people who are grieving and emotionally involved in a particular prosecution:

Communication with the family is essential though and should always take place. It's part of my guidelines to my staff that no decisions about downgrading charges can be made without the views of the family being taken into account. They're not always determinative, in that the job of the Director of Public Prosecutions is to make that decision about whether there is a reasonable prospect of success...[T]he best that can be done sometimes is to make sure that you try and communicate well and in person.⁵⁷

Coronial processes

- 3.62 Some submitters and witnesses commented on the harm caused to First Nations families by coronial processes. Dr Amy McQuire described this process as 'incredibly violent', one that dehumanises women and ultimately fails to provide grieving families with the answers and the closure that they need:

I speak so often about Monique Clubb because the reason police did not continue her investigation and ended it, basically, within a month, is because they believed she was a drug addict and had overdosed in the park in Beenleigh. That was totally counter to anything her family were saying— and the search and rescue officers. Yet that inquest was so focused in on her deficiency...The police could basically tick a box, the coroner said

⁵⁶ Mr Robert Owen, Director of Public Prosecutions for Western Australia, Office of the Director of Public Prosecutions for Western Australia, *Committee Hansard*, 4 October 2023, p. 20. Also see: p. 19; Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 43, who acknowledged that 'the more support a person has in this process, the more likely they are to have a successful outcome...and to be able to cope with the prosecution process'.

⁵⁷ Mr Lloyd Babb SC, Director of Public Prosecutions (NT), *Committee Hansard*, 18 April 2024, p. 28. Note: Mr Babb advised that his office has a formal complaint mechanism and there is a right to review for decisions.

she was likely deceased and potentially died after she'd left the park that day—but there was no follow-through; there was nothing after that. Because inquests are one of the few places families can go to get truth and to get answers, those hopes are often totally dashed.⁵⁸

- 3.63 Mrs Debbie Kilroy OAM, Executive Director of Sisters Inside, commented that the families are 'invisibilised, disappeared and forgotten' in the coronial process, with the courts operating as 'alibi courts':

The coronial courts, day-in and day-out, for me, are alibi courts. Coronial courts are full of lawyers and barristers that represent not only individual police but also the police service of that jurisdiction...Families do not have a right to legal representation. They're told that they have to use the counsel assist to the coroner. The counsel assist to the coroner is just that—they're there to assist the coroner. They're not there to be instructed or to represent the family...When you can expose the failures of the racial and gendered violence of policing in these inquests, they have years—because the inquest takes years—to rewrite policies and change policies in light of the evidence that has been produced...When they come to the coroner's court, they can say, 'That's fixed up now', the coroner ticks it off and we move on, in the pretence that no other Aboriginal woman would be disappeared or murdered again—which is a farce, because it's happening regularly.⁵⁹

- 3.64 Dr David Singh, Co-Director of the Institute of Collaborative Race Research, shared this view:

...the coronial process is often used as a means to exonerate the state. It's not about finding justice for the family or finding out what happened to their loved ones. The state moves in particular ways, in very muscular ways, to exonerate its ways of having failed the family...[T]he state moves very quickly to exonerate itself, and it has appropriated the coronial process as a means to do that.⁶⁰

New South Wales: lived experience

- 3.65 The NJP, with permission, shared the experience of the Smith family, whose loved ones were killed in New South Wales nearly 40 years ago. Mona Lisa Smith (known as Mona to family and friends) was a First Nations Muruwari Kunya girl. Jacinta Rose Smith (known as Cindy to family and friends) was a First Nations Wakamurra girl:

On 5 December 1987, cousins [Cindy and Mona]...were last seen by their friends and family in Bourke, New South Wales (NSW).

⁵⁸ Dr Amy McQuire, personal capacity, *Committee Hansard*, 15 May 2024, pp. 7–8.

⁵⁹ Mrs Debbie Kilroy OAM, Chief Executive Officer, Sisters Inside, *Committee Hansard*, 15 May 2024, p. 8.

⁶⁰ Dr David Singh, Co-Director, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 9.

According to police records, at approximately 4am, Cindy and Mona were found by motorists at the site of a crashed car, along the highway heading out of Bourke.

...

Lying next to Cindy, drunk, unhurt, with his arm over her body, was 40-year-old non-Indigenous man, Alexander Ian Grant ('Grant'). The position of Cindy's body when she was found, along with other evidence from the scene, suggest that Grant had sexually interfered with her body, either after she had passed away or as she was dying.

The manner and cause of Mona and Cindy's deaths are yet to be determined by the State Coroner. An inquest is set to be resumed in the latter half of 2023, 35 years after the girls passed away.

...

On 8 November 1988, a coronial inquest into Mona and Cindy's deaths was initiated but later adjourned due to pending criminal charges against Grant. The families expected that they would be updated when the inquest was resumed. However, for 35 years the inquest lay dormant. In July 2022, after relentless petitioning by the family and submissions from NJP and with [the] assistance of barrister Julie Buxton, the NSW State Coroner agreed to re-open the coronial inquest.⁶¹

- 3.66 The NJP submitted that the Smith family and the Bourke community have been traumatised by the violent deaths of the two teenagers, and also by the lack of action that would give them the answers that they need:

The 35 years of inaction on this case have left the girls' families and the broader community of Bourke with immense uncertainty relating to many aspects of the alleged accident, the investigation and the decision making of the DPP. [Both girls' families] believe that if the investigation by the NSW Police had been performed properly, more serious charges may have been laid against Grant and more questions relating to the circumstances of their deaths may have been answered. While the Coronial inquest will be resumed [in mid to late 2023], it will be affected by time, fading memories, and years of evidence which may have gone missing or been destroyed. The trauma for the girls' families and community that has been created and exacerbated by years of unanswered questions and inaction cannot be understated.⁶²

- 3.67 In November 2023, the NSW State Coroner, Magistrate Teresa O'Sullivan (the Coroner), resumed the coronial inquest. The findings of the coronial inquest were brought down on 23 April 2024.⁶³

⁶¹ National Justice Project, *Submission 78*, p. 17.

⁶² National Justice Project, *Submission 78*, p. 18. Also see: pp. 12–13, which described how the WA Coroner's Court refused to hold a coronial inquest into the murder of Baby Charlie.

⁶³ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024.

3.68 For the sake of convenience for the reader, this report sets out in depth in this section the findings of the Coroner in relation to this important case. Many of the findings and recommendations are relevant for other sections of this report and will be cross-referenced as relevant.

3.69 In considering the findings, there are many themes which are consistent with other case studies considered by the committee during the course of this inquiry and with the testimony provided *in camera* by First Nations' witnesses who have lost family members. These include: (a) failures in the initial investigation; (b) poor communication with family members; (c) the continuing fight for justice by the families over many years; (d) the failure of key institutions to secure justice for the families until decades after the relevant events; and (e) evidence of acts of racial bias (whether conscious or unconscious).

3.70 In relation to the initial police investigation, the Coroner found:

The summary of the failings...makes it clear beyond any doubt, that the initial police investigation suffered from what can only be termed very serious deficiencies. Moreover, those failings had a major impact on the investigation and the prospects of any future criminal prosecution. That necessarily follows because vital evidence was not collected or secured from the scene.⁶⁴

3.71 In relation to the consequences of the failings in the initial police investigation, the Coroner noted:

Ultimately, however, despite the best efforts of those officers, the failures in the hours, days and weeks following the accident to investigate the matter thoroughly and to secure critical exhibits...had an irreparable impact on the investigation and the evidence available for use in any criminal prosecution.⁶⁵

3.72 In relation to whether there was any potential systemic racism or cultural bias in the conduct of the initial police investigation, the Coroner found:

I accept the submissions...as to the existence of racial bias within the NSW Police Force at the relevant time, and that it did in fact impact upon the investigation in the deaths of Mona and Cindy.

...

The uncomfortable truth, to my mind, is that had two white teenage girls died in the same circumstances, I cannot conceive of there being such a manifestly deficient police investigation into the circumstances of their deaths.

It is very plain, however, that there was a paucity of indigenous cultural training available to officers within the NSW Police Force at the relevant

⁶⁴ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [274] and [275].

⁶⁵ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraph [291].

time; moreover, the unconscious racial bias outlined above was simply representative of the ill-informed, and frankly racist social views of many within the Australian community at the relevant time.⁶⁶

- 3.73 In relation to the efforts made by the families of Mona and Cindy to seek a review of the investigation (with the support of the National Justice Project which should be acknowledged and admired), the Coroner found:

Given the deficiencies in the initial police investigation which have not been catalogued or acknowledged until this inquest, the perseverance and strength of the Smith families in pursuing justice in the form of answers and a thorough investigation (albeit many years too late) cannot be overstated...The families' concerns have been squarely vindicated by the evidence received during this inquest...I find it somewhat troubling that these issues were not formally acknowledged by the [then Police Commissioner] until certain concessions were made in closing submissions on 20 December 2023.⁶⁷

- 3.74 In responding to overtures for a further inquest, it is noted that the then Police Commissioner did not believe that a further inquest would be capable of finding new information. The then Attorney General believed that a further coronial inquest would not be capable of finding any new information not already known, or in providing any meaningful information or closure for the families. However, in commenting on the conclusion reached by the then NSW Attorney-General, the Coroner noted:

This conclusion is based on the perfunctory and piecemeal reviews conducted by police over the years, apparently based on limited information considered at the relevant times.⁶⁸

- 3.75 This led the Coroner to recommend:

That the Commissioner of the NSW Police Force develop guidelines for the review of investigations relating to deaths that are the subject of a request for advice from the NSW Attorney General to the Commissioner of the NSW Police Force, where the Attorney General is considering an application for the holding of a fresh of further inquest into the death/s.

⁶⁶ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [315] and [316].

⁶⁷ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [323] to [325].

⁶⁸ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [331] to [334].

Such guidelines should include:

- (a) the methodology of the review;
- (b) transparency of the review process;
- (c) the involvement of any experts (including independent experts as required); and
- (d) consultation with the family of the deceased.⁶⁹

3.76 In relation to cultural sensitivities, the Coroner stated:

It is absolutely plain that during the initial police investigation, Mona and Cindy's families were not dealt with in a respectful or appropriate manner; nor was there any apparent appreciation of the attendant cultural sensitivities.⁷⁰

3.77 The Coroner considered making a recommendation in relation to training in cultural competence. However, the Coroner noted the following submissions from the NSW Police Force (contained in a witness statement dated 21 April 2024):

Amongst other matters, the statement emphasised the Aboriginal Community Liaison Officer (ACLO) Program; detailed the Aboriginal Strategic Direction (ASD), a working document which outlines NSWPF plan to strengthen relationships with and support the Aboriginal and Torres Strait Islander communities within NSW. It also details programs and positions administered under the ASD (2024), which includes in the Eastern Region, 26 ACLOs and six Aboriginal Engagement Officers (being inspectors with local responsibility for engagement with Aboriginal Communities).

The statement...also set out the cultural awareness packages operative within NSWPF...

Ultimately, having regard to this evidence I have formed the view (including because the matter was not further explored during the inquest), that the recommendation that I had contemplated is not necessary or desirable.⁷¹

3.78 Finally, it is worthwhile quoting the concluding words of the Coroner. Again, these words resonate with evidence from First Nations' families who have suffered great trauma and have also fought for justice for their loved ones in similar circumstances. The Coroner concluded by saying:

⁶⁹ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraph [336].

⁷⁰ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraph [343].

⁷¹ Coroners Court of New South Wales, Inquest into the death of Mona Lisa and Jacinta Smith, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [346] to [348].

My final words of thanks and praise go to Mona and Cindy's family. Without their tireless advocacy, it is doubtful that this inquest would have been re-opened. I will conclude by again expressing my sincere condolences to those who knew and loved Mona and Cindy and I also express my thanks to them for participating in this process and for sharing their memories of their loved ones.⁷²

Cultural sensitivity

- 3.79 Some jurisdictions have improved the way in which coroners perform their statutory functions. The Law Council described the NSW Coroners Court's Aboriginal Coronial Information and Support Programme, which employs First Nations support workers to support families throughout the process, and its First Nations Protocol:

The protocol aims to ensure that First Nations families are provided with an opportunity to raise cultural considerations relevant to the conduct of the coronial investigation and inquest, such as appropriate naming conventions for deceased First Nations people or the opportunity to conduct ceremonies or hearings on country. The goal of the protocol is to ensure that the work of the coronial jurisdiction does not perpetuate cycles of grief and loss.⁷³

- 3.80 The NJP submitted that 'any improvements are inconsistent and long overdue'. It expressly argued that Western Australia is the jurisdiction most in need of reform, with 'the worst [coroners] in our nation':

Unlike most other jurisdictions WA coroners run culturally unsafe inquests which almost always offend First Nations families and worse, they consistently refuse to make meaningful recommendations for systemic change... Their refusal to examine and make recommendations about systemic failures and push for reform is offensive to First Nations peoples, it goes against the Royal Commission into Aboriginal Deaths in Custody recommendations and appears to the relatives of the deceased to simply protect the institutions of the state.⁷⁴

- 3.81 The Mullaley and Smith families—with lived experience in Western Australia and New South Wales, respectively—called for national reform of coronial systems, arguing that First Nations communities deserve trauma-informed and more culturally responsive systems. In addition, the Smith family suggested that improvements could be to provide for independent assistance and better communications from coroners:

First Nations-led development and implementation of respectful and culturally safe protocols for investigating First Nations deaths, and for these

⁷² Coroners Court of New South Wales, *Inquest into the death of Mona Lisa and Jacinta Smith*, File Number 2022/209698 & 2022/209975, 23 April 2024, paragraphs [368] to [369].

⁷³ Law Council of Australia, *Submission 12*, p. 22.

⁷⁴ National Justice Project, *Supplementary Submission 78*, p. 6. Also see: *Mullaley v State Coroner of Western Australia* [2020] WASC 264, where the Western Australian Supreme Court upheld the WA State Coroner's decision not to conduct an inquest.

to be applied consistently across all Australian States/Territories. This includes, but is not limited to: a) A First Nations liaison officer at the Coroner's Court to assist First Nations families where there has been a death, to explain the role of the Coroner's Court to them and guide them through the court processes, especially where they are not legally represented; b) Communication with the family at key points of the investigation and coronial process to keep them informed and allow them to ask questions.⁷⁵

- 3.82 Ms Christine Robinson, Chief Executive Officer of Wirringa Baiya Aboriginal Women's Legal Centre, is the non-government service provider representative on the NSW Domestic Violence Death Review Team.⁷⁶ She highlighted that families might be more prepared to share information with the team, if it had another First Nations appointee:

...how we have those conversations with the victims and their families to actually obtain more information is crucial...We only get to hear bits and pieces of who is happy to talk. We know that the DV review team is very under-resourced as it is. It also needs to probably have an Aboriginal person in there as part of the team. Aboriginal people feel more comfortable speaking to Aboriginal people; they will tell their truth and they will talk more about the situation and how things came to pass. I think that is one of the things. We're not unpacking it enough. As an Aboriginal woman, we understand the subtle racism and discrimination. I don't think non-Aboriginal people understand it to our level.⁷⁷

- 3.83 Mrs Kilroy and Sisters Inside suggested that a National Indigenous Agency (NIA) be established to 'prevent, investigate and prosecute the historical and current the [sic] Enforced Disappearances and Murders of First Nations Women and Children'. Their submission encompassed the range of powers and functions that should be provided to the new agency, including:

The NIA should have the responsibility of conducting all coronial investigations and have statutory standing to appear at inquests, alongside Families, at mandatory coronial inquests into the suspected Enforced Disappearances and Murders of First Nations Women and Children.⁷⁸

⁷⁵ National Justice Project, *Supplementary Submission 78*, p. 8. Also see: p. 6.

⁷⁶ Coroners Court New South Wales, 'Domestic violence death review', [https://coroners.nsw.gov.au/resources/domestic-violence-death-review.html#:~:text=The%20Domestic%20Violence%20Death%20Review,case\)%%20and%20quantitative%20review%20function](https://coroners.nsw.gov.au/resources/domestic-violence-death-review.html#:~:text=The%20Domestic%20Violence%20Death%20Review,case)%%20and%20quantitative%20review%20function) (accessed 14 May 2024).

⁷⁷ Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 6. Note: Ms Robinson considered also that death review teams should have more non-government representatives and longer tenure for appointments: pp. 6–7.

⁷⁸ Mrs Debbie Kilroy OAM and Sisters Inside, *Submission 87*, p. 2.

Accessing the legal system

3.84 The Access to Justice project (see paragraph 3.45) reported that First Nations people experience multiple intersecting legal problems; however, legal services are not equipped to meet the demand:

The need for funding for criminal, family and civil matters is acute. Meeting this need, including through better resourcing of Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS), must be a priority.⁷⁹

3.85 Ms Julianna Marshall, Acting Chief Executive Officer of the Central Australian Women's Legal Service, gave evidence that women's legal services have a unique safety role as gendered specialist services:

We operate as crisis centres and we address long-term underpinning causes of increased vulnerability to domestic and family violence...We work with women and other services, including child protection, housing and safe houses across the territory, to respond to and mitigate risks of serious injury and homicide.⁸⁰

3.86 Ms Marshall emphasized that the women's legal services should be recognised and resourced as a 'drop in' service:

...for true accessibility we need to fully fund the services to run drop-in models, because it's those women who aren't engaged with other services that need to have a really clear access point. Maybe that's just walking in, as somewhere safe to sit down. It may be as a crisis is actually unfolding, on the lawns down the street, and we will assist with a response to that. It may be a purposeful visit, having known that our services can assist with such a broad range of legal and sociolegal supports.⁸¹

3.87 The Australian Lawyers Alliance submitted that women's legal services—including First Nations women's legal services—have a special focus on empowering and supporting women through the pursuance of their legal rights, combined with a specialist and thorough understanding of the nature and dynamics of domestic and family violence (DFV). Further:

Aboriginal and Torres Strait Islander women's legal services offer this support in culturally safe and accessible ways. Adequate and sustainable funding is essential for these services in particular, so that the staff are not

⁷⁹ Law Council of Australia, *The Justice Project, Final Report, Introduction and Overview*, August 2018, p. 25.

⁸⁰ Ms Julianna Marshall, Acting Chief Executive Officer, Central Australian Women's Legal Service, *Committee Hansard*, 18 April 2024, p. 20.

⁸¹ Ms Julianna Marshall, Acting Chief Executive Officer, Central Australian Women's Legal Service, *Committee Hansard*, 18 April 2024, p. 22.

burnt out and are still able to provide culturally safe services. Providing that extra layer of service takes additional staff capacity, time and resources.⁸²

- 3.88 The FNWLSQ observed that there is a lack of specialist legal services for First Nations women, as well as identified First Nations positions within generalist DFV legal services. Its submission cautioned, however, that care must be taken to appreciate the additional burden of expectations place upon First Nations staff:

Marginalised staff members of generalist services may feel peer pressure to conform with generalist expectations or may feel extra pressure to represent or be ambassadors for the groups to which they belong and they may bear the brunt of microaggressions and other forms of bigotry in the workplace. Expecting First Nations lawyers to take on the responsibility of making generalist legal services culturally safe by virtue of their presence imposes an unfair burden on those lawyers, and may eventually have physical and psychological consequences.⁸³

- 3.89 The FNWLSQ added that First Nations people are underrepresented in the legal profession. In 2020, only 85 solicitors in Queensland (0.7 per cent of the profession) and 632 solicitors in Australia (0.8 per cent of the profession) identified as Aboriginal or Torres Strait Islander:

This makes it difficult for both generalist and First Nations specialist domestic and family violence legal services to recruit and retain First Nations solicitors. Hence, the same systemic inequities and injustices that have led to the epidemic of violence against First Nations women and children may limit their access to justice.⁸⁴

Regional and remote areas

- 3.90 According to submitters and witnesses, First Nations legal services are especially absent in regional and remote areas. The FNWLSQ advised that, even where there are offices, there are no 'solicitors staffing these offices, leaving First Nations women with no legal assistance or representation except by remote services located hundreds of kilometres away'.⁸⁵
- 3.91 The North Queensland Women's Legal Service (NQWLS) highlighted that access to good quality legal advice, support and services is critical to assisting First Nations women to leave abusive relationships or to support those who stay:

⁸² Australian Lawyers Alliance, *Submission 29*, p. 7. Also see: Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 10.

⁸³ First Nations Women's Legal Services Queensland, *Submission 38*, p. 18. Note: this service is the only specialist First Nations women's legal service in Queensland.

⁸⁴ First Nations Women's Legal Services Queensland, *Submission 38*, pp. 18–19.

⁸⁵ First Nations Women's Legal Services Queensland, *Submission 38*, p. 18. Also see: Carrie's Place, *Submission 31*, p. 5.

What we hear is that women and girls living in rural, regional and remote locations do not have ready access to these services and stay longer in abusive relationships or return to them because of their feelings of [being overwhelmed]. Conflict[s] of interest and services not being adequately funded to meet the demand appear to be the main drivers of this issue. Sometimes there is no appropriate service at all to assist with a woman's specific issues, or there are only one or two services, and they could be at capacity or assisting the other party.⁸⁶

- 3.92 Ms Grace Dudley, Systemic Change Advocate with the Kimberley Community Legal Service, said that there are complex and different barriers for First Nations women in regional Australia that require particular responses and reform:

...we speak to the need for localised and culturally appropriate solutions to family violence in the region. We're calling for better crisis accommodation, better housing options for victim survivors, more education options for perpetrators and First Nations men, and the need for more immediate and culturally safe police responses to family violence in remote communities. Addressing family violence in this remote region will require a long-term commitment, investment, time and community-based solutions.⁸⁷

Access to non-legal services

- 3.93 Submitters and witnesses commented also on the difficulty for First Nations women and children in accessing non-legal services in regional and remote areas.⁸⁸ The Ngaanyatjarra Pitjantjatjara Yankunytjajara (NPY) Women's Council advised that it can be difficult to get a timely police response, if at all:

Due to the nature of community, police and locality there is at times over one (1) hour or more (one-way) trip to communities in the NPY region and urgent emergency responses are also influenced by police capacity and competing safety priorities. Women can be waiting for up to six (6) hours for a crisis police response, or in the extreme, have no police response at all due to capacity – this however is not an anomaly.⁸⁹

- 3.94 Carrie's Place highlighted that, due to remoteness, First Nations women might not even seek police assistance: 'police stations may be situated far from the town which can make reporting seem futile and in the context of DFV can often be too late'.⁹⁰

⁸⁶ North Queensland Women's Legal Service, *Submission 13*, p. 12. Also see: Kimberley Community Legal Services, *Submission 53*, pp. 5–6 and 14.

⁸⁷ Ms Grace Dudley, Systemic Change Advocate, Kimberley Community Legal Centre, *Committee Hansard*, 4 October 2023, p. 38.

⁸⁸ See, for example: Western NSW Community Legal Centre and Western Women's Legal Support, *Submission 19*, p. 8. Note: Chapter 5 discusses in more detail access to culturally appropriate services.

⁸⁹ Ngaanyatjarra Pitjantjatjara Yankunytjajara Women's Council, *Submission 56*, p. 3.

⁹⁰ Carrie's Place, *Submission 31*, p. 5.

- 3.95 The NAAFLS concurred that many communities do not have a local police station or access to police services, and highlighted particularly a severe lack of support services:

Very few remote communities have local mental health services or domestic violence rehabilitation or healing programs...Police based in remote communities are often required to leave for days at a time to respond to violence in neighbouring communities and escort women to shelters in regional hubs. Nurses are also expected to travel hundreds of kilometres to service remote communities. The only option for many remote community members to access services is to travel to Darwin or Katherine which is difficult as some communities have very limited to no options for public transport. Once in town they need to find temporary accommodation that is both limited and expensive, leaving most victim-survivors and perpetrators without access to support. Ensuring adequate access to support services in remote communities would provide victim-survivors access to safety and assist in preventing and reducing the impacts of DFSV.⁹¹

- 3.96 The NAAFLS contended that First Nations workers should be embedded within remote communities to provide more immediate assistance and referrals: 'NAAFLS recommends Aboriginal Community Controlled Organisations lead approaches to women's safety services in remote communities'.⁹²

- 3.97 Similarly, the Aboriginal Legal Service (NSW/ACT) argued:

Aboriginal women and children are exposed to all forms of violence at disproportionate levels. This includes violence perpetrated *within* community by Aboriginal family members and partners; however, it also includes violence committed by non-Aboriginal perpetrators. The high levels of violence experienced by Aboriginal women and children is multifaceted and requires nuanced responses...[W]hen considering the Aboriginal family and domestic violence *within* Aboriginal communities, the Government should support and empower local solutions.

An increase in Aboriginal community-controlled domestic violence programs and services would ensure Aboriginal women have access to alternative, culturally safe domestic violence services. However, to create effective solutions Aboriginal communities need meaningful support from all sectors of the Government: access to data on violence, ongoing funding and genuine support in rolling out local initiatives. We submit that the Government invest in and support Aboriginal community-led initiatives to address domestic and family violence.⁹³

- 3.98 The Victorian Aboriginal Legal Service (VALS) agreed that Aboriginal organisations should be adequately funded to deliver culturally safe services:

Specialist Aboriginal organisations like Djirra are imperative for delivering services that assist victims of family violence. Organisations like

⁹¹ North Australian Aboriginal Family Legal Service, *Submission 40*, pp. 18–19.

⁹² North Australian Aboriginal Family Legal Service, *Submission 40*, p. 19.

⁹³ Aboriginal Legal Service (NSW/ACT), *Submission 25*, pp. [2–3].

Dardi Munwurro that support Aboriginal men with behavioural change and healing programs are also imperative for addressing underlying behaviours that lead to family violence and equipping men with conflict resolution tools. Without appropriate funding, programs delivered by organisations such as the above two cannot continue to service the large cohorts of people that want to access the service. Aboriginal organisations are consistently underfunded in contrast to generalist organisations.⁹⁴

- 3.99 Ms Antoinette Gentile, Acting Chief Executive Officer of Djirra, agreed that its holistic model enables the organisation to provide effective wrap around and critical supports to women experiencing violence:

That women feel safe to trust us in the most challenging time in their lives demonstrates the success of our programs, including our signature intervention and early intervention programs: Sisters Day Out, Dilly Bag and Young Luv.⁹⁵

- 3.100 Ms Gentile noted that, in the past two years, demand for Djirra's services has significantly increased but she emphasised that the sector remains chronically underfunded, which places First Nations women's safety and lives at risk:

Specialist family violence services like Djirra cannot wait for...[the] additional funding needed to provide frontline specialist legal, early intervention and case management services. The expansion of these services is particularly needed for regional areas, where there are fewer choices for women seeking safety and less funding available to ensure access to culturally safe early intervention prevention and response services for First Nations women and children. Aboriginal women matter to us, and we must matter to governments.⁹⁶

- 3.101 Ms Gentile noted that the Federal Budget 2024–2025 did not provide any funding certainty for services such as Djirra, as recommended in the recent independent review of the National Legal Assistance Partnership 2020–2025 (NLAP). She noted that FVPLS are currently funded at 20 to 30 per cent less than Legal Aid Commissions (LACs):

...can you imagine what it must be like for Aboriginal people who are experiencing this level of disrespect? It tells us that we are not important enough to care. With all due respect to non-Aboriginal people who experience what our women do, we just go, 'We're invisible.' As Antoinette Braybook [the Djirra Chief Executive Officer] would say, 'We are invisible

⁹⁴ Victorian Aboriginal Legal Service, *Submission 59*, p. 15.

⁹⁵ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 3. Also see: Central Australian Women's Legal Service, answers to spoken questions on notice, 18 April 2024 (received 2 July 2024), pp. [2–3], which presented a case study illustrating the effectiveness of its holistic, wrap around service.

⁹⁶ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 4. Also see: Central Australian Women's Legal Service, answers to spoken questions on notice, 18 April 2024 (received 2 July 2024), p. [1], which provided statistics on its increased service demand from 2020–2021 to date (including drop-in clients).

to everyone', because governments perpetuate that story that we are not enough, not good enough. We know what we need. We know how to work with our women, and, unfortunately, we need resources from government to be able to do that, and the lack of that tells us that we don't matter.⁹⁷

3.102 The Chief Executive Officer of VALS, Ms Nerita Waight, explained that the funding not provided in the Federal Budget 2024–2025 will require VALS to continue to restrict service delivery:

...it means that we will continue to implement our two-stage test: first, you must not earn over \$42,000 per annum—that is pre-tax, by the way—and, second, you must have significant merit. Those barriers are incredibly hard for us to introduce. We know that there are so many Aboriginal community members who require legal help and are deserving of it, but we just don't have the resources to deliver those responses because we don't receive needs-based funding. The calculation method, the structure of the NLAP, doesn't allow for meaningful legal assistance. That means that it affects your most vulnerable. It also means that you can't be centred out there in community. We shouldn't be engaging in approaches that result in postcode justice. Aboriginal people should be able to access legal help where they are; they shouldn't have to travel 400 kilometres to access that.⁹⁸

3.103 Ms Patty Kinnersly, Chief Executive Officer of Our Watch, expressed strong support for those organisations working on the front line, noting the desperate and immediate need for more funding:

It's not about taking funding off primary prevention to move to response or to give primary prevention more money and less to other things. It's actually about us needing more money in the pie, and it needs to happen as soon as possible.⁹⁹

3.104 Chapter 5 further discusses the issues of funding for Aboriginal community-controlled organisations.

Responses within the judicial system

3.105 Submitters and witnesses advised that there are cultural and communication divides between First Nations and non-Indigenous people, which manifest in judicial responses to missing and murdered First Nations women and children.¹⁰⁰

3.106 The NAAFLS broadly noted that 'the adversarial court process is intimidating for victim-survivors', with its clients routinely describing the court process as a

⁹⁷ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 9.

⁹⁸ Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, p. 37.

⁹⁹ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 15.

¹⁰⁰ Also see: Law Council of Australia, *The Justice Project, Final Report, Introduction and Overview*, August 2018, p. 25.

‘secondary victimisation’. The NAAFLS expressed concerns about the lack of trauma-awareness in the court process:

We do not feel that the courts are adequately sympathetic to Aboriginal victim-survivors. There is little to no acknowledgment of witness vulnerability and/or the many reasons why a victim-survivor may not wish to commence criminal proceedings or may be fearful of sharing the truth. Hesitation by an Aboriginal victim-survivor is used by lawyers as proof of guilt or dishonesty rather than shame or distress.¹⁰¹

Language barriers

3.107 Dr Diana Eades, a socio and anthropological linguist, submitted that there are several linguistic and cultural issues for First Nations people interacting with the legal system. In the first category, many people do not speak English as a first language, leading to the risk of miscommunication.¹⁰²

3.108 The NAAFLS submitted that, despite language being a known barrier for Aboriginal people, little has been done to improve service delivery:

...for many Aboriginal people, English is a second, third or sometimes even fifth language. A report by the Equal Opportunity Commission found that 20% of remote Aboriginal people had difficulty understanding or being understood by service providers, including lawyers. Without interpreter services, Aboriginal people are being locked out of participating in court proceedings.¹⁰³

3.109 The Domestic Violence Legal Service and the Northern Territory Legal Aid Commission particularly noted the need for more accessible legal services for respondents to applications for domestic violence orders (DVOs). Their submission endorsed the Darwin Local Court’s Respondent Early Assistance Legal Service (REALS):

REALS provides respondents with an opportunity to be an active participant in proceedings. It helps them to better understand the Court process and ultimately if a DVO is made, the conditions of the DVO and the penalties for the contravention of a DVO. This improves the likelihood that the order is able to be practically complied with and reduces the likelihood of inadvertent breach.¹⁰⁴

¹⁰¹ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 20.

¹⁰² Dr Diana Eades, *Submission 30*, pp. 5–8. Note: Dr Eades identified other communication challenges: the lack of interpreters, the use of legal language and concepts, and the lack of awareness of local or nuanced Aboriginal English.

¹⁰³ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 20.

¹⁰⁴ Domestic Violence Legal Service and Northern Territory Legal Aid Commission, *Submission 33*, p. 2.

3.110 The NQWLS highlighted that language barriers are also a significant concern for its First Nations clients when they interact with the Queensland Police Service:

Time and time again we hear about poor outcomes when police attend domestic disturbances where victims speak limited or no English and/or are suffering trauma. There is no doubt these women and girls find it difficult to give coherent statements, or to understand complex court processes. Indigenous language interpreters are not readily offered or in fact available, especially in regional or remote areas.¹⁰⁵

3.111 Dr Warren Mundy, independent reviewer of the NLAP (see 'Commonwealth government response' from paragraph 3.128) explained the different funding arrangements for interpreter services:

NIAA funds broader Indigenous interpreting services, and training and accreditation services to improve Aboriginal and Torres Strait Islander access to qualified interpreters. There are also specific services, like the Aboriginal Interpreter Service (AIS) which offers interpreter support in all major towns and remote bush court circuits in the Northern Territory. The AIS has multiple sources of funding...[I]nterpreter services for Aboriginal and Torres Strait Islander peoples are chronically underfunded. This is so despite the broadly recognised significance of these services in improving access to justice outcomes for Aboriginal and Torres Strait Islander peoples.¹⁰⁶

3.112 The NAAFLS concurred with Dr Mundy's view of funding for interpreter services, submitting that demand for the AIS is greatly outstripped by supply:

...it is far too difficult to obtain interpreting services in Aboriginal languages and it is common for friends or family members of our clients to informally interpret due to interpreter unavailability. We are aware of other organisations such as police failing to use interpreters when speaking to remote community members who cannot understand English, which leads to confusion and can reinforce police-related trauma.¹⁰⁷

Cultural barriers

3.113 Dr Eades submitted that 'cultural issues are central to any consideration of the law's engagement with First Nations people'. However:

Some of the cultural beliefs and practices of the law are shared within the wider western society, but they are not necessarily shared with Aboriginal

¹⁰⁵ North Queensland Women's Legal Service, *Submission 13*, p. 10. Also see: Dr Diana Eades, *Submission 30*, p. 5.

¹⁰⁶ *Independent Review of the National Legal Assistance Partnership, Final Report*, March 2024, p. 97, www.ag.gov.au/sites/default/files/2024-05/nlap-review-final-report.PDF (accessed 3 June 2024). Note: Recommendation 13 of the independent review concluded that access to interpreter services is essential to accessing justice and governments should determine an adequate level of interpreter funding.

¹⁰⁷ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 20.

societies. The disjunction between the culture of the law and the culture of Aboriginal societies is at the heart of how the law listens to and understands or misunderstands what Aboriginal people say.¹⁰⁸

3.114 Dr Eades illustrated this argument with reference to the law's reliance on interviews with a question/answer method that does not accord with First Nations culture:

...interviews are not a speech event typically found in Aboriginal societies, where information is often provided in a reciprocal way and less directly. When Aboriginal people want to find out substantial, complex and sensitive information, such as details about an event or a situation, or why someone has done something, they typically talk around a topic, engaging in conversation (or yarning) rather than talk structured by direct questions.

...

[A]s information is given and sought in Aboriginal societies as part of a relationship, trust and connectedness are essential in the sharing of substantial information. Because of the importance of the relationship to the sharing of complex and sensitive information, many Aboriginal people can feel uncomfortable or unable to share information with someone they do not (yet) have an established relationship of trust with.¹⁰⁹

3.115 Dr Eades endorsed the development of strong bicultural communication abilities between First Nations people and actors within the legal system, as occurred with the NSW Police Force in the reinvestigation of the Bowraville murders (Strike Force ANCUD).¹¹⁰

3.116 In evidence, the NSW and WA DPPs referenced specifically the 'Mildren directions', a set of jury directions developed by former NT Justice Dean Mildren AM RFD KC to assist a jury in assessing the evidence at trial of First Nations people.

3.117 Ms Dowling advised that the Mildren directions are available in some jurisdictions—Queensland, WA and the NT—but are not given as a matter of course in New South Wales. She considered that having those directions available would greatly assist with the fair assessment of evidence:

There are a number of different ways to approach it that could be mandatory directions, such as those in the Criminal Procedure Act relating to so-called counterintuitive behaviours in sexual assault matters. It could be by way of judicial directions to be contained in the bench book or a combination of

¹⁰⁸ Dr Diana Eades, *Submission 30*, p. 9. Also see: Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 37.

¹⁰⁹ Dr Diana Eades, *Submission 30*, p. 10. Note: the submission highlighted a number of additional cultural issues that create further risk of miscommunication: gratuitous concurrence, silence, specific information, shame, and eye contact: pp. 12–15.

¹¹⁰ Dr Diana Eades, *Submission 30*, pp. 9 and 11. Also see: p. 2; Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 7, which argued that more time should be allowed for communicating with and listening to Aboriginal women.

those. It could be by way of further amendments to the Evidence Act. There are a number of legislative pathways and practice pathways.¹¹¹

- 3.118 Mr Owen noted that the *Aboriginal Benchbook for Western Australian Courts* references the Mildren directions and the 'Anunga Guidelines', a set of nine guidelines formulated in 1976 by Justice William Forster to ensure that the confessional statements of Aboriginal accused persons are obtained fairly.¹¹²

Awareness and safety training

- 3.119 Other submitters and witnesses commented on the extent of cultural awareness and cultural safety training by actors within the courtroom.

- 3.120 The NSW DPP Ms Dowling advised that all staff attend compulsory cultural awareness training (a one-day course). However, the 'training that we currently offer is what I would call an entry-level set of basic training'. She added 'we do offer a lot more training; however, it's not currently compulsory'.¹¹³

- 3.121 In Western Australia, ODPP staff undertake a full-day training course that is expanded by daily engagement with First Nations people over a period of time. Mr Owen said 'you can't replace experience, just like you can't rely solely on formal training'.¹¹⁴

- 3.122 Mr Owen stated his strong commitment towards ensuring that proceedings are conducted in a culturally sensitive and culturally safe manner:

...if we acknowledge and accept the past injustices and that there's mistrust between the Aboriginal community and the justice system, in particular my office, then I want to rectify that...[T]he justice system is open, it's equal, and everybody should be entitled to access it on equal footing. We know that's not the case, and I can do what I can do in the confines of my own office in the prism of what a white Anglo-Saxon male can think is a solution, although I know that's not the solution.¹¹⁵

¹¹¹ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 38. Also see: p. 44, where Ms Dowling stated 'we can do much better across Australia' and referenced New Zealand as having the best model.

¹¹² Mr Robert Owen, Director of Public Prosecutions for Western Australia, Office of the Director of Public Prosecutions for Western Australia, *Committee Hansard*, 4 October 2023, p. 27. Also see: Office of the Director of Public Prosecutions (WA), answer to question on notice, 4 October 2023 (received 4 October 2023).

¹¹³ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 39. Note: Ms Dowling noted that, if Aboriginal witnesses and complainants are not treated in a culturally appropriate and safe way, they often disengage from the process which almost invariably results in a trial not proceeding: p. 40.

¹¹⁴ Mr Robert Owen, Director of Public Prosecutions for Western Australia, Office of the Director of Public Prosecutions for Western Australia, *Committee Hansard*, 4 October 2023, pp. 19 and 21–23.

¹¹⁵ Mr Robert Owen, Director of Public Prosecutions for Western Australia, Office of the Director of Public Prosecutions for Western Australia, *Committee Hansard*, 4 October 2023, p. 23. Also see: p. 18.

3.123 In the context of further training, Ms Dowling said that trauma informed practice is something that she intends to progress within the NSW ODPP in the next 12 months:

It's taken some time to get cultural awareness training rolled out right across the office, and of course there are budget issues in terms of providing that training to almost a thousand people. However, a trauma informed approach to prosecution practice is the only way, in my view, to adequately represent the needs of all our vulnerable witnesses.¹¹⁶

3.124 Some stakeholders called for more culturally appropriate and safe courts. The Law Council noted that the Access to Justice project canvassed multiple measures to reduce barriers for First Nations women and children experiencing violence:

These included increased cultural awareness and competency training (including through bench books and more active learning experiences delivered by elders); measures to increase the diversity of justice system personnel, including judicial officers; increased access to cultural liaison officers; expanded access to interpreters, and measures to accommodate complex communication needs; and increased adoption of therapeutic jurisprudence.¹¹⁷

3.125 The Central Australian Aboriginal Congress argued that the courts also need to focus on the needs of First Nations men, who are themselves impacted by multiple layers of disadvantage within a complex and diverse cross-cultural environment. The congress argued that, ultimately, the focus should be on 'minimising the risk of future violence by (overwhelmingly) men towards the women and families in their lives':

...all courts dealing with those accused of Aboriginal family violence should: (a) be culturally safe; (b) involve senior Aboriginal community members to assist with understanding the factors driving offending behaviours and in determining effective sentencing; and (c) include access to specialist therapeutic advice to assist with understanding any mental health or other issues related to offending and to ensure referral of offenders to appropriate services such as drug and alcohol treatment or mental health services [see Chapter 5].¹¹⁸

3.126 Ms Rachael Ozanne-Pike, Lawyer with the NQWLS, remarked that Queensland's seven Specialist Domestic and Family Courts are quite different from the mainstream courts, one key difference being their 'justice groups', which work intensively with First Nations men, including beyond court:

One of the big issues is that, after someone has served their period of incarceration—or maybe they've just been sentenced with no actual period

¹¹⁶ Ms Sally Dowling, Director of Public Prosecutions, Office of the Director of Public Prosecutions (NSW), *Committee Hansard*, 28 July 2023, p. 41.

¹¹⁷ Law Council of Australia, *Submission 12*, p. 22.

¹¹⁸ Central Australian Aboriginal Congress, *Submission 18*, p. 21.

of incarceration—for domestic violence offences, that's it. There's often no ability to wrap any services around them or anything like that. They're just out into the community again...To get the change and to keep women and children safe, we need to work on the perpetrators as much as we work on looking after the victims.¹¹⁹

3.127 Mr Brendan Thomas, Deputy Secretary of the Transforming Aboriginal Outcomes Division at the NSW Department of Communities and Justice, described three programs in NSW that have been developed to improve the relationship between First Nations people and the criminal justice system (Aboriginal courts, the Koori Youth Court and the Walama Court List):

...each of those involves judicial officers sitting with significant Aboriginal people, with elders and other respected people, and sharing authority with those people to make decisions...They are examples of where the justice system is trying to bring family and community into the decision-making, listen to people properly, slow processes down so you're not jumping to conclusions as quickly, take some time to make proper decisions and listen to people in making those decisions.¹²⁰

Commonwealth government response

3.128 The NIAA and the AGD recognised that multiple factors are driving the violence against First Nations women and children: 'it is therefore critical that national policies and plans are responsive to the multifaceted experiences and adaptive to the [women and children's] circumstances'.¹²¹

3.129 Their submission referenced the *Wiyi Yani U Thangani (Women's Voices)* project, which was led by the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO. The multi-year project aims to elevate the voices of First Nations women and girls and in 2020 released its first report titled *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future* (the Securing our Rights, Securing our Future report).¹²²

3.130 The Securing our Rights, Securing our Future report captured the needs of First Nations women and girls, the principles they think should be enshrined in

¹¹⁹ Ms Rachael Ozanne-Pike, Lawyer, North Queensland Women's Legal Service, *Committee Hansard*, 2 November 2023, p. 11.

¹²⁰ Mr Brendan Thomas, Deputy Secretary, Transforming Aboriginal Outcomes Division, Department of Communities and Justice (NSW), *Committee Hansard*, 28 July 2023, pp. 48 and 50.

¹²¹ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 5.

¹²² Australian Human Rights Commission, 'Wiyi Yani U Thangani (Women's Voices)', <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/projects/wiyi-yanu-thangani-womens> (accessed 31 May 2024).

policy and program design, and their recommendations for measures to effectively promote the enjoyment of their human rights.¹²³

- 3.131 The NIAA and the AGD acknowledged that the *Securing our Rights, Securing our Future* report emphasises the importance of self-determined and First Nations women-led responses to achieve systemic change (also see Chapter 5),¹²⁴ a finding endorsed by several submitters, including the NAAFLS:

Aboriginal women in leadership know what decisions and directions are best for, and will be accepted, by their communities. Prioritising their recommendations is critical if we want to effectively address DFSV. The experience of non-Indigenous women experiencing DFSV cannot be used as a valid point of consultation; the experiences for both groups are significantly different.¹²⁵

- 3.132 In 2022, Ms Oscar hosted the *Wiyi Yani U Thangani (Women's Voices)* First Nations Women's Safety Policy Forum (First Nations Women's Safety Policy Forum). Over 150 First Nations community members, practitioners, researchers, specialist experts and government participants considered how to address the root causes and drivers of violence.¹²⁶

- 3.133 The First Nations Women's Safety Policy Forum issued a Delegate Statement, which reiterated the findings from the *Securing our Rights, Securing our Future* report on the need for First Nations women-led solutions:

We, the delegates, call on all Australian governments to take urgent and ongoing action to invest in the solutions of First Nations women to end violence, and ensure commitment to our human rights. It is the responsibility of all levels of government to ensure our rights are protected by listening and acting on the solutions put forward by First Nations women, victim-survivors and specialist community-controlled organisations

...

¹²³ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing our Rights, Securing our Future*, 2020, <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani> (accessed 2 June 2024).

¹²⁴ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 5, which stated, however, that 'the *Australian Government response to the Wiyi Yani U Thangani (Women's Voices) Report* responds to the report's recommendations in line with National Agreement obligations'.

¹²⁵ North Australian Aboriginal Family Legal Service, *Submission 40*, pp. 5–6. Also see: Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, p. 1; Western NSW Community Legal Centre and Western Women's Legal Support, *Submission 19*, p. 9; Queensland Family and Child Commission, *Submission 20*, p. 2.

¹²⁶ Australian Human Rights Commission, 'Wiyi Yani U Thangni First Nations Women's Safety Policy Forum Outcomes Report November 2022', <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-thangani-6> (accessed 12 March 2024).

First Nations women have always been central to providing care and doing remarkable, and often unrecognised work, to keep family and kin safe. Women are at the forefront of social change, establishing and running holistic organisations grounded in culture and community, to respond to immediate harms whilst enabling healing and implementing violence prevention measures. When First Nations women are invested in, children thrive, economies grow, communities are cohesive, and harms and violence are minimised.¹²⁷

National Plan to End Violence against Women and Children

3.134 As noted in Chapter 1, the National Plan to End Violence against Women and Children 2022–2032 (the National Plan) aims to end DFSV against women and children over the next 10 years.¹²⁸

3.135 To support this objective, the Commonwealth (Albanese) government has committed \$3.4 billion to delivering the National Plan. Most recently:

Through the 2024-25 Budget, the Australian Government committed \$1.1 billion to ending violence against women and children (bringing total investment since October 2022 to \$3.4 billion), bringing the total number of funded activities in the national plan to 99.¹²⁹

3.136 The NIAA and the AGD highlighted funded measures for the period 2022–2023 to 2024–2025. These measures were categorised as: support for First Nations victim-survivors of FDSV; prevention, early intervention and response initiatives; building justice sector capability; and sector strengthening measures. The first category included, for example:

- 2022–2023: funding was provided to support additional frontline service and community workers for vulnerable people (\$169.4 million over four years), to recognise the higher rates of violence and increased complexity of remote service delivery in the Northern Territory (\$10.7 million), and to extend ACCO delivery of culturally appropriate services family violence services in the Northern Territory (\$3.79 million over five years).
- 2023–2024: additional funding to extend the Family, Domestic and Sexual Violence National Partnership (\$159 million for two years).
- 2024–2025: the Commonwealth government committed \$44.1 million for additional legal assistance funding, \$24 million of which was directed

¹²⁷ Australian Human Rights Commission, ‘2022 Wiyi Yani U Thangani First Nations Women’s Safety Policy Forum Delegate Statement’, <https://humanrights.gov.au/2022-wiyi-yanu-thangani-first-nations-womens-safety-policy-forum-delegate-statement> (accessed 12 March 2024).

¹²⁸ Commonwealth of Australia, National Plan to End Violence against Women and Children 2022–2032, p. 68, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 1 February 2024).

¹²⁹ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, pp. 8 and 14.

towards First Nations legal services (Aboriginal and Torres Strait Islander Legal Services and Family Violence Prevention Legal Services).¹³⁰

- 3.137 In the third category of funded measures—building justice sector capability—the Commonwealth government has committed \$12.6 million over five years from 2022–2023 for a nationally coordinated approach to education and training on DFSV for community frontline workers, health professionals, and the justice sector:

This includes funding for continued judicial education on family and domestic violence through the National Domestic and Family Violence Bench Book and the Family Violence in the Court Training program, as well as development of new training for legal practitioners on coercive control [see Chapter 4].¹³¹

- 3.138 It is also noted that the Commonwealth government is funding the development of a National Bench Book on Aboriginal and Torres Strait Islander Peoples and the Legal System:

This Bench Book intends to improve access to and delivery of quality, culturally appropriate justice and legal assistance services to First Nations peoples, by better informing judicial officers and legal professionals about the cultural and legal issues faced by First Nations peoples in the justice system and promoting best practice.¹³²

- 3.139 Chapter 4 sets out the Commonwealth government’s funding commitments to enhance the effectiveness of police responses to DFSV.¹³³

National Legal Assistance Partnership 2020–2025

- 3.140 The NIAA and the AGD referred to the NLAP, which delivers Commonwealth funded legal assistance to First Nations women through legal service providers (LACs, Community Legal Centres, and ATSILS) based on need, capability and service priorities.¹³⁴

- 3.141 The NIAA and the AGD stated that the ATSILS are the First Nations-controlled providers of culturally appropriate legal assistance services, with funding a shared responsibility for federal, state and territory governments. Over the life of the NLAP, the Commonwealth government will have contributed \$456 million in baseline funding:

¹³⁰ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, pp. 14–17.

¹³¹ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 13.

¹³² National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 15.

¹³³ Note: funded measures under ‘Building justice sector capability’ complement the Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–27 and 2022–23 Federal Budget commitments.

¹³⁴ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 11.

The includes additional funding for ATSILS provided as part of the 2024-25 Budget of \$3.7 million for a one-off indexation boost and \$11.7 million for workforce stabilisation.¹³⁵

3.142 Commonwealth legal assistance is also provided through various other funding mechanisms. Through the First Nations Justice package, for example, additional funding has been provided to ATSILS to provide culturally-appropriate legal assistance to First Nations families in coronial inquiries (\$13.5 million).¹³⁶

3.143 As indicated earlier (see paragraph 3.111), in 2023–2024, Dr Mundy independently reviewed the NLAP, delivering his final report to government on 28 May 2024. This report made a number of recommendations concerning legal assistance funding, including:

- the need to address unmet geographic need;
- the need for complete national geographic coverage by FVPLS;
- new funding arrangements must address National Agreement reforms;
- self-determination must feature in services' funding decisions;
- the NLAP funding model should be abandoned; and
- the AGD should administer legal assistance funding to ensure better coordination and reporting.¹³⁷

3.144 Dr Mundy remarked that legal assistance schemes have previously been investigated—including in 2014 by the Productivity Commission¹³⁸ — however:

...there has been relatively little change in the last decade. This has led to the neglect of Australia's legal assistance sector...This Independent Review presents an opportunity to generate meaningful reform for the legal assistance sector. In particular, it is a starting point for implementing the recommendations of the Productivity Commission's recent review of the National Agreement on Closing the Gap as they relate to the legal assistance sector. There is not much point to a Review if its work and recommendations do not lead to transformational change.¹³⁹

¹³⁵ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 14.

¹³⁶ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, pp. 8 and 11.

¹³⁷ *Independent Review of the National Legal Assistance Partnership, Final Report*, March 2024, Recommendations 2–3, 9, 11–12, 14 and 31.

¹³⁸ Productivity Commission, *Access to Justice Arrangements*, No. 72, 5 September 2014, www.pc.gov.au/inquiries/completed/access-justice/report (accessed 2 June 2024).

¹³⁹ *Independent Review of the National Legal Assistance Partnership, Final Report*, March 2024, p. i.

3.145 In response to this review, the NIAA and the AGD advised:

Commonwealth, state and territory governments are carefully considering the findings of the review, alongside submissions to the review. Further consultation across government and the legal assistance sector will inform negotiations about future legal assistance funding arrangements.¹⁴⁰

¹⁴⁰ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 14.

Chapter 4

Police culture and practices

- 4.1 In 2019, Canada's National Inquiry into Missing and Murdered Indigenous Girls and Women released its final report, that stated:

Overwhelmingly, the families who testified before the National Inquiry were seeking answers to perceived flaws in the investigations into the loss of their loved ones. They discussed many ways...in which they felt that police services had failed in their duty to properly investigate the crimes committed against them or their loved ones, leading ultimately to a failure to obtain closure and justice within the existing system.¹

- 4.2 Similarly, in 2020, the *Wiyi Yani U Thangani (Women's Voices)* project (see Chapter 3) reported that there is an urgent need to improve crisis responses when lives are threatened by harmful behaviours.² However, the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, stated:

...reforming police practices and behaviours is not happening at the pace or scale required. Women and girls...are distrusting of the police and are not reporting harms, believing that the police response will cause them further harm...They have raised serious concerns about the discriminatory attitudes of police toward them. They have discussed how these attitudes result in police normalising violence against our women and children, disbelieving or disregarding issues reported, or lacking urgency and failing to intervene in violent incidents.³

- 4.3 Mr Gary Jubelin, a former homicide detective with the NSW Police Force, acknowledged that 'not all murders can be solved'. However, Mr Jubelin stated that 'what law enforcement bodies can do is bring some comfort to the families by ensuring and demonstrating that everything that can be done will be done.'⁴

¹ Government of Canada, National Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, 3 June 2019, Vol. 1b, p. 233, www.mmiwg-ffada.ca/final-report/ (accessed 20 February 2024).

² Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, pp. 156–157, https://wiyiyaniuthangani.humanrights.gov.au/sites/default/files/2023-03/ahrc_wiyi_yani_u_thangani_report_2020.pdf (accessed 20 February 2024).

³ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p. 157. Also see: Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 2; Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, p. 8; Wirringa Baiya Aboriginal Women's Legal Centre Inc, *Submission 62*, p. [5]; Ms Anne Lenton, Director, Legal Services, Djirra, *Committee Hansard*, 18 June 2024, p. 6.

⁴ Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, p 17.

4.4 This chapter primarily examines the following matters:

- investigations into the deaths and disappearances of First Nations women and children, compared to their non-Indigenous counterparts; and
- police policies and practices to investigate missing persons reports and homicides, and to reduce violence and increase safety, for First Nations women and children.

Policing practices

4.5 Participants in the committee's inquiry argued that police forces do not appropriately engage with First Nations people. Their evidence highlighted instances of:

- delayed responses to reports of missing and murdered First Nations people;
- inadequate responses to reports of domestic violence from First Nations women; and
- discriminatory and racist attitudes towards First Nations people.

4.6 That inappropriate engagement has contributed to a reluctance on the part of First Nations people to report matters to police. For example, the Women's Legal Service NSW suggested that First Nations people mistrust state agencies due to historical experiences of mistreatment:

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 misidentification or crimes committed in the context of seeking to numb the pain of intergenerational trauma.⁵

4.7 Whilst a homicide detective, Mr Jubelin was involved in re-investigating the Bowraville murders which have been referred to in this report (see Chapter 3). His firsthand experiences evidence the reason for the distrust between First Nations people and police services:

I first saw injustices faced by First Nations people when I led a reinvestigation into the Bowraville murders. This related to the disappearance and murder of three Aboriginal children in Bowraville over a five-month period in 1990-91. I led a reinvestigation in that matter from 1997. In 2014 I gave evidence to the New South Wales parliamentary inquiry into the...response to those murders. This is just a portion of the evidence where I stated:

It is very nice for society to say that all victims are treated equally. Unfortunately in this situation I do not think that is entirely correct...[R]ace and, to a lesser degree, socioeconomic factors have impacted on the manner

⁵ Women's Legal Service NSW, *Submission 21*, p. 4. Also see: Chapter 2.

in which these matters have been investigated. That's the evidence I gave in the inquiry into the Bowraville murders, but sadly the family have still not got justice for the murder of their children.⁶

Delayed responses to reports of missing and murdered First Nations people

4.8 The Australian Human Rights Commission (AHRC) commented on the time that it takes police to action reports of missing and murdered First Nations women and children.⁷

4.9 The Victorian Aboriginal Legal Service (VALS) submitted that there is a 'casual' attitude and response towards reports of missing First Nations women, compared to non-Indigenous reports:

This casual approach to missing Indigenous women often results in critical timeframes for investigation being missed, thus lowering the chances of discovering evidence about their whereabouts.⁸

4.10 In relation to reports of domestic violence (DV), the Aboriginal Legal Service (NSW/ACT) similarly reported:

...Aboriginal women and children are less likely to receive effective support from police—even during times of crisis. A 2022 study found that in a high proportion of fatal domestic violence cases involving Aboriginal women, police either did not provide effective assistance or failed to respond at all to calls for assistance. Furthermore, in instances where police did respond the impacts were often found to be harmful by the victims.⁹

4.11 Change the Record and Djirra contended that police services do not allocate timely or sufficient resources for investigations into the disappearance and/or murder of First Nations women and children.¹⁰

4.12 To illustrate this argument, the Jumbunna Institute for Indigenous Education and Research (Jumbunna) referenced the Bowraville murders (see Chapter 3). It argued that the NSW Police Force did not treat the first child's disappearance as a potential homicide, which resulted in delayed inquiries (including with the key suspect) and potentially also the murder of two other children. Ultimately:

This failure of the NSW Police Force to properly resource and conduct a homicide investigation into the murders has left the families in the traumatic

⁶ Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, p. 17.

⁷ Australian Human Rights Commission, *Submission 34*, p. 7. Note: the Australian Human Rights Commission referenced the coronial inquest of Kwementyaye Green, which found that the police had 'spent an inordinate amount of time considering whether Ms Green had stabbed herself', and its submission noted similar delays in three other cases from around Australia.

⁸ Victorian Aboriginal Legal Service, *Submission 59*, p. 5.

⁹ Aboriginal Legal Service (NSW/ACT), *Submission 25*, pp. [2–3].

¹⁰ See, for example: Change the Record and Djirra, *Submission 85*, p. 12; Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council, *Submission 56*, p. [4].

position of engaging in over thirty years of advocacy seeking justice for their murdered children.¹¹

4.13 The National Aboriginal and Torres Strait Islander Legal Service (NATSILS) stated that, when police investigate reports of missing First Nations people, 'the response has too often been that they are itinerant in any event and have probably just gone "walkabout"'. NATSILS highlighted examples of cases in which police did not respond for hours, days or weeks to reports of missing First Nations women and children.¹²

4.14 In this regard, Mr Jubelin, retired Detective Chief Inspector of the New South Wales Police Force with over 25 years as a detective investigating homicides, said:

From an investigative point of view, the critical time in any investigation is when the matter is reported. Sadly, in these types of matters, that response is quite often not adequate. I think education and training play a key role in fixing the disparity between how investigations are run depending on who the victim is. We need to ensure that all victims, and this is a fairly obvious statement, are treated equally regardless of race or socio-economic standing.¹³

4.15 Australians for Native Title and Reconciliation (ANTAR) and the Australian Lawyers Alliance (ALA) described this 'neglect' as typical under-policing for First Nations victim-survivors of DV in the Northern Territory. They described the case of a 49-year old woman who, prior to being murdered in 2021, had contacted the NT Police Force for assistance 18 times over two years.¹⁴

4.16 The Aboriginal Peak Organisations for the Northern Territory referred to the findings of the coronial inquest for Kwentymaye Green. Ms Green was a repeat victim of domestic and family violence. In his findings:

Judge Greg Cavanagh found that massive failings and lethargy at all levels of policing led to an inadequate and protracted investigation that prevented the perpetrator being charged of any offence. Judge Cavanagh drew comparison to a number of Aboriginal and non-Aboriginal murder victims to emphasis [sic] the discrepancies found in police investigations and highlighted the similarities in the Stephen Lawrence inquiry that found institutional racism to have influenced police performance and failings.¹⁵

¹¹ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 37.

¹² National Aboriginal and Torres Strait Islander Legal Service, *Submission 81*, pp. 7–9. Also see: North Australian Aboriginal Family Legal Service, *Submission 40*, p. 11.

¹³ Mr Jubelin, private capacity, *Committee Hansard*, 18 June 2024, p. 17.

¹⁴ Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, p. 13.

¹⁵ Aboriginal Peak Organisations of the Northern Territory, *Submission 36*, p. 2.

4.17 Ms Antoinette Gentile, Acting Chief Executive Officer of Djirra, argued that many First Nations women's deaths have not been properly investigated: 'it is likely, therefore, that some of these deaths have been mis-recorded as suicides or accidents'.¹⁶

4.18 ANTAR and the ALA suggested that First Nations families and friends are often compelled to take matters into their own hands. In South Australia, for example:

Where police are perceived as being more likely to delay response times or resources for investigating missing persons cases, First Nations victims' families turn to their own resources prior to seeking police assistance.¹⁷

4.19 The Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council suggested that 'work volume supersedes the time and skills needed to adequately investigate reports of missing and murdered women'. The Council emphasised that First Nations women could actually assist the police, if the time were taken to establish relationships of respect and trust:

Kunmanara Smith also speaks to the skills of Anangu such as reading tracks and the interconnectedness of community that could be of benefit in assisting police with their investigations. However, this requires a commitment to working together, prioritising safety, respecting cultural expertise and having a relationship of trust. These values all form part of [our] guiding principles and are integral to Anangu ways of working and provide a vision for how cross-cultural practices could look like.¹⁸

4.20 There is also the need to keep families informed as an investigation continues. Again, quoting from Mr Jubelin who has extensive experience in this regard:

Finally, I'd just like to say that in my observations as a police officer, working in the media and when I'm contacted by First Nations families about their concerns about investigations, it's quite often because they're not informed by police. They're not updated, they're not treated with the respect that they should be given, and they're not kept informed about what the investigation is. Because of the historical difficulties in the relationships between police and First Nations people, often the First Nations people are concerned that the investigation is not being treated properly, and quite often, in cases that I've looked at, work was being done, but the families weren't being informed...

¹⁶ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 3, who noted that the rates of suicide for First Nations women are at least double that of non-Indigenous women. Also see: Change the Record and Djirra, *Submission 85*, p. [12]; North Australian Aboriginal Justice Agency, *Submission 77*, pp. 11–14.

¹⁷ Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, p. 17.

¹⁸ Ngaanyatjarra Pitjantjatjara Yankunytjayjara Women's Council, *Submission 56*, p. [4]. Also see: Victoria Police, *Submission 52*, p. 6, which agreed that a missing person's Elders and community members could work with police in the early stages of an investigation.

I think the communication from the police needs to be keeping the families informed on the progress of the investigation. I've had, and I'm not exaggerating here, countless First Nations families say: 'Could you just help us? We're just not getting any feedback from the police.'

I think because of the distrust between First Nations people and police—and it goes both ways—the onus is on the police to probably go a little bit further than they do on other investigations to reassure the families that everything that can be done is being done.

Also, when we talk communication, we need to be aware of something I learnt through my experiences in Bowraville. I turned up to Bowraville thinking, 'There aren't going to be any communication barriers.' You talked about cultural awareness and cultural competency. I was naive to the fact, and I had to learn a lot of things, including the way that you communicate with Indigenous communities and how you can sit down and have a conversation. I think police have got to look at the way that they keep the families informed and acknowledge that there are subtle differences that they need to adapt their approach to when dealing with these families so the families are still confident that the police are genuinely putting the best effort they can into working on the crimes that have been reported.¹⁹

Responses to domestic violence

- 4.21 Information presented to the committee raised concerns about how police forces respond to DV in First Nations communities. In 2022, the Central Australian Aboriginal Congress' (CAAC) Acting Chief Executive Officer, Dr Josie Douglas, noted in response to the Australian Broadcasting Corporation's Four Corners program (see Chapter 2):

We are very concerned that too often the policing and justice systems fail to protect Aboriginal women by not taking their report and concerns about domestic violence seriously. As we saw on Four Corners, Aboriginal women are reporting domestic violence. They should receive the same level of protection and response as any other Australian citizen.²⁰

- 4.22 Multiple submitters and witnesses argued that police fail to respond professionally, courteously and appropriately to First Nations women's reports of missing persons and DV and, in some cases, misidentify women as the perpetrators, rather than as the victims.

- 4.23 The Law Council of Australia (Law Council) explained:

...First Nations women who experience violence are more likely to engage in resistant behaviours and to use retaliatory violence as a survival method. Consequently, when police respond to a single incident of violence, there

¹⁹ Mr Jubelin, private capacity, *Committee Hansard*, 18 June 2024, pp. 17–18.

²⁰ Central Australian Aboriginal Congress, 'Congress responds to ABC TV Four Corners program on murdered and missing Aboriginal women', 26 October 2022, www.caac.org.au/news/congress-responds-to-abc-tv-four-corners-program-on-murdered-and-missing-aboriginal-women/ (accessed 27 February 2024).

may be a significant risk of police misidentifying the victim and the perpetrator.²¹

- 4.24 On this point, Ms Gentile particularly emphasised the need to focus more on serial perpetrators of domestic, family and sexual violence (DFSV), so that police attending a call out can identify who is the perpetrator of violence. She provided the following example:

Djirra's individual support services recently supported a woman whose perpetrator had been listed as the respondent in 17 prior family violence intervention orders that protected six different women. More needs to be understood about the increased risk to, and vulnerability of, Aboriginal women in circumstances where men have perpetrated violence before.²²

- 4.25 The Law Council explained that misidentification results in a heightened level of distrust of the legal system among First Nations people:

This means, for example, that women in custody have often not told police, lawyers or the court about the violence they have experienced, including violence materially relevant to their charges and their defence. The Law Council notes that 'distrust is particularly apparent in the family law sphere, fuelled by policies relating to the forced removal of children and current patterns of engagement with the child protection system'. This creates a major barrier for women seeking help when experiencing family violence, and further creates intergenerational distrust and trauma, perpetuating further violence.²³

- 4.26 Ms Meena Singh, Commissioner for Aboriginal Children and Young People at the Commission for Children and Young People (Victoria), said:

Lots of people in our community fear the police. We don't trust the police. We don't see them as a safe place to go. There are, unfortunately, because of other circumstances of our history, other roles that are often seen as not to be trusted. How do we create trust in those relationships? How do we create relationships before the need arises [see 'Building relationships and trust' from paragraph 4.77]?²⁴

Misidentification of perpetrators

- 4.27 Change the Record and Djirra shared concerns about the 'common' and high level of misidentification of First Nations women as perpetrators of violence. They referenced a 2017 Queensland Domestic Violence Death Review and Advisory Board report that found 'in nearly all domestic and family violence

²¹ Law Council of Australia, *Submission 12*, p. 15.

²² Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 3. Also see: Djirra, answers to questions on notice, 18 June 2024 (received 24 June 2024).

²³ Law Council of Australia, *Submission 12*, pp. 15–16. Also see: Ms Anne Lenton, Director, Legal Services, Djirra, *Committee Hansard*, 18 June 2024, p. 6.

²⁴ Ms Meena Singh, Commissioner for Aboriginal Children and Young People, Commission for Children and Young People (Victoria), *Committee Hansard*, 18 June 2024, p. 26.

related deaths of First Nations people, the deceased was recorded as both a respondent and as the victim prior to the death'.²⁵

4.28 The VALS concurred that, 'police and courts take action against victim-survivors of abuse instead of perpetrators' with alarming frequency (such as in the case of Ms Tamica Mullaley, see Chapter 3).²⁶

4.29 Australia's National Research Organisation for Women's Safety (ANROWS) advised that police and the legal system can misidentify the people who are most in need of protection:

Victims and survivors who use self-defence against perpetrators of domestic and family violence or engage in couple fighting can be misidentified as a perpetrator of family violence by police and the legal system. Inaccurate identification of the person most in need of protection in these cases can result from incident-based policing approaches that focus on individual incidents of abuse (mostly physical) instead of patterns of behaviour in the broader context of the relationship, and by misconceptions around the stereotypical or "ideal victim" presenting as submissive and powerless. As gendered stereotypes intersect with systemic racism, Aboriginal and Torres Strait Islander women are particularly vulnerable to decisions based on stereotypes around what the ideal victim should look like.²⁷

4.30 Ms Christine Robinson, Chief Executive Officer at Wirringa Baiya Aboriginal Women's Legal Centre, similarly highlighted that First Nations women are not seen as 'good victims':

Some of the issues that we see with reporting include that we're very often regarded as a bad victim. Who is a good victim and who is a bad victim? Responses are different depending on whether or not the person has been affected by drugs or alcohol. Sometimes those people are dismissed because they've been on either one of those. Their family may be involved with the police quite a lot for criminal activities. One brush covers the whole family.²⁸

²⁵ Change the Record and Djirra, *Submission 85*, pp. 19–20. Also see: Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 7; North Australian Aboriginal Justice Agency, *Submission 77*, p. 10; Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner, *Submission 79*, p. 31; Central Australian Women's Legal Service, answers to spoken questions on notice, 18 April 2024 (received 2 July 2024), pp. [1–2], which provided two case studies illustrative of their clients' experiences.

²⁶ Victorian Aboriginal Legal Service, *Submission 59*, p. 13. Also see: Victorian Aboriginal Child Care Agency, *Submission 65*, p. 18.

²⁷ Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 4. Also see: Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, pp. 10–11; Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, p. 6; Victorian Aboriginal Legal Service, *Submission 59*, p. 14.

²⁸ Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 3.

- 4.31 Professor Larissa Behrendt AO, Professor of Law and Director of Research at Jumbunna, also remarked on the media's portrayal of First Nations women and children (also see Chapter 5):

...a big part of the problem is that it seems there's a sense amongst the mainstream media that the sensationalism about high crime rates and the danger of crime is a much more important story—and a bigger and more popular story—than the stories of victims, especially victims who don't meet a particular white racial stereotype.²⁹

- 4.32 The North Queensland Women's Legal Service (NQWLS) described the misidentification of First Nations women victim-survivors as perpetrators as 'terribly unjust' and discussed the result of incident-based policing:

Misidentification often occurs in the face of long histories of police involvement where the other party has been the aggressor. It is a terribly unjust situation that after enduring years of abuse and violence when these women eventually react to the abuse or defend themselves, they are met with the full force of the justice system and named the perpetrator. Essentially, these women are criminalised for using techniques to survive violence being perpetrated against them...Without a dominant-aggressor framework being universally used by police and courts and extensive specialised training undertaken, erroneous conclusions based on the most recent incident alone will continue to be made.³⁰

- 4.33 ANROWS argued:

Misidentification can also increase a victim's and survivor's vulnerability to further manipulation by the perpetrator. For example, in cases where a victim and survivor is misidentified, the perpetrator can engage in systems abuse, such as by providing misleading statements to police.³¹

- 4.34 The NQWLS explained with this example:

One First Nations client we helped had two young children and had been controlled and subjected to ongoing emotional, physical, and sexual abuse throughout her relationship with a much older non-Indigenous man. Their relationship had commenced when she was 15 years old. Despite our client being the one to call for help, her partner successfully convinced the police

²⁹ Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2024, p. 16.

³⁰ North Queensland Women's Legal Service, *Submission 13*, p. 4. Also see: Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 17; Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser, First Nations Women's Legal Service Queensland, *Committee Hansard*, 2 November 2023, p. 6.

³¹ Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 5.

who attended an incident that she was the perpetrator and had her charged for assault.³²

- 4.35 The North Australian Aboriginal Family Legal Service submitted that misidentification leads to the overrepresentation of First Nations women in data on domestic violence order (DVO) breaches. It noted that the Northern Territory's mandatory sentencing laws result in custodial sentences for the victim-survivors whom the legislation is intended to protect:

...across the states and territories most people that are found guilty of breaching a DVO are generally given non-custodial sentences. In the Northern Territory, however, the majority (71%) received a custodial sentence (due to mandatory sentencing). Many of those sentenced would be Aboriginal women. This strongly indicates that laws in the Northern Territory aimed at protecting victim-survivors are directly failing Aboriginal women.³³

- 4.36 Ms Caitlin Weatherby-Fell, Chief Executive Officer of the Top End Women's Legal Service, explained that women's legal services are currently the only legal services that are able to provide dual legal representation for women who are defendants and applicants on a DVO application.³⁴

- 4.37 In 2018, the Law Council's Access to Justice project found that 'mandatory minimum sentences which have a discriminatory impact on Aboriginal and Torres Strait Islander peoples should be repealed'. The project found that the law should recognise the specific circumstances of First Nations women:

Aboriginal and Torres Strait Islander women offenders have a distinct criminogenic profile that should be recognised and reflected in criminal justice policies and procedures. Priorities in this area include diversionary options, community-based prevention and early intervention support programs that facilitate healing, holistic family support programs, education and training programs, bail reform, specialist family violence courts and culturally safe programs for women in prison and exiting prison.

The imprisonment of a primary caregiver can be highly detrimental to the development of children, and may lead to intergenerational interaction with the prison system. This suggests that sentencing guidelines could be reviewed to ensure adequate consideration.³⁵

³² North Queensland Women's Legal Service, *Submission 13*, p. 5. Also see: First Nations Women's Legal Services Queensland, *Submission 38*, p. 8; Women's Legal Service WA, *Submission 83*, p. 8 ('Ilona').

³³ North Australian Aboriginal Family Legal Service, *Submission 40*, p. 13. Also see: Change the Record and Djirra, *Submission 85*, p. [20].

³⁴ Ms Caitlin Weatherby-Fell, Chief Executive Officer, Top End Women's Legal Service, *Committee Hansard*, 18 April 2024, p. 22.

³⁵ Law Council of Australia, The Justice Project, Final Report, Introduction and Overview, August 2018, p. 26, <https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20-%20Final%20Report%20in%20full.pdf> (accessed 22 February 2024).

- 4.38 The Northern Territory Council of Social Services articulated a link between the misidentification of perpetrators and the incarceration of First Nations women:

The typical prisoner in Alice Springs Women's Correctional facility is an Aboriginal 30 year-old woman, with children, incarcerated for 'act intended to cause harm' and has been subjected to violence and abuse. These are women who needed support and have ended up being criminalised and incarcerated. The over-policing and under-policing are two sides of the same issue—which is that Aboriginal women are not considered 'true victims'—and have the same impact—a significant barrier to Aboriginal victim-survivors of violence seeking help.³⁶

- 4.39 Mr Martin Hodgson also discussed the over-policing and criminalisation of First Nations women. He suggested that in many cases the women were criminalised for 'trivial matters or issues that would have been far better dealt with by healthcare workers'. That criminalisation increases 'their vulnerability to those who would prey on them'.³⁷

- 4.40 Some submitters discussed recent legislation in New South Wales and Queensland that criminalises coercive behaviour towards current or former intimate partners. The NQWLS considered that the *Domestic and Family Violence Protection Act 2012* (Qld) can increase the safety of First Nations women and children. However:

...the [Act] is only a tool and its implementation and effectiveness come down to individuals and the systems they operate in. [Queensland Police Service, QPS] officers must be willing to issue [Police Protection Notices] and apply for protection orders, even at times without the cooperation of victims; and magistrates must interpret behaviour as domestic violence (not always straightforward especially when it comes to coercive control) and to identify future risk. In the event of conflicting stories or mutual violence, both the court...and QPS...have an obligation to identify the person most in need of protection.³⁸

- 4.41 Ms Ozanne-Pike acknowledged, however, that Queensland legislation has now changed to require the court to identify the person most in need of protection:

...the new provision in the protection order act, now encompasses ideas that victims may use violence. They may use violence in self-defence or in retaliation. They may use violence after the cumulative effects of the violence used against them...[T]hat's a big step forward that the Queensland government has taken...I'm told that the police have amended their manual accordingly. So, when they're presenting at incidents, they should be

³⁶ Northern Territory Council of Social Services, *Submission 66*, p. 6. Note: the committee heard that 'Aboriginal and Torres Strait Islander women are the fastest growing prison population in Australia, being incarcerated at more than 20 times the rate of non-Aboriginal and Torres Strait Islander women': Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 2.

³⁷ Mr Martin Hodgson, *Submission 60*, pp. 2–3.

³⁸ North Queensland Women's Legal Service, *Submission 13*, p. 3.

looking from a holistic viewpoint rather than an incident based one, to really work out what's going on and who's the person most in need of protection.³⁹

4.42 The Domestic Violence Legal Service representative Ms Zara O'Sullivan informed the committee that the *Domestic and Family Violence Act 2007* (NT) has similarly changed, however, it 'still involves the person engaging in the court process'.⁴⁰

4.43 Acting Assistant Commissioner Sachin Sharma from the NT Police, Fire and Emergency Services explained that the Domestic Violence General Orders now embed that the person most in need of protection is the one who is subject to the greatest amount of harm:

It is not necessarily the person who is showing anger in this particular moment or upset while the other party is not. So they should see beyond that. These are the aspects we have started to train for. It goes into saying that such harm may be due to any number of abusive behaviours, including physical and/or sexual violence, coercive control, threats, intimidation, emotional abuse, stalking and isolation.⁴¹

4.44 ANROWS argued that the legal system needs to distinguish between couple fighting and coercive control in First Nations communities, or unnecessarily risk 'bringing First Nations women engaging in incident-based violence into the legal system'. It suggested:

To avoid the over-incarceration of First Nations women, [there needs to be] a consistent definition of [domestic and family violence] across legislative and policy settings Australia-wide that sets the context for how to understand coercive control as a gendered, overarching context for a range of [domestic and family violence] behaviours. It is vital that this definition makes it clear that physical and non-physical aggression between couples is not necessarily coercive control.⁴²

4.45 The Australian National University's Law Reform and Social Justice Research Hub expressed reservations about the outcomes of coercive control legislation:

Without adequate policing training that dismantles...unconscious racism and sexism in domestic violence scenarios and with the combined deep consultation from First Nations representatives, coercive control will fail to have the holistic approach it seeks to achieve.⁴³

³⁹ Ms Rachael Ozanne-Pike, Lawyer, North Queensland Women's Legal Service, *Committee Hansard*, 2 November 2023, p. 10.

⁴⁰ Ms Zara O'Sullivan, Acting Managing Solicitor, Domestic Violence Legal Service, *Committee Hansard*, 18 April 2024, p. 12.

⁴¹ Acting Assistant Commissioner Sachin Sharma, Domestic Violence and Youth Service Portfolio, NT Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024, p. 43.

⁴² Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 4.

⁴³ Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, p. 6.

4.46 The VALS observed that, as coercive control is so complex, there is:

...a high potential for police to misinterpret self-defensive actions or coping mechanisms as forms of abuse. Refusing to talk to someone who persistently emotionally degrades you, or verbally abusing someone in reaction to that abuse, could be misidentified by police as tactics of coercive control.⁴⁴

Discriminatory and racist attitudes

4.47 The committee received information that authorities continue to hold discriminatory and racist attitudes, which impede investigations of missing and murdered First Nations women and children. For example, the AHRC commented on the 'discriminatory treatment of First Nations women and children by the policing and justice systems throughout Australia'.⁴⁵ It saw this as:

...an ongoing problem...that manifests as a range of acts and omissions that undermine equal enjoyment of human rights. Within this, there are clear and documented instances where discrimination has taken the form of substandard investigations into missing and murdered First Nations women and children.⁴⁶

4.48 The Partnership for Justice in Health reported on accounts from First Nations families that consistently show:

- authorities fail to respond to our concerns
- calls for help are dismissed and ignored
- when reporting violence or persons missing, we are met with claims that the victim is 'itinerant' or has 'gone walkabout'
- the concerns of our women, children and communities are not listened to or considered worthy of investigation.

In essence, whilst seeking help during the most vulnerable of times our people are subjected to negligence, further violence, trauma and harm...Time and time again, our people are criminalised or perceived as the problem while authorities working in our public institutions are not held to account for failing to do their jobs to care, protect and serve.⁴⁷

4.49 Other submitters and witnesses agreed that there is systemic racism within police forces, as evidenced by police behaviour and responses to First Nations

⁴⁴ Victorian Aboriginal Legal Service, *Submission 59*, pp. 14–15. Also see: Ms Rachael Ozanne-Pike, Lawyer, North Queensland Women's Legal Service, *Committee Hansard*, 2 November 2023, p. 12, who said that coercive control often results in women changing contact in protection orders.

⁴⁵ Australian Human Rights Commission, *Submission 34*, p. 7.

⁴⁶ Australian Human Rights Commission, *Submission 34*, p. 7.

⁴⁷ Partnership for Justice in Health, *Submission 8*, pp. 1–2. Also see: Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 3.

women. At Toormina (NSW), Ms Rachael Cavanagh stated that First Nations women:

...quite often get turned away and not taken seriously, or they are questioned about their behaviour and what they're doing. Responses from the police are very much, 'Oh, yeah, we know that house; they drink a lot,' and they don't turn up. There are situations where women are lying in the gutter, absolutely traumatised, and children are standing around their mothers, and the police are like, 'Yeah, we'll turn up when we do,' and sometimes they don't turn up at all. There are parts of our community that police just won't go into after a certain time in the evening.⁴⁸

- 4.50 Jumbunna referred specifically to the 1990–1991 murders of three children at Bowraville, New South Wales (the Bowraville murders). It suggested that the way in which the NSW Police treated the families and investigated the murders was 'a black/white issue':

Racial prejudice played a key role in the failures of the Original Investigation. At the outset, family members' attempts to report Colleen, Evelyn and Clinton missing were not taken seriously by the local police. Police officers responded to the families' distressed calls for action with racist remarks suggesting that the children, including four-year-old Evelyn, had 'gone walkabout', or that the families themselves were somehow responsible for their children's disappearances. In the case of Colleen, the Bowraville police took three months to take an official statement from her mother. Evelyn's mother was treated as a suspect from the beginning, with police suggesting that she was an unfit mother and that she had sold her daughter. Despite being the third child to go missing in a five-month period, Clinton's disappearance received limited attention from the Bowraville police, and 'the search was principally shouldered by his family'...Michelle Jarrett argued that 'if the police had have listened to Colleen's family, Evelyn and Clinton might still be with us...If they had done this properly in the first place, we wouldn't be sitting here all these years later'.

Following Clinton's disappearance, the Child Mistreatment Unit was assigned to the case, and the families were subjected to further blame and racially-driven stereotypes regarding their capacity to care for their own children. The families have long held the belief that if Colleen, Evelyn and Clinton had been white, the investigation would have handled completely differently.⁴⁹

- 4.51 The VALS similarly argued that the investigation clearly treated the murdered First Nations children and their families as less important than non-Indigenous people:

⁴⁸ Ms Rachael Cavanagh, private capacity, *Committee Hansard*, 22 February 2023, p. 6. Also see: North Australian Aboriginal Family Legal Service, *Submission 40*, p. 8; Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser, First Nations Women's Legal Service Queensland, *Committee Hansard*, 2 November 2023, p. 3, who said that domestic violence and the safety of women is not seen as a policing priority.

⁴⁹ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 40.

The murders were initially poorly investigated, and evidence was “pursued with no great urgency”. The police began investigating the families' circumstances, with a view that the families themselves were in part responsible for the murder of the children. The families of the children continue to seek justice for their babies and continue to advocate for the investigation to be properly conducted...These failures by police make it clear to First Nations people that in the eyes of the police Aboriginal children are less important than non-Indigenous children.⁵⁰

- 4.52 Ms Delphine Charles, sister-in-law of one of the murdered Bowraville children, commented:

I don't think the police who investigated Clinton's death cared. They didn't care because he was black. If they had done their job and investigated properly at the time, we would not have to keep fighting for justice. We see other kids go missing and their disappearances are taken seriously. The fact the police thought our kids had gone walkabout shows the prejudice that they had about our case.⁵¹

- 4.53 Jumbunna's Professor Behrendt advised that the Bowraville murders illustrate how historic forces continue to 'lift contemporary outcomes':

...when they are concerned that something has happened to their children, there is a failure of systems to take them seriously. There was endemic prejudice in the way the police treated the families, which was deeply shrouded in racist assumptions... The biggest tragedy...is that those failures in the original investigation have not been able to be cured. The fact that the families are still fighting today for justice for their children is as a result of those failures. The fact that the system has not been able to address that and acknowledge that these terrible mistakes were made with devastating consequences to the families is a real indictment on the system.⁵²

- 4.54 The National Justice Project discussed the views of the Smith family (see Chapter 3):

The family of Mona and Cindy believe that the investigation that followed the deaths of their loved ones would have been conducted differently had it been two non-Indigenous girls found on the side of the road.⁵³

- 4.55 Professor George Newhouse, Chief Executive Officer of the National Justice Project (NJP), which has been assisting the Mullaley family, stated that there is a structural problem with police forces across Australia:

Like other police forces in our nation, the Western Australia Police Force has a military command structure. The WA police are focused not on the

⁵⁰ Victorian Aboriginal Legal Service, *Submission 59*, p. 5. Also see: Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 37.

⁵¹ Ms Delphine Charles, *Submission 48*, p. 2.

⁵² Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2024, p. 11.

⁵³ National Justice Project, *Submission 78*, p. 17.

individual but on the 'community'. To the WA police, like most others around our nation, the community is people who look like them.⁵⁴

- 4.56 Professor Newhouse pondered how police forces can be encouraged to see individuals at the heart of each First Nations interaction. In his view, you cannot appeal to police on the basis that the victim is a human being because often the victim is also a perpetrator, and police see the perpetrators as the 'baddie':

On the night that George Campbell disappeared, he was in a high-speed police chase. He's a baddie—that's the logic. So when the family are saying: 'Could you please go looking for him? The river's up, and he was last seen by the river?' there's not the same level of empathy. It's part of the culture of policing. They need to have some focus on the individual, even the perpetrator... There needs to be a duty of care on police to investigate. Police know they have no duty of care... So it's not something that they're taught to care about. There does need to be a real cultural shift in policing to address that issue. Not every young kid who's in a high-speed chase is evil. And when they go into a river, you need to go and look for them... With hospitals and health care, you can actually convince the system to focus on the individual. It's harder with police.⁵⁵

- 4.57 Professor Newhouse and Professor Craig Longman, Professor of Practice at Jumbunna, told the committee that police services do not acknowledge that there is racism within their organisations. Professor Longman ruminated:

[H]ow do we deal with racism in Australia? What we probably do need among some of those institutions, like the police, is much more courage to just say, 'Yes, something is deeply wrong here; this is not the version of policing we want to be doing'.⁵⁶

- 4.58 Mr Brendan Thomas, Deputy Secretary, acknowledged that 'in the Department of Communities and Justice, racism is a problem' and has been for some time:

Every year in New South Wales there's a survey that's done of staff right across the Public Service... In our department, quite a significant proportion of staff talked about experiencing racism in the workplace as a key issue for them, particularly Aboriginal staff... As a result of that, I led a task force inside the department to look at the nature and scope of this problem in DCJ and what we are going to do about it... That task force concluded its

⁵⁴ Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 4 October 2023, p. 39.

⁵⁵ Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 28 July 2023, p. 67.

⁵⁶ Professor Craig Longman, Professor of Practice, Jumbunna Institute for Indigenous Education and Research, University of Technology, Sydney, *Committee Hansard*, 28 July 2023, p. 68. Also see: p. 66; Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 28 July 2023, p. 64.

examinations earlier this year. We've developed...a strategy that we've got to really try and root racism out of the organisation.⁵⁷

- 4.59 Mr Thomas said that there is not a lot of evidence about effective strategies to eliminate structural racism within organisations.⁵⁸ However, for the department, a number of profound changes are required, the first of which is:

...a truth-telling process where we're openly talking about racism in the organisation and we give people the opportunity to do that in a safe way so that it does come out and there's nowhere to hide from the racism in the organisation. We need a profound change to the way we deal with those things when they do come out. Racism is not an interpersonal dispute, and it can't be dealt with that way. It needs to be dealt with properly and effectively as the awful, pernicious problem that it is.⁵⁹

- 4.60 Systemic racism and discrimination have been identified in other Australian jurisdictions. For example, in 2022, the Queensland Government established an Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence (the Commission).⁶⁰ The Commission's report (the *A Call for Change* report) stated:

...the Commission has 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. Where complaints in relation to such treatment are brushed aside or dealt with in the most minor of ways and those who complain are the ones who are shunned and punished. It is hardly surprising that these attitudes are reflected then in the way that those police who hold them respond to victim-survivors. It is a failure of the leadership of the organisation that this situation has been allowed to continue over many years unchecked.⁶¹

- 4.61 Some inquiry participants highlighted the intersectionality of the discrimination experienced by First Nations women. For example, Dr Jennie Gray, Chief Executive Officer, Women's Legal Service WA, referred to the 'fundamentally

⁵⁷ Mr Brendan Thoms, Deputy Secretary, Transforming Aboriginal Outcomes Division, Department of Communities and Justice (NSW), *Committee Hansard*, 28 July 2023, p. 55.

⁵⁸ Mr Brendan Thoms, Deputy Secretary, Transforming Aboriginal Outcomes Division, Department of Communities and Justice (NSW), *Committee Hansard*, 28 July 2023, p. 55.

⁵⁹ Mr Brendan Thoms, Deputy Secretary, Transforming Aboriginal Outcomes Division, Department of Communities and Justice (NSW), *Committee Hansard*, 28 July 2023, p. 55.

⁶⁰ Commissions of Inquiry Order (No. 2) 2022, *Queensland Government Gazette*, 11 May 2022, (Vol. 390), No. 6, p. 23; 'Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence', www.qpsdfvinquiry.qld.gov.au/ (accessed 27 February 2024).

⁶¹ Commission of Inquiry into Queensland Police Service responses to domestic and family violence, *A Call for Change*, 2022, p. 11. Also see: Women's Legal Service NSW, *Submission 21*, p. 4, which noted similar findings in the 2020 *Wiyi Yani U Thangani (Women's Voices)* project; First Nations Women's Legal Services Queensland, *Submission 38*, p. 15; North Australian Aboriginal Family Legal Service, *Submission 40*, p. 8, who noted the Commission's comments on the common use of derogatory and dehumanising remarks to women victim-survivors.

different' way First Nations women experience family, domestic and sexual violence (FDSV):

To understand family violence in Aboriginal communities, we must take an intersectional approach and understand and accept that racism, intergenerational trauma and history, socioeconomic disadvantage, poverty, geography and gender all impact on First Nations women's experience of [FDSV]. When considered alongside ageism, disability discrimination, classism, homophobia and transphobia, all of which exacerbate experiences of violence, only then can we begin to comprehend the additional barriers and risks for First Nations women.⁶²

- 4.62 The Queensland Aboriginal and Islander Health Council (QAIHC) contended that Priority Reform 3 of the National Agreement (Transforming Government Organisations) recognises the need to identify and eliminate institutional racism within government organisations. It expressed concern about implementation of this reform:

QAIHC is concerned about the progress toward implementation of this priority reform, noting that the Annual Data Report released by the Productivity Commission in July 2022 states that progress on priority reforms cannot yet be reported and that developing measures to report on progress is currently in early stages.⁶³

- 4.63 On 5 September 2022, a coronial inquest into the death of Kumanjayi Walker commenced in Alice Springs.⁶⁴ The inquest heard evidence of communications between NT police officers that were 'described as 'threatening' and 'blatantly racist'. Dr Ian Freckleton AO KC, representing the NT Police Force, 'told the coroner the messages were 'repugnant' and 'do not represent the values of the Northern Territory Police Force or of most members of that force'.⁶⁵
- 4.64 Commissioner Michael Murphy APM stated that 'inquiries will be undertaken' in relation to allegations of racism within the NT Police Force. Those inquiries

⁶² Dr Jennie Gray, Chief Executive Officer, Women's Legal Service WA, *Committee Hansard*, 4 October 2023, p. 37. Also see: Ms Stephanie Monck, Principal Legal Officer, Women's Legal Service WA, *Committee Hansard*, 4 October 2023, p. 41, who said that First Nations women 'face double discrimination: they face discrimination for being a woman and they face discrimination because they're Aboriginal and/or Torres Strait Islander.

⁶³ Queensland Aboriginal and Islander Health Council, *Submission 7*, p. 6.

⁶⁴ Department of the Attorney-General and Justice, *Kumanjayi Walker coronial inquest*, no date, www.justice.nt.gov.au/attorney-general-and-justice/courts/inquests-findings/kumanjayi-walker (accessed 5 June 2024).

⁶⁵ Samantha Jonscher, 'Blatantly racist' and 'disgraceful' texts between Zachary Rolfe and colleagues read out at Kumanjayi Walker inquest', *ABC News*, 14 September 2022, www.abc.net.au/news/2022-09-14/zachary-rolfe-racist-texts-kumanjayi-walker-coronial-inquest/101437236 (accessed 5 June 2024)

could involve an investigation by the NT Independent Commissioner Against Corruption.⁶⁶

4.65 Ms Karen Iles, Director and Principal Solicitor of Violet Co Legal & Consulting, reflected on the outcome of this discrimination. She informed the committee that 'the issue of unresolved trauma caused by a complete lack of access to our justice system—a system that is gate-kept by police—comes up a lot' in her work with First Nations communities.⁶⁷

4.66 Ms Iles contended that, while there are professional police officers who perform their job without discrimination, First Nations people will continue to distrust police forces until systemic discrimination and racism are addressed:

Of course there can be training, and there has been for decades. Of course there are individual police officers who are doing a fabulous job, and I'm sure that those First Nations officers who are sitting behind me in this inquiry today are doing a fabulous job. However, inquiry after inquiry finds that, systemically, the police force consists of sexist, misogynist and racist culture. We can never get justice. Until that is resolved, police are not safe for many Aboriginal and Torres Strait Islander victims and their families to deal with.⁶⁸

4.67 More broadly, Ms Patty Kinnersly, Chief Executive Officer of Our Watch, said that 'very little of our work will end up taking purchase' until such time as 'we challenge systemic racism across the country':

Until we are in a position where our systems are not systemically retraumatising Aboriginal and Torres Strait Islander people by being inherently racist...[T]he retraumatisation and intergenerational trauma will continue to exist while in this country we are not dealing with systems of oppression in practical and genuine ways and holding people to account. It's hard for us to unpick that, because as a community that still sees itself as a non-Aboriginal community, we don't like the inference that our systems are inherently racist or discriminatory...[W]e need to change the soup that we all live in.⁶⁹

4.68 Ms Singh shared this view:

...there's a whole mindset about Aboriginal people and, in particular, Aboriginal women and Aboriginal children that this country has had cultivated since day 1 of invasion...It's about how this country sees

⁶⁶ Jack Hislop, 'Investigation announced into NT Police racism claims from Zachary Rolfe during Kumanjayi Walker inquest', *ABC News*, 27 February 2024, www.abc.net.au/news/2024-02-27/investigation-nt-police-racism-claims-from-zachary-rolfe/103515516 (accessed 5 June 2024).

⁶⁷ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal & Consulting, *Committee Hansard*, 20 February 2024, p. 1.

⁶⁸ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal & Consulting, *Committee Hansard*, 20 February 2024, p. 3.

⁶⁹ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, pp. 12–13.

Aboriginal women and Aboriginal children not as equals to every other woman and every other child and every other being in this country, worthy of protection, love and safety and all of the things— worthy of potential, care and investment.⁷⁰

Australian police services

- 4.69 Former NSW police officer Mr Jubelin expressed a view that ‘police are making an effort to improve their response to First Nations related matters but there is still room for improvement’. He added:

...quite often in policing we make progress in relation to how we deal with these matters, but then the ball's dropped when another issue becomes the priority within the policing organisation...[E]ducation and training play a key role in fixing the disparity between how investigations are run depending on who the victim is. We need to ensure that all victims, and this is a fairly obvious statement, are treated equally regardless of race or socio-economic standing.⁷¹

- 4.70 Police services advised that their policing responses do not distinguish between First Nations women and children and their non-Indigenous counterparts.⁷²

- 4.71 Mr Peter Crozier, Deputy Chief Police Officer for ACT Policing at the Australian Federal Police (AFP), said that ‘if a matter is reported...there is no difference in the way that police should respond...The service that we provide the community has to be provided to all equally’.⁷³

- 4.72 Superintendent Christopher Nicholson, Commander, Crime Prevention Command in the NSW Police Force, similarly stated:

With regard to racism, the NSW Police Force does not and will not tolerate racism, discrimination and bias within its ranks. We commit to treating all persons within New South Wales with dignity, fairness and respect...Whilst we acknowledge much work is yet to be done, progress is being made through listening to your voices, learning from past mistakes and embracing a shared vision for a safe and inclusive relationship between the NSW Police Force and the New South Wales Aboriginal and Torres Strait Islander community.⁷⁴

⁷⁰ Ms Meena Singh, Commissioner for Aboriginal Children and Young People, Commission for Children and Young People (Victoria), *Committee Hansard*, 18 June 2024, p. 27.

⁷¹ Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, p. 17.

⁷² See, for example: Northern Territory Police, Fire and Emergency Services, *Submission 5*, p. 4; Tasmanian Government, *Submission 57*, pp. [5–7].

⁷³ Mr Peter Crozier, Deputy Chief Police Officer, Australian Capital Territory Policing, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 30. Also see: p. 35, where Mr Crozier stated that the best practice guide should ensure that there is no bias in police responses.

⁷⁴ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 11. Note: Superintendent Nicholson stated that there are strong complaints management processes that would manage misconduct (such as racism): p. 15.

- 4.73 Superintendent Nicholson refuted that racism is rife within the NSW Police Force: 'that behaviour is absolutely not tolerated'. He described the role of the Police Aboriginal Strategic Advisory Council (PASAC), comprised of senior public servants and non-government organisations:

They conduct an inward look at how we do the business. We put ourselves out there openly and transparently to them as part of what we're doing in terms of our structure, our framework, our training and our people strategy et cetera. [The Australia New Zealand Policing Advisory Agency] arrangements are built into our PASAC arrangements.⁷⁵

- 4.74 Superintendent Kerry Johnson from the Queensland Police Service recognised that some First Nations communities mistrust police:

Some communities we work really well with, and in other communities there are tensions and there are issues. I would concede that across the board there are hits and misses—in some areas we do well and in some areas we don't...But as an observation around it—and I base it on the fact that we meet with the 15 discrete mayors and the two Torres Strait shire mayors twice a year—we have a lot of discussions. Do issues come out of that? Of course they do. There is some genuine discussion that goes on there. So I'm not going to say no to that, but I think that's a massive generalisation across the board, because there's a lot of communities where it works really well.⁷⁶

- 4.75 Mr Crozier argued that police services:

...have to recognise some of the reasons why people may not choose to come forward to report matters to us. That is very much on the police. That is something that we need to recognise, and we need to recognise what we can do better to be able to encourage, to build the relationships, to understand some of the challenges that people may have, to create whatever form of trust we can to encourage people to think, 'Yes, the police are here to help us.' So that certainly is on us. I can only speak for ACT Policing and the AFP; I can't speak for the situation that occurs in other state and territory police forces. What I can say is that, speaking to my colleagues across the country, that is something we all recognise we need to do.⁷⁷

- 4.76 Mr Jason Kennedy, Commander of Professional Standard at the AFP, also acknowledged that First Nations people consider that 'they receive a different type of police service' if they identify as Aboriginal or Torres Strait Islander.

⁷⁵ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 15.

⁷⁶ Mr Kerry Johnson, Superintendent, First Nations Division, Queensland Police Service, *Committee Hansard*, 20 February 2024, p. 10.

⁷⁷ Mr Crozier, Australian Capital Territory Policing, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 31.

He emphasised the need to build community trust, such as through the development of engagement protocols.⁷⁸

Building relationships and trust

4.77 Mr Jubelin referenced specific community activities involving First Nations communities and the NSW Police Force (such as the work of Tribal Warrior in Redfern, Sydney). In his view, these types of activities are integral to breaking down barriers and increasing trust in police:

...if we look at the bigger scale and invest efforts into that type of community activity, breaking down the barriers, I think the rewards and the types of problems that we're talking about here will be overcome. It's hard to shift the culture in an organisation like a law enforcement agency. But we're all human, regardless of whether we're wearing a uniform or not. If we can break that down so relationships are built, then, when someone walks into a police station, someone in the police station might actually know the person or have spent time with the person, and therefore the report of the crime or potential crime is taken more seriously.⁷⁹

4.78 Mr Phillip Hall, the Chief Executive Officer of the Bowraville Local Aboriginal Land Council, highlighted that police resourcing can also contribute to the problem, with a constant 'migration of police' in the local area: 'these young police don't understand the situation of Aboriginal people. There's a big, big problem with that'.⁸⁰

4.79 The AFP acknowledged that community engagement opportunities build trust, which enables police to work with communities to 'do things differently', however, 'one size does not fit all'.⁸¹

4.80 Ms Lesa Gale, Acting Deputy Commissioner Operations at the AFP, advised that the AFP is working towards fostering a diverse and inclusive organisation and culture. Its measures include the AFP's First Nations Advisory Board, a targeted First Nations employment strategy, and the AFP First Nations Unit:

The AFP First Nations Unit was established to promote full and unhindered First Nations participation in the AFP workforce, as well as to inform the provision of culturally competent policing services to the Australian community. The First Nations unit continues to work with external partners

⁷⁸ Mr Jason Kennedy, Commander, Professional Standards, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 32.

⁷⁹ Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, p. 20. Also see: p. 19.

⁸⁰ Mr Phillip Hall, Chief Executive Officer, Bowraville Local Aboriginal Land Council, *Committee Hansard*, 21 February 2023, p. 4.

⁸¹ Mr Peter Crozier, Deputy Chief Police Officer, ACT Policing, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 34. Also see: Ms Hilda Sirec, Acting Assistant Commissioner Northern Command, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 33; Mr Jason Kennedy, Commander, Professional Standards, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 34.

to develop a cultural competency program to enhance opportunities for First Nations people to share their lived experiences with non-First nations members.⁸²

4.81 The NSW Police Force has an Aboriginal Strategy and Coordination Team within its Crime Prevention Command. That team 'provides a specialist cultural lens in the development of culturally considered corporate policy, training, information and engagement with Aboriginal communities'.⁸³ Members of the team are identified Aboriginal personnel who are closely connected to their community. They consult with Aboriginal Community Liaison Officers and the Aboriginal Employee Network to develop training programs that address the needs of Aboriginal communities within NSW.⁸⁴

4.82 The NSW Police Force also collaborates with First Nations communities through:

...97 Police Aboriginal Consultative Committees (PACC) which meet four times a year. These meetings are attended by Police, local Government and non-government agencies, and members of the local Aboriginal community. They provide opportunity for local Aboriginal people to raise issues and concerns in relation to crime and policing within their community.⁸⁵

4.83 Mr Douglas from the Kempsey Local Aboriginal Land Council acknowledged that NSW Police has a consultation mechanism (the PACC). However, in his view, this mechanism is not producing any change:

I've found, with the number of committees that are formulated in our community—and it may be the same or a consistent thing in other communities—and that we get involved with, it's like you're put back in an eternal whirlpool and we're just talking about the same things all of the time. It seems like matters of real concern don't really get aired, even though they're spoken about much in each of those.⁸⁶

⁸² Ms Lesa Gale, Acting Deputy Commissioner Operations, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 28.

⁸³ NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023).

⁸⁴ NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023). Note: from students at the academy through to the Commissioner of Police, all officers receive training that is led and delivered by First Nations people. To develop this training, the Aboriginal training team engages directly with Aboriginal communities: Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 12.

⁸⁵ NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023).

⁸⁶ Mr Greg Douglas, Chief Executive Office, Kempsey Local Aboriginal Land Council, *Committee Hansard*, 21 February 2023, p. 3.

Police policies, guidelines and investigation practices

- 4.84 Police representatives discussed the policies, guidelines and investigation practices that guide their work.
- 4.85 The NSW Police Force advised that the Missing Persons Registry (MPR, formerly the Missing Persons Unit) operates under Standard Operating Procedures that were written in 2019. Detective Inspector Ritchie Sims, State Crime Command, MPU, described how police now respond to missing persons reports, including the use of a computerised risk assessment tool, whose assessment is then reviewed by a sergeant.⁸⁷
- 4.86 Victoria Police submitted that its policies and procedures are published in the Victoria Police Manual. This manual sets out mandatory behavioural, operational and administrative standards, some of which are supplemented by related procedures and guidelines.⁸⁸
- 4.87 Victoria Police advised that it does not have any policies, guidelines or investigative practices that specifically deal with missing or murdered Aboriginal women and children. However, a person's Aboriginality or ethnicity influences how officers approach an investigation, such as whether investigators seek cultural advice and knowledge from an Aboriginal Community Liaison Officer or Police Aboriginal Liaison Officer for assistance.⁸⁹

Reducing violence and increasing safety

- 4.88 State and territory police forces variously commented on actions and initiatives that they have undertaken, or are involved in, to reduce violence and increase the safety of First Nations women and children. This section focuses on that engagement with First Nations communities.
- 4.89 The *Wiyi Yani U Thangani (Women's Voices)* report states that a criminal justice system that evokes fear in First Nations women and girls cannot be a system that protects them:

Aboriginal and Torres Strait Islander women are calling for greater cultural competence of police and for a space where equal partnerships between community and police can be developed to create community-led solutions. They want to see creativity and collaboration to develop effective

⁸⁷ Detective Inspector Ritchie Sims, State Crime Command, Missing Persons Registry, NSW Police Force, *Committee Hansard*, 28 July 2023, pp. 20–21.

⁸⁸ Victoria Police, *Submission 52*, p. 5. Note: the submission specifically references the Crime Investigative Guidelines—Suspicious Deaths, which sets out the only reference to Aboriginality or ethnicity considerations when investigating a homicide: p. 7.

⁸⁹ Victoria Police, *Submission 52*, pp. 5–6.

diversionary programs, alternative sentencing options, and justice reinvestment.⁹⁰

4.90 The National Indigenous Australians Agency (NIAA) and the Attorney-General's Department (AGD) reflected the concerns raised in the *Wiyi Yani U Thangani (Women's Voices)* report in relation to 'a lack of urgency, intent and competency during investigations', leading to unresolved cases.⁹¹

4.91 Victoria Police recognised that 'a culturally sensitive police response is integral to reducing violence and increasing the safety of Aboriginal women and children'. It identified specific guidance that supports its employees to respond appropriately to First Nations women and children affected by family violence. This includes the Police and Aboriginal Community Protocols Against Family Violence:

One of the key strategies to address family violence in Aboriginal communities are the Police and Aboriginal Community Protocols Against Family Violence (PACPAFV). The PACPAFV is a trilateral partnership between Dhelk Dja, the Aboriginal Justice Forum and VP that outline how police and community work together to best respond to family violence where a person identifies as Aboriginal. The Protocols ensure that at a family violence incident, police determine if any participant identifies as Aboriginal to ensure that people have access to a culturally safe referral and the choice of referral to either an Aboriginal or Non-Aboriginal support agency.⁹²

Cultural awareness training

4.92 In 2021, the National Summit on Women's Safety (see Chapter 6) called for the National Plan to End Violence against Women and Children 2022–2032 (the National Plan) to work on certain priorities. One such priority is to 'ensure there is training and workforce development across sectors such as police, justice systems, health care and frontline services'.⁹³

4.93 The National Plan specifically recognises:

The legal and justice systems are not well adapted or informed to respond effectively to the interlocking and compounding forms of violence Aboriginal and Torres Strait Islander women experience. More work is

⁹⁰ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p. 166.

⁹¹ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 5.

⁹² Victoria Police, *Submission 52*, p. 10.

⁹³ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022–2032*, 2022, p. 25, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 1 March 2024).

needed to educate and develop the legal and justice systems, particularly at the frontline of policing.⁹⁴

4.94 As noted earlier, state and territory police services have instituted cultural awareness training to improve relationships and trust with First Nations communities.⁹⁵ The NSW Police Force provided further detailed information in response to questions on notice (also see evidence given to the NSW Coroner at paragraph 3.77),⁹⁶ as did the Queensland Police Service.⁹⁷

4.95 Police representatives also recognised that trust could be fostered through engagement programs that are tailored to local communities. For example, the AFP acknowledged that working with communities on self-determined solutions presents opportunities to build trust:

Whether or not it's about police having guns going into certain communities or doing other things, or going in in uniform or plain clothes or whatever that would be, I think the best way for us to address it is not a one-size-fits-all. If there are options and we're working with community and liaison officers who are giving context on both sides, we've got some opportunities to do things differently.⁹⁸

4.96 Ms Hilda Sirec, Acting Assistant Commissioner Northern Command of the AFP, highlighted how that organisation has engaged with communities in the Northern Territory to identify better prevention initiatives for those communities:

...for instance, tailoring our ThinkUKnow program so it's bespoke to the communities. In some of the communities, sport was a wonderful way to engage with children and elders, and other opportunities with art and creativity were another way. We identified that not one program will fit all. We really needed to engage with our stakeholders in those communities to tailor that.⁹⁹

⁹⁴ Commonwealth of Australia, *National Plan to End Violence against Women and Children 2022–2032*, 2022, p. 42.

⁹⁵ See, for example: Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 11; Mr Alan Dewis, Executive Director, First Nations Division, Queensland Police Service, *Committee Hansard*, 20 February 2024, p. 9; Acting Assistant Commissioner Sachin Sharma, Domestic Violence and Youth Service Portfolio, Northern Territory Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024, p. 38.

⁹⁶ NSW Police Force, answers to spoken questions on notice, 28 July 2023 (received 22 August 2023), see: pp. 1–4.

⁹⁷ Queensland Police Service, answers to spoken questions on notice, 20 February 2024 (received 22 March 2024), see: pp. 3–7.

⁹⁸ Mr Peter Crozier, Deputy Chief Police Officer, Australian Capital Territory Policing, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 33.

⁹⁹ Ms Hilda Sirec, Acting Assistant Commissioner Northern Command, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 33. Also see: Mr Jason Kennedy, Commander Professional

- 4.97 Acting Senior Sergeant Dylan O'Connor-Mitchell, Community Resilience and Engagement Command, NT Police, described how that command engages and works with communities:

My team in Darwin consists of First Nations police officers, from sergeants to constables to ACPOs, and then also ALOs. They will proactively go into the community. Obviously, a lot of them have grown up there; they have the lived experiences in the communities. They've already got the connections, as all First Nations people do. They inject themselves into programs like the Stars Foundation—or the Clontarf Foundation, which is focused on First Nations youth, women and men—to try to break down barriers and have positive engagements with police...We do a lot of not just community engagement but also going to big events or working with organisations. We do a lot of mediation.¹⁰⁰

- 4.98 The AFP provides its recruits with mandatory 'Cultural Health and Competency Program (CHCP) online modules in addition to the Cultural Awareness training program'.¹⁰¹
- 4.99 The AFP submitted that, following a 2021 review by the Commonwealth and ACT Ombudsmen, its 'Cultural Connections' training will be replaced by a new stand-alone program that is specific and relevant to the First Nations community in the ACT region.¹⁰²

- 4.100 The AFP recognised that more collaboration is required:

...across the Commonwealth, States and Territories to eliminate all forms of violence experienced by First Nations women and children...There is more work to be done, and the AFP acknowledges that our partnerships and close engagement with the First Nations community are critical to success in this space.¹⁰³

- 4.101 ACT Policing representatives advised that officers receive ongoing training from recruitment. This is provided formally through independent contractors, as well as informally (experientially) by the First Nations Unit and First Nations Liaison Officers.¹⁰⁴

Standards, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 34, who noted other examples of individuals and programs that resonated with the community.

¹⁰⁰ Acting Senior Sergeant Dylan O'Connor-Mitchell, Community Resilience and Engagement Command, NT Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024, pp. 38–39.

¹⁰¹ Australian Federal Police, answers to questions on notice, 5 October 2022 (received 11 November 2022).

¹⁰² Australian Federal Police, *Submission 4*, pp. 4–5.

¹⁰³ Australian Federal Police, *Submission 4*, p. 12.

¹⁰⁴ Ms Lesa Gale, Acting Deputy Commissioner Operations, Australian Federal Police, and Mr Peter Crozier, Deputy Chief Police Officer, ACT Policing, Australian Federal Police, *Committee Hansard*, 5 October 2022, pp. 30–31. For further details, see: Australian Federal Police, answers to questions on notice, 5 October 2022 (received 11 November 2022), p. 1 and Attachment 2.

4.102 Similarly, NT Police, Fire and Emergency Services discussed enhanced cultural awareness training, which aims to help assure First Nations communities that they will be heard:

Dr Brown and her team have been the central force behind the research and introduction of prevent, assist and respond training, which we call PART. This is a five-day training course created by Tangentyere Council Aboriginal Corporation and delivered to all police recruits. In addition, 10 online PART modules have been created and are in the process of being implemented for staff. Tangentyere is requesting government funding to provide ongoing delivery of the face-to-face program to police and health workers, but, in the meantime, we are funding it, and we have started delivering this training to our recruits.¹⁰⁵

4.103 Victoria Police advised that 'foundation level training' is provided to recruits at the Police Academy, to instil the knowledge, skills and attributes required to work with Aboriginal community members when recruits begin their duties.¹⁰⁶

4.104 In addition, from 2022, Victoria Police sworn employees (police and protective service officers) have been required to complete the Aboriginal Cultural Awareness Training package developed by the Aboriginal Community Liaison Officers:

This package addresses intricacies such as intergenerational trauma, Stolen Generation, appropriate identification of Aboriginal people and understanding kinship structures in the family violence context.

ACLOs and other Aboriginal employees across the State have been presenting the content and sharing their experiences. This process has been supported by the Divisional Training Officers. Planning is underway to video record Aboriginal employee's truth telling experiences to expand the program and minimise further trauma to Aboriginal employees.

Feedback from employees who have participated has been overwhelmingly positive of both the content and the integrity of the information that our Aboriginal employees are delivering to participants.¹⁰⁷

4.105 Ms Nerita Waight, Chief Executive Officer of VALS, acknowledged Victoria Police's initial induction training which is supplemented by mandatory training annually. She suggested:

...mandatory training and those refresher courses should also be focused on things that they need to work on, such as racism, gender, family violence and mental health...It's fairly important that it's not simple cultural

¹⁰⁵ Acting Assistant Commissioner Sachin Sharma, Domestic Violence and Youth Service Portfolio, NT Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024.

¹⁰⁶ Victoria Police, *Submission 52*, p. 13.

¹⁰⁷ Victoria Police, *Submission 52*, p. 12.

awareness training but there is that focus on regular antiracism training, because they are two very different things.¹⁰⁸

4.106 Superintendent Nicholson reported that the NSW Police Force learned lessons from Bowraville that have informed its cultural training program:

All police now receive mandatory training in cultural awareness...I will say that the experience and the lessons learned by the police force from Bowraville actually feature as a part of that cultural awareness package. In fact, I'm happy to say for the record that it is my belief that Bowraville features in all levels of our cultural awareness training.¹⁰⁹

4.107 The cultural awareness training undertaken by police officers in NSW includes 'trauma informed practice and engagement with victims'.¹¹⁰ That trauma informed:

...training is delivered by identified Aboriginal personnel who either have lived familial experience or connection to the local community and a strong awareness of local trauma faced throughout the years of interactions with the NSWPF.¹¹¹

4.108 Superintendent Nicholson explained that the training provided to NSW police officers goes beyond cultural awareness. He stated that the NSW Police Force has used the lessons from Bowraville to go:

...above and beyond what I would call cultural awareness. In our areas across New South Wales with high Aboriginal populations, we now have another two tiers of training on top of that. One is an induction package into those commands. The second is a deeper cultural awareness training.¹¹²

4.109 In addition to that training suite 'in those areas of high Aboriginal population', the NSW Police Force has:

...develop[ed] a two-way communication and consultation process among the Aboriginal community. Every year in those commands, commanders—superintendent level—assign and define inspectors of police, who are given an Aboriginal engagement portfolio. They are required to produce a community profile every year that must be updated and done in conjunction

¹⁰⁸ Ms Nerita Waight, Chief Executive Office, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, p. 35. Also see: p. 36, where Ms Waight clarified that that First Nations-led anti-racism training should be implemented.

¹⁰⁹ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 13. Note: the NSW Police Force provided further details about the cultural awareness training programs and materials it provides to its officers on notice, see: NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023).

¹¹⁰ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 24.

¹¹¹ NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023).

¹¹² Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 14.

with the local Aboriginal community. That must address all of the key issues facing that community. They then do a joint action plan among those communities. Again, it is a realistic and pragmatic action plan of what they can achieve in that 12-month period.¹¹³

4.110 As part of that consultation process, those commands are required to meet quarterly:

...with the Aboriginal community with support services in those communities. They come together to discuss all of those local issues that are occurring. They can be criminal based issues. They can also be systemic issues that the community is facing locally. They minute those meetings. They record those meetings. There must be defined outcomes that the local commander is held accountable for as part of those meetings.¹¹⁴

4.111 The Queensland Police Service established the First Nations Division in December 2023 '[t]o address First Nations cultural capabilities within the QPS'.¹¹⁵ The First Nations Division has established:

...the First Nations Advisory Group to build cultural capabilities through education, collaboration and consultation on strategies and objectives. The service is designed to improve policing outcomes for First Nations peoples and communities.¹¹⁶

4.112 Alice Springs-based Acting Sergeant Bradley Wallace described the increasing importance of ALOs and ACPOs in the NT Police:

...the use of our Aboriginal liaison officers and our Aboriginal community police officers in our investigations particularly and the domestic violence and child abuse areas has become more and more prevalent and more and more desired by the organisation. It's highly rated, and the skills that those people bring to the table for us can't be learned in a university or a school. I've personally used our senior Aboriginal liaison officer on multiple occasions to deal with high-level mediations in communities, the gathering of evidence and assisting us to speak with witnesses, and for use with language and cultural skills. It has made a massive difference in the process of our investigations.¹¹⁷

4.113 Some police forces advised that their First Nations officers provide cultural awareness training across government departments and agencies, as well as

¹¹³ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 14.

¹¹⁴ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 14.

¹¹⁵ Mr Alan Dewis, Executive Director, First Nations Division, Queensland Police Service, *Committee Hansard*, 20 February 2024, p. 9.

¹¹⁶ Mr Alan Dewis, Executive Director, First Nations Division, Queensland Police Service, *Committee Hansard*, 20 February 2024, p. 9.

¹¹⁷ Acting Sergeant Bradley Wallace, NT Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024, p. 39.

working nationally to improve First Nations outcomes in the criminal justice system. For example, the AFP submitted:

The First Nations Unit liaises regularly with counterparts from other state and territory policing jurisdictions (and international counterparts) to ensure a national discussion on improving First Nations outcomes in the judicial system.¹¹⁸

4.114 Dr Tessa Boyd-Caine, Chief Executive Officer, ANROWS, stated that QPS had approached her organisation to conduct a review of the domestic and family violence training provided by QPS. She indicated that the cultural awareness training provided by QPS has not been similarly reviewed. Dr Boyd-Caine suggested a review should answer questions such as:

...who's delivering the training, what's the cultural competency and a whole lot of other factors that we don't have line of sight over. And then, of course, the evaluation to impact. Our reflection of the literature and the evidence is that there is a lot of evidence about some things, but the really key questions about what works, the really key questions about what difference is being made—there is not yet evaluation to answer some of those questions.¹¹⁹

4.115 Ms Thelma Schwartz, Principal Legal Officer at the Queensland Indigenous Family Violence Legal Service (QIFVLS), critiqued the cultural awareness training provided by QPS. She argued that 'having QPS deliver what they believe is 'cultural capability training' is not the intent of Judge [Deborah] Richards recommendations' from the QPS commission of inquiry. Ms Schwartz stated that Judge Richards:

...expressly called on Aboriginal and Torres Strait Islander community controlled organisations, and experts, to come in and deliver that training. And we do that in relation to the five-day specialist course. In relation to access to police recruits, I'm not in that space; I don't know how they deliver training to police recruits or has vetted that training. But there are ways that they can start improving culture, and they haven't taken it.¹²⁰

4.116 Ms Schwartz continued that police officers should receive regular training, beginning when they are first recruited into the force. She maintained that police forces should ensure their training 'isn't a one-off; this isn't just self-managed, where they're just tuning into a webinar and ticking a box, or where we're all sharing screens and all sharing responses'.¹²¹

¹¹⁸ Australian Federal Police, *Submission 4*, p. 8. Also see: p. 5 (ACT Policing).

¹¹⁹ Dr Tessa Boyd-Caine, Chief Executive Officer, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, 20 February 2024, p. 38.

¹²⁰ Ms Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service, *Committee Hansard*, 20 February 2024, p. 39.

¹²¹ Ms Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service, *Committee Hansard*, 20 February 2024, p. 39.

4.117 ANROWS informed the committee that it 'has advocated for police education and training to be monitored and evaluated to assess whether it is effective. It is in the public interest that such evaluation be made publicly available'.¹²²

4.118 Dr Jane Lloyd, Director, Research and Evaluations, ANROWS, stated that while education and training is important, it should not be the only approach to address the mistrust of police forces among First Nations people:

...the evidence would suggest that training is important but not sufficient in cultural change in any system. Having leadership that demonstrates what you're trying to embody would be one; having a theory of change so that you have a shared understanding of the problem that you're trying to solve but also the different activities and mechanisms through which you are going to get that outcome. So it would never just be training alone, and you would need to have a way of tracking and monitoring your progress. You need a whole theory of change, whatever system you're dealing with.¹²³

First Nations representation in police forces

4.119 The NQWLS told the committee that employing First Nations people in local agencies or as officers/liaison officers helps to breakdown reporting barriers for First Nations women and girls. It submitted that 'people who understand the community and are known by the community help First Nations women and girls feel safe to make complaints or discuss issues'.¹²⁴

4.120 Mr Scott Lee, Assistant Commissioner Specialist Protective Command, said a key strategy is for First Nations people to be reflected in the AFP workforce, including at senior levels of the organisation. As at May 2022, 188 members identified as First Nations people, representing 2.5% of the total AFP workforce. Under its Diversity and Inclusion strategy 2023–2026, the AFP is aiming for three per cent First Nations representation by 2028, including at Senior Executive Service level.¹²⁵

¹²² Australia's National Research Organisation for Women's Safety, answers to questions on notice, 20 February 2024 (received 13 March 2024).

¹²³ Dr Jane Lloyd, Director, Research and Evaluations, Australia's National Research Organisation for Women's Safety, *Committee Hansard*, 20 February 2024, p. 39.

¹²⁴ North Queensland Women's Legal Service, *Submission 13*, p. 12. Also see: Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 3, who indicated that greater 'investment into Aboriginal specific recruitment within the police force is also very important. We need to see Aboriginal people within the layers of the justice system so that we know we have the confidence to work with a system that wasn't built for us but can actually have some cultural sensitivity about how it works with us when we are victim survivors of violence'.

¹²⁵ Mr Scott Lee, Assistant Commissioner Specialist Protective Command, Australian Federal Police, *Committee Hansard*, 5 October 2022, p. 32; Australian Federal Police, *Submission 4*, p. 9; Australian Federal Police, Diversity and Inclusion Strategy, 2023–26, p. 6, www.afp.gov.au/sites/default/files/2023-10/AFP-Diversity-and-Inclusion-Strategy2023-26.pdf

- 4.121 NTPFES provided information on the number of officers at various ranks within NT Police. Acting Assistant Commissioner Sharma advised that there are no First Nations Senior Sergeants (Acting Senior Sergeant O'Connor-Mitchell being a substantive Sergeant) and no First Nations officers beyond that level.¹²⁶
- 4.122 The NSW Police Force advised the committee that, as of 9 July 2023, there are 17 020 police officers in NSW.¹²⁷ Superintendent Nicholson shared statistics on the number of Aboriginal staff employed: 'there are 689 Aboriginal staff in New South Wales. Forty-two per cent of those staff are women'.¹²⁸
- 4.123 Superintendent Nicholson informed the committee that the NSW Police Force has an Aboriginal strategy and coordination team which is comprises 'seven Aboriginal people whose job it is to lead Aboriginal training across New South Wales'. He elaborated:
- ...that from the very top of our organisation, from the commissioner down, we have elevated Aboriginal engagement to tier 1 corporate sponsorship, which is the highest level of sponsorship that the organisation can have. It is led personally by our deputy commissioner of police.¹²⁹
- 4.124 Detective Superintendent Daniel Doherty advised that in NSW, a homicide or suspected homicide case involving a First Nations woman or child would always have an ACLO appointed to assist police investigating that case.¹³⁰ An ACLO is available to be deployed anywhere in NSW '24 hours a day, seven days a week, no matter where an incident occurs...if an ACLO is needed anywhere in the state, they will be there'.¹³¹
- 4.125 Superintendent Nicholson confirmed that the ACLOs appointed to homicide cases:

(accessed 21 March 2024). Note: there are targeted programs for First Nations people interested in joining the Australian Federal Police.

¹²⁶ Acting Assistant Commissioner Sachin Sharma, Domestic Violence and Youth Service Portfolio, NT Police, Fire and Emergency Services, *Committee Hansard*, 18 April 2024, pp. 41–42.

¹²⁷ NSW Police Force, answers to questions on notice, 28 July 2023 (received 22 August 2023).

¹²⁸ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 17. Note: Superintendent Nicholson advised that it is not mandatory for individual officers to report their Aboriginality and, as a result, the number of Aboriginal staff could be higher: p. 18.

¹²⁹ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, pp. 12–13.

¹³⁰ Detective Superintendent Daniel Doherty, State Crime Command, Homicide Squad, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 16.

¹³¹ Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 23.

...are always a member of the Aboriginal community. In most cases, they are a member of that local Aboriginal community. They have the direct connection with families. They have the direct culturally sensitive connection with family. They are the best judge always to breach the gap between the families and the police.¹³²

4.126 NSW Police acknowledged, however, that even with the involvement of ACLOs there may still be difficulties between police and First Nations people where confidence in police is lacking.¹³³

4.127 Commissioner Johnson discussed the LECC's review of the NSW Police Force's Aboriginal strategic direction. She commented that the review considered training (excluding cultural competency) and the efficacy of the ACLO role:

I think they are highly valued by the New South Wales police. There are significant duties, obligations and burdens for people who are employed at a grade 3 or 4 clerk level within the New South Wales public sector, which is one above base grade. They don't have their own cars. They don't have their own telephones. They are being asked to be the bridge in extraordinarily difficult circumstances, often across wide geographical areas.¹³⁴

4.128 The NJP expressed some scepticism about the impact of employing ACLOs:

...ACLOs are presented by the police as a solution to many problems, but they are disempowered and isolated individuals within police forces. There needs to be an alternative process such as a hotline available in all State and Territory police forces to speak to an empowered high ranking First Nations unit to get a "Second Opinion".¹³⁵

4.129 The NJP was critical of the NSW Police Force's Aboriginal Strategic Direction and questioned whether there would be any meaningful change in state and territory police forces:

...the NSW Police...seem sincere but there is **NO systemic change to the operations and culture of the police force**. Those in power (particularly the police) do not listen to First Nations people...[The] current Aboriginal Strategic Direction...is a plan without teeth or meaningful outcomes, it is window dressing. There are no key performance indicators...that require

¹³² Superintendent Christopher Nicholson, Commander, Crime Prevention Command, NSW Police Force, *Committee Hansard*, 28 July 2023, pp. 16–17.

¹³³ Detective Inspector Ritchie Sims, State Crime Command, Missing Persons Registry, NSW Police Force, *Committee Hansard*, 28 July 2023, p. 23.

¹³⁴ Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission, *Committee Hansard*, 28 July 2023, p. 29.

¹³⁵ National Justice Project, *Supplementary submission 78.1*, p. 5. Note: the submission suggested that an empowered unit also be responsible for triaging and internally investigating First Nations complaints. Also see: Mr Gary Jubelin, private capacity, *Committee Hansard*, 18 June 2024, pp. 19–20, who said that it is difficult for Aboriginal Community Liaison Officers who must be supported.

change in police practices or policies and no empowerment or real engagement with First Nations communities.¹³⁶

- 4.130 Professor Newhouse saw greater representation of First Nations people in police forces as a necessary measure to improve responsiveness to complaints about misconduct. He stated:

In cases of missing and murdered people, often police have no oversight and there are no complaint mechanisms for Indigenous people to escalate their concerns. There needs to be an Indigenous assistant commissioner of police and a hotline for people to make complaints about policing so that issues like missing family members or domestic violence that's going unresponded to can be escalated. That assistant commissioner should be Indigenous and report annually on the outcomes of their complaints.¹³⁷

Accountability of police forces

- 4.131 In 2018, the Australian Law Reform Commission's (ALRC) *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* report (the *Pathways to Justice* report) commented that many First Nations people have negative attitudes toward the police and consider that 'the law is applied unfairly and that complaints about police practices are not taken seriously'.¹³⁸

- 4.132 Several inquiry participants highlighted deficiencies in the complaints processes for and about police forces, and argued that there is a lack of accountability around their actions.

- 4.133 The NJP called for greater accountability for police services throughout Australia:

There is a culture of **protecting the Police Force as an institution** and this culture is ingrained in the Police Force and is reinforced by the police unions/police associations. The **police unions and associations have a critical role to play** in reinforcing the acceptability of police misconduct as they are seen as defending it.

Police are granted **extreme powers** by the parliaments of all Australian states and territories, with virtually no accountability internally or externally. Police accountability bodies, such as the Ombudsman and the [Crime and Corruption Commissions], are under resourced and toothless and many appear to protect the institutions of state rather than the individual complainant.¹³⁹

¹³⁶ National Justice Project, *Supplementary submission 78.1*, p. 5 (emphasis in original).

¹³⁷ Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 4 October 2023, p. 39.

¹³⁸ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Summary Report*, ALRC Summary Report 133, December 2017, p. 19, www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf (accessed 22 February 2024).

¹³⁹ National Justice Project, *Supplementary submission 78.1*, p. 5 (emphasis in original).

4.134 Violet Co Legal and Consulting argued that there is a community expectation of an independent complaint and review mechanism for police conduct:

...there must be independent and transparent complaint and review mechanisms, to ensure that police meet their legal and ethical obligations to the community. Our community expects this. Police investigating police, often in the same local area command, is an unacceptable conflict of interest. This practice is out of step with community expectations, and out of step with workplace law in Australia. Independent police complaint bodies are urgently required in each State and Territory.¹⁴⁰

4.135 In 2023, Ms Iles launched the 'Make Police Investigate' campaign, which calls for a legally enforceable duty of care to victims of aggravated sexual assault and other serious crimes.¹⁴¹

4.136 In reflecting upon Ms Iles' experience as a victim-survivor, Violet Co Legal and Consulting explained that police had failed to investigate any of her claims and, 18 years later, no-one has ever been interviewed or held accountable for those crimes:

Karen had to learn that, despite community perception, police are not obliged to investigate her allegations and that there is no duty that compels them to do so. She has lived experience of the shortcomings of internal police conduct investigations through making formal complaints to bodies such as the Law Enforcement Conduct Commission of New South Wales and Police Link in Queensland, processes which do not guarantee investigation of the original claim and further extends the interaction between vulnerable peoples and a traumatising institution.¹⁴²

4.137 The VALS highlighted Victoria Police's internal process for investigating complaints:

The Independent Broad-based Anti-corruption Commission (IBAC) investigates only 1% of complaints made regarding police. The remainder of complaints made to the body are referred back to Victoria Police for internal investigation, with IBAC only reviewing 4–5% of investigations conducted by Victoria Police. [Further] a majority of the complaints investigated by Victoria Police are not handled by the dedicated Professional Standards Command but rather referred down to local or regional commands, where they are often investigated by officers who know the officer subject to the complaint. The absence of oversight for police misconduct complaints only fuels the communities' lack of confidence that police will be held accountable for their actions.¹⁴³

¹⁴⁰ Violet Co Legal and Consulting, *Submission 63*, p. 9.

¹⁴¹ Make Police Investigate, *Our justice system (police) needs to respond better to rape and sexual violence*, no date, www.makepoliceinvestigate.org/ (accessed 5 March 2024).

¹⁴² Violet Co Legal and Consulting, *Submission 63*, p. 3.

¹⁴³ Victorian Aboriginal Legal Service, *Submission 59*, pp. 6–7.

- 4.138 In 2022, the IBAC conducted the *Victoria Police handling of complaints made by Aboriginal people* audit (the VP audit). The audit examined the Victoria Police handling of 41 complaints made by Aboriginal people and its oversight of 13 serious incidents involving an Aboriginal person.¹⁴⁴
- 4.139 The VP audit identified 'concerning patterns in how Victoria Police handles the investigation of complaints made by Aboriginal people and serious incidents involving Aboriginal people'. These included: very few complaints were substantiated; Aboriginal status was poorly recorded; complainants were not updated on the progress of their complaints; dedicated resources for improving relationships and communication were rarely used; and a substantial proportion of files contained indications of bias or a lack of impartiality.¹⁴⁵ Ten recommendations were made to address these areas of concern.
- 4.140 In June 2023, Victoria Police provided the IBAC with a progress report in response to its recommendations. To date, one recommendation—relating to simplification of the complaint classification system—has been fully implemented. At the time of writing, implementation of the remaining recommendations had not been assessed by the IBAC.¹⁴⁶
- 4.141 The Commission of Inquiry into Queensland Police Service responses to domestic and family violence commented on the QPS's conduct and complaints system. Those comments echoed those of the IBAC on Victoria Police, indicating that those issues are not confined to a single jurisdiction:

The failings of the current conduct and complaints system are so great, and the risk that the system will fail to protect against serious misconduct is so significant, that a different approach is needed. The current system should be replaced with an independent Police Integrity Unit which sits within the [Crime and Corruption Commission Queensland] and independently investigates complaints against police officers.¹⁴⁷

¹⁴⁴ Independent Broad-based Anti-Corruption Commission, 'Research Reports, Victoria Police handling of complaints made by Aboriginal people', 18 May 2022, www.ibac.vic.gov.au/victoria-police-handling-complaints-made-aboriginal-people (accessed 29 February 2024).

¹⁴⁵ Independent Broad-based Anti-Corruption Commission, Victoria Police handling of complaints made by Aboriginal people, Audit report, May 2022, pp. 8–11.

¹⁴⁶ Independent Broad-based Anti-Corruption Commission, 'Research Reports, Victoria Police handling of complaints made by Aboriginal people', 18 May 2022.

¹⁴⁷ Commission of Inquiry into Queensland Police Services responses to domestic and family violence, *A Call for Change*, 2022, p. 19, www.qpsdfvinquiry.qld.gov.au/about/assets/commission-of-inquiry-dpsdfv-report.pdf (accessed 29 February 2024).

4.142 Currently, the QPS investigates complaints made against it. Ms Iles described this level of scrutiny as 'absolutely laughable and Orwellian'.¹⁴⁸ Ms Schwartz, argued that 'police should not be investigating police'.¹⁴⁹

4.143 Dr Hannah McGlade, Associate Professor of the Law School, Curtin University and member of the UN Permanent Forum on Indigenous Issues, held a similar view about the WA Police:

I am sure that [the police] need to be properly reviewed and accountable. We have seen the CCC has been unwilling to do that. The CCC has apparently abdicated its general oversight of police complaints...and that has been the subject of some Western Australian parliamentary reports. The CCC has been advised it needs to improve its relationship with Aboriginal people. I don't think it has done that. I have never heard of any senior Aboriginal leaders occupying public servant roles within the CCC. I have never heard of it wanting to engage with the Aboriginal community and that is a significant failure on its part...[I]t goes to the heart of racial discrimination from police, the lack of accountability of police and the failure of the oversight body in that respect.¹⁵⁰

4.144 The Western Australian Corruption and Crime Commission (CCC (WA)) advised that during the 2022–23 financial year it assessed 3486 allegations related to WA Police. Of those allegations, it considered that 1332 (or 38 per cent) met:

...the threshold for serious misconduct. Of those, 464 allegations (or 34.8%) of all allegations assessed as meeting the threshold for serious misconduct, were referred back to the WA Police for action.¹⁵¹

4.145 The Chief Executive of the CCC (WA), Ms Emma Johnson, advised that her office has a broad remit and 'it doesn't take much to activate our jurisdiction':

But there are no automatic requirements in relation to domestic violence incidents or a missing First Nations child that would activate a report to us, unless there was some misconduct identified in the conduct of the police.¹⁵²

¹⁴⁸ Ms Karen Iles, Director and Principal Solicitor, Violet Co Legal & Consulting, *Committee Hansard*, 20 February 2024, p. 2.

¹⁴⁹ Ms Thelma Schwartz, Principal Legal Officer, Queensland Indigenous Family Violence Legal Service, *Committee Hansard*, 20 February 2024, p. 41.

¹⁵⁰ Dr Hannah McGlade, Associate Professor, Curtin Law School, Curtin University, *Committee Hansard*, 4 October 2023, pp. 14–15.

¹⁵¹ Crime and Corruption Commission (WA), answers to questions on notice, 4 October 2023 (received 9 November 2023). Note: the majority (88.6%) of those 464 allegations 'resulted from notifications by WA Police to the Commission' with the remainder reported by members of the public.

¹⁵² Ms Emma Johnson, Chief Executive, Corruption and Crime Commission (WA), *Committee Hansard*, 4 October 2023, p. 7.

4.146 Ms Johnson clarified that all police misconduct—including neglect of duty—is considered serious misconduct. If proven, this would include a failure to respond appropriately to the report of a missing First Nations child.¹⁵³

4.147 Ms Johnson explained that the decision to investigate an allegation is partially a matter of resourcing, however:

...we have mechanisms in place where if something came before us that was serious enough and warranted the commission's investigation then we would prioritise it above all other things and conduct that investigation.¹⁵⁴

4.148 In her view, allegations made in respect of WA Police will be properly investigated, due to the checks and balances within the CCC (WA) model (such as the ability to remove a matter from police for investigation by the commission).¹⁵⁵

4.149 Professor Newhouse from the NJP advised that, in the case of Baby Charlie (see Chapter 3), the CCC (WA) missed the opportunity to examine how WA Police responds to DV victims. The CCC (WA) reviewed the findings of the internal investigation undertaken by the police and, as a result:

...there was no independent oversight of the investigation into this case. It was undertaken by police—police investigating police. The police failed...even to consider the complaints about racism that the family made...But I think one of the greatest oversights was the failure even to consider the actions of police in leaving a vulnerable toddler in a place where a violent man could come back and abduct the child. That was barely considered. This was a situation where there was misconduct on the part of the police and it was effectively whitewashed by the CCC, who did not give the family a proper opportunity to respond. They did not get procedural fairness, they did not have the serious issues that they were concerned about addressed and the CCC is a complete and utter failure.¹⁵⁶

4.150 Ms Johnson continued that the case of Tamica Mullaley and Baby Charlie were not investigated by the CCC (WA), but was unable to explain why this decision had been made. Ms Johnson indicated that the current process would likely result in a different approach:

¹⁵³ Ms Emma Johnson, Chief Executive, Crime and Corruption Commission (WA), *Committee Hansard*, 4 October 2023, p. 7.

¹⁵⁴ Ms Emma Johnson, Chief Executive, Crime and Corruption Commission (WA), *Committee Hansard*, 4 October 2023, p. 6. Note: the Corruption and Crime Commission advised that it 'is not resourced sufficiently to investigate every allegation of serious misconduct and must prioritise its resources accordingly': Corruption and Crime Commission (WA), answers to questions on notice, 4 October 2023 (received 9 November 2023).

¹⁵⁵ Ms Emma Johnson, Chief Executive, Crime and Corruption Commission (WA), *Committee Hansard*, 4 October 2023, p. 8.

¹⁵⁶ Professor George Newhouse, Chief Executive Officer, National Justice Project, *Committee Hansard*, 4 October 2023, p. 40.

...this matter would come into our assessment area, and, with the priority mechanisms that are in place at this point in time, this matter would be prioritised for assessment...[W]e would assess all of the information before us and tease out any possible misconduct that might be relevant to a particular matter, and the assessment team would make a recommendation to the corporate executive and ultimately the commissioner about the course of action that the commission might take...[I]n a situation like this, we might conduct our own investigation or we might refer it to police but do it with them or do it with active oversight...[A]ll the matters related to the serious misconduct that might have occurred in a situation like this would be teased out and robustly considered and...appropriate action would be taken.¹⁵⁷

4.151 The NSW Law Enforcement Conduct Commission (LECC) is tasked with independent oversight of the NSW Police Force, including complaints handling processes and police responses to critical incident investigations (deaths).¹⁵⁸

4.152 With respect to critical incidents, Commissioner Anina Johnson said that the LECC gets 'more than enough visibility' in terms of on-scene attendance and access to the police database. She conceded, however, that the LECC can be, and is regularly, excluded from interviews.¹⁵⁹

4.153 Commissioner Johnson advised that 'the commission does receive complaints about racism and poor interactions between police and First Nations people', however, 'it is really an extraordinarily small number'. She added that the commission is currently interrogating the NSW Police Force database, part of which will be to identify systemic issues in these complaints:

About 33 per cent of the complaints dealt with excessive use of force. This is complaints from First Nations people within that 18-month time period. About 25 per cent alleged an improper use of police powers. Sixteen per cent were complaints about service or standards. We do propose to publish that work, but we're just not there yet. We've just finished collecting that data and aggregating that data.¹⁶⁰

4.154 Commissioner Johnson informed the committee that the LECC is accountable to the NSW Parliament and its reports, including in relation to systemic issues, are usually made public.¹⁶¹

¹⁵⁷ Ms Emma Johnson, Chief Executive, Corruption and Crime Commission (WA), *Committee Hansard*, 4 October 2023, p. 9.

¹⁵⁸ Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission, *Committee Hansard*, 28 July 2023, p. 27.

¹⁵⁹ Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission, *Committee Hansard*, 28 July 2023, p. 33.

¹⁶⁰ Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission, *Committee Hansard*, 28 July 2023, p. 30. Also see: p. 28.

¹⁶¹ Ms Anina Johnson, Commissioner, Law Enforcement Conduct Commission, *Committee Hansard*, 28 July 2023, p. 31.

4.155 Professor Craig Longman with Jumbunna reflected on the NSW LECC's evidence, observing 'without a consequence, the culture will never be forced to change'.¹⁶²

Commonwealth government response

4.156 In its *Pathways to justice* report, the ALRC recommended that all levels of government in Australia review:

- 'police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples'; and
- 'their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations'.¹⁶³

4.157 The ALRC also recommended that consideration be given to several initiatives 'to further enhance cultural change within police that will ensure police practices and procedures do not disproportionately contribute to the incarceration of Aboriginal and Torres Strait Islander peoples'.¹⁶⁴

4.158 As part of its efforts to build justice sector capability, the Commonwealth government has committed \$4.1 million over four years from 2022–23 to enhance the effectiveness of police responses to family, domestic and sexual violence through the development and delivery of a national law enforcement training package:

The enhanced law enforcement training package will include content that recognises and addresses barriers and increased risk factors to First Nations women and children experiencing [FDSV], as well as culturally safe policing responses and embed appropriate trauma informed models.¹⁶⁵

4.159 In June 2023, the AGD engaged in a consultation process:

¹⁶² Professor Craig Longman, Professor of Practice, Jumbunna Institute for Indigenous Education and Research, University of Technology, Sydney, *Committee Hansard*, 28 July 2023, p. 68.

¹⁶³ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Summary Report*, ALRC Summary Report 133, December 2017, p. 17, www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf (accessed 5 June 2024). Also see: Law Council of Australia, *Submission 12*, pp. 24–25.

¹⁶⁴ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples, Summary Report*, ALRC Summary Report 133, December 2017, p. 18. Note: those initiatives include employing and replacing greater numbers of First Nations people in police forces, providing cultural awareness training, sharing lessons on successful cooperation between police and First Nations peoples, and publicly reporting community engagement initiatives: p. 18.

¹⁶⁵ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 13. Note: this training complements the five-year Work Plan to Strengthen Criminal Justice Responses to Sexual Assault 2022–27.

...to inform the design of a potential grant opportunity to develop the training for legal practitioners on coercive control. The department has analysed the submissions received through the consultation process and is considering appropriate next steps.¹⁶⁶

- 4.160 In September 2023, the Standing Council of Attorneys-General released the National Principles to Address Coercive Control in Family and Domestic Violence. These seven principles embody a national understanding of coercive control.¹⁶⁷
- 4.161 The NIAA and the AGD noted that 'coercive control is often a significant part of family and domestic violence and is a pressing issue that requires a coordinated, national approach'.¹⁶⁸
- 4.162 According to the NIAA and the AGD, the National Principles recognise that coercive control in First Nations communities must be understood in the context of colonisation, intergenerational trauma, systems abuse, and racist policy and practice. In particular, the principles also recognise that the misidentification of First Nations women as perpetrators of family and domestic violence is a significant issue, and that responses to coercive control must not exacerbate discrimination and inequality for First Nations peoples.¹⁶⁹
- 4.163 In February 2024, the government committed a further \$10.7 million over four years from 2024–25 for the Justice Policy Partnership (JPP). The JPP, which is co-led by the AGD and NATSILS, is working on 'an anti-racism strategy for the justice system, and reporting to [the Standing Council of Attorneys-General] on options for bail and remand reform'.¹⁷⁰

¹⁶⁶ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 17.

¹⁶⁷ Attorney-General's Department, 'Coercive Control', www.ag.gov.au/families-and-marriage/families/family-violence/coercive-control (accessed 28 February 2024). Also see: National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 19.

¹⁶⁸ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 15. Note: coercive control involves perpetrators using abusive behaviours in a pattern over time in a way that creates and maintains power and dominance over another person or persons.

¹⁶⁹ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 15.

¹⁷⁰ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, pp. 12–13.

4.164 National Principle 3: Taking an intersectional approach to understanding features and impacts states:

Structural forms of discrimination and inequality increase the risk that services and legal systems will minimise, doubt or ignore a victim-survivor's experiences, or misidentify victim-survivors as perpetrators of coercive control.¹⁷¹

¹⁷¹ Commonwealth of Australia, Attorney-General's Department, *National Principles to Address Coercive Control in Family and Domestic Violence*, 2023, p. 3, www.ag.gov.au/system/files/2023-09/national-principles-to-address-coercive-control-family-and-domestic-violence.PDF (accessed 28 February 2024). Also see: National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, pp. 19–20.

Chapter 5

Acknowledging and responding to the crisis

- 5.1 Amnesty International submitted that the ‘alarming’ statistics for missing and murdered First Nations women and children are ‘no surprise to Aboriginal and Torres [Strait] Islander communities who have dealt with this silent national crisis for a long time’. However, Australian governments and the broader community are yet to acknowledge that there is a crisis.¹
- 5.2 Dr Hannah McGlade, a Noongar woman and member of the United Nations’ Permanent Forum on Indigenous Issues, has similarly stated: ‘it’s really time for Australia to take this issue seriously and take the blinkers off and start valuing the lives of Aboriginal women and girls of this country’.²
- 5.3 Many submitters and witnesses argued that it would be incorrect to speak of violence against First Nations women and children, as though this violence were ‘a new issue’:
- 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.³
- 5.4 Adjunct Professor Muriel Bamblett AO, Adviser to the Aboriginal and Torres Strait Islander Advisory Council, stressed the importance of understanding, acknowledging and accounting for historical policies and actions:
- It is important that this inquiry highlight and raise awareness of how historical policies and actions have led us to where we are now. We need to continually frame current policy and action against the background of enduring and widespread disadvantage imposed on our people that impacts on women’s and children’s lives every day.⁴
- 5.5 Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research (Jumbunna), agreed that the historical context is inextricably linked to the current crisis, which is

¹ Amnesty International, *Submission 64*, p. 4.

² R. Hirini, ‘Why isn’t this a national crisis’: Report calls for action on Indigenous deaths’, *NITV News*, 5 February 2020, www.sbs.com.au/nitv/article/why-isnt-this-a-national-crisis-report-calls-for-action-on-indigenous-womens-deaths/sy9ej2uq6 (accessed 5 February 2024).

³ Women’s Legal Service NSW, *Submission 21*, p. 3. Also see: Boorndawan Willam Aboriginal Healing Service, *Submission 11*, p. [4]; Chapter 3.

⁴ Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 37.

symbolised by the murder and disappearance of three children in Bowraville (the Bowraville murders):

You can't look at this issue without looking at the historical relationship between the police and the legal system and First Nations people. You can't disassociate the role the law played in dispossessing Aboriginal people and in regulating their lives through various pieces of legislation, which included removing Aboriginal children, all as an ongoing process of colonisation. You can't point to a time when that process was ended; in that sense, there's no post-colonial period.⁵

5.6 In relation to First Nations women and children, this chapter discusses:

- recognition and portrayal;
- honouring and commemorating loved ones; and
- effecting change and responses to violence.

Recognition and portrayal

5.7 Many submitters and witnesses remarked on the disparity in mainstream media coverage of violence against First Nations women and children, compared to their non-Indigenous counterparts.⁶ Australian Lawyers for Human Rights (ALHR) provided the following commonly cited example:

...when William Tyrell went missing in 2014 and Cleo Smith disappeared in 2021, those stories dominated news coverage for weeks. William Tyrell's case has continued to cycle back through news feeds through the years, with the investigation into his disappearance continuing with significant resources today. Cleo Smith, through widespread pleas to the community, a dedicated police force, and a \$1 million reward, was located 18 days after her disappearance.

On the other hand, the disappearances of First Nations children garner only a fraction of the media coverage of non-Indigenous children. In 2013, a 10-month old First Nations boy...was abducted and murdered in Western Australia. His abduction and his family's journey for justice have received very little police commitment. The family is still waiting for the government's commitment to a public inquest. Similarly, the murders of three First Nations children in Bowraville in 1991 evidence a lack of urgency

⁵ Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2023, p. 11. Also see: Dr Amy McQuire, Sisters Inside and Institute for Collaborative Race Research, *Submission 54*, p. 5; Boorndawan Willam Aboriginal Healing Service, *Submission 11*, p. [5], which submitted that the stories which have already been shared should not be overlooked'.

⁶ See, for example: Women's Legal Service NSW, *Submission 21*, p. 3; Josephite S.A. Reconciliation Circle, *Submission 42*, p. 2; Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2023, p. 12.

in media coverage and police response and the [case] remains unsolved today.⁷

- 5.8 Stakeholders argued that the way in which the mainstream media fails to report cases of missing and murdered First Nations women and children demonstrates a broader lack of regard for their well-being and lives.
- 5.9 The Ngaanyatjarra Pitjantjatjara Yankunytjayjara (NPY) Women's Council Chairperson Kunmanara Smith said: 'when a white woman is murdered this becomes breaking news, but when an Anangu woman disappears it is "news, wiya" (no news)'.⁸
- 5.10 The Victorian Commission for Children and Young People submitted that this 'double standard severely undermines the value of Aboriginal and Torres Strait Islander women and children'.⁹
- 5.11 Submitters and witnesses also remarked on the content of any mainstream media coverage. The Victorian Aboriginal Legal Service (VALS) commented that victim-blaming has long been a feature of the reporting. VALS highlighted the 1975 case of a murdered 28-year old First Nations woman, who was reported to be a sex worker which had the effect of minimising the culpability of the accused:

...no one was ever found guilty of [the] murder despite a substantial amount of evidence, and the trial for [the woman's] murder was vacated after the presiding judge unilaterally decided that on the evidence available the man accused...could not be found guilty.¹⁰

- 5.12 Dr Amy McQuire argued that the mainstream media reiterates, without question, the information provided by police, which compromises both outcomes and the quality of the investigation:

If they went to Bowraville when [one 16-year old girl] went missing and they asked the police then, 'What are you doing to search for her? What are you doing to find her? Where's the search and rescue?', I think we would be facing a very different situation today. The community wouldn't have had to deal with this for three decades...I think, at the very integral beginning of

⁷ Australian Lawyers for Human Rights, *Submission 39*, p. 7. Also see: Seeds of Affinity – Pathways for Women Incorporated, *Submission 1*, p. 1; Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, pp. 15–16; North Australian Aboriginal Family Legal Service, *Submission 40*, p. 17; Violet Co Legal and Consulting, *Submission 63*, p. 7.

⁸ Ngaanyatjarra Pitjantjatjara Yankunytjayjara Women's Council, *Submission 56*, p. 5. Also see: Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, p. 2.

⁹ Commission for Children and Young People (Victoria), *Submission 50*, p. 2. Also see: Office of the Advocate for Children and Young People and the Office of the Children's Guardian, *Submission 22*, p. [2]; Commissioner for Children and Young People (WA), *Submission 58*, p. 3.

¹⁰ Victorian Aboriginal Legal Service, *Submission 59*, p. 4. Also see: Victorian Aboriginal Child Care Agency, *Submission 65*, p. 17.

an investigation, the media have to be there and questioning the police—not viewing the police as the primary informant, but questioning them at every point.¹¹

- 5.13 The North Australian Aboriginal Family Legal Service (NAAFLS) similarly emphasised that media coverage can significantly affect an investigation, including by progressing efforts to locate a missing person:

When Aboriginal women are erased from the media, efforts to mobilise an investigation and search-party all but fails...[T]he devastating failures of police and media were highlighted in the SBS Documentary ‘Vanished’: the crucial window of time to locate [two First Nations women] was lost as police did not initiate their search and there was no media coverage to alert locals. We note in contrast the disappearance of Paddy Moriarty – a white man – garnered national and international media coverage. The media had an extensive campaign for the “colourful character from the tiny NT town”, with podcasts and documentaries about his disappearance.¹²

- 5.14 Professor Behrendt concurred that there is an ‘important link between being seen in the media and getting justice’, with community outrage and interest motivating police and the allocation of resources:

You can look at specific, even quite contemporary, cases where the response of the community has meant a higher profile on the cases, which has meant a higher allocation of public resources towards the solving of those cases. Part of that higher role that the media play in highlighting a case is also to find witnesses and bring people forward...[T]he way in which the attention and resources follow the media attention also sends very strong messages to the community about who as a victim matters and who doesn't.¹³

- 5.15 The Partnership for Justice in Health submitted that the media has effectively pathologised First Nations people:

...our peoples are often framed through deficit narratives which place us as the problem, as deserving of violence, or immorally depicting violence as inherent to our cultures. There is rarely public outrage or outcry in response to the devastating experiences of our women and children.¹⁴

- 5.16 Dr McQuire, Sisters Inside and the Institute for Collaborative Race Research submitted that this pathologisation has depicted First Nations women only as victims, curtailing and denying them the ability to speak of their strength and resilience:

¹¹ Dr Amy McQuire, private capacity, *Committee Hansard*, 22 February 2024, pp. 14–15.

¹² North Australian Aboriginal Family Legal Service, *Submission 40*, p. 18. Also see: Queensland Family and Child Commission, *Submission 20*, p. [2].

¹³ Professor Larissa Behrendt AO, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2023, p. 14. Also see: p. 10.

¹⁴ Partnership for Justice in Health, *Submission 8*, p. 2. Also see: North Australian Aboriginal Family Legal Service, *Submission 40*, p. 8, which submitted that ‘we often see and hear that domestic violence is an ‘Aboriginal issue’.

When Aboriginal women are given room to speak on violence, it is often only through a discourse of pathologisation in which Black communities – and particularly Black men – are viewed as innately violent. This is the ‘acceptable’ discourse that is most palatable to white agendas and white witnesses. As silence operates by replacing one discourse with another, this pathologisation is powerful: it means that Aboriginal women are not able to speak of their strength or their resistance, but only of their wounds. The evidence of these wounds must be shown in graphic imagery or in sensationalist wording.¹⁵

5.17 Professor Behrendt observed:

[A] big part of the problem is that it seems there's a sense amongst the mainstream media that the sensationalism about high crime rates and the danger of crime is a much more important story—and a bigger and more popular story—than the stories of victims, especially victims who don't meet a particular white racial stereotype.¹⁶

5.18 Dr McQuire indicated that independent, black media should be funded to report on First Nations matters: ‘that's the only way that we can actually speak about these issues the way they deserve to be spoken about’.¹⁷

Role of the media

5.19 The Australian National University's Law Reform and Social Justice Research Hub argued that indifference to the death or disappearance of First Nations women is part of Australia's colonial legacy, with the violence now normalised and reinforced by the mainstream media:

Indifference to violence against First Nations women has continued with the silence around the deaths and disappearances of First Nations women. The historic normalisation of violence and exploitation of First Nations women has contributed to the media's dehumanised portrayal of First Nations women, and necessarily also to Australia's lax response to these tragedies.¹⁸

5.20 Dr McQuire argued that the dehumanisation of Aboriginal people and the media's role in that process has resulted in a lack of recognition or silence around Aboriginal women and children being targeted for violence:

¹⁵ Dr Amy McQuire, Sisters Inside and Institute for Collaborative Race Research, *Submission 54*, p. 12.

¹⁶ Professor Larissa Behrendt, Professor of Law and Director of Research, Jumbunna Institute for Indigenous Education and Research, *Committee Hansard*, 22 February 2023, p. 16.

¹⁷ Dr Amy McQuire, private capacity, *Committee Hansard*, 22 February 2023, p. 16. Note: Dr McQuire also supported young journalists being trained to understand issues from a First Nations perspective.

¹⁸ Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, p. 9. Also see: North Australian Aboriginal Family Legal Service, *Submission 40*, p. 18; Dr Amy McQuire, private capacity, *Committee Hansard*, 22 February 2023, p. 15; Law and Social Justice Hub, University of Melbourne, *Submission 82*, p. 23. Note: the submission identified ways in which missing and murdered First Nations women and children have been commemorated and honoured: p. 24.

When stories like this happen, they have all of these news values that media will often use to cover a story, and, in the Bowraville case, we saw that they fundamentally saw these stories as not newsworthy. The reason for that is that they were Aboriginal children. That's what the Bowraville families have been saying for over the past three decades. Their deaths are not seen as newsworthy deaths, even though there was a suspected serial killer preying on Aboriginal children in one small street in a small New South Wales town.¹⁹

5.21 The Indigenous Law and Justice Hub at the University of Melbourne submitted:

The Australian public remain[s] deeply ignorant of racist, colonial and patriarchal violence. This is due to several reasons—among them including the opacity of police records, the whitewashing of Australian policing history, the indifference of the Australian mainstream media.²⁰

5.22 Our Watch, a national leader in the primary prevention of violence against women and their children in Australia, advised that, by failing to report on and discuss the underlying causes of violence against First Nations women and children, the media has created a barrier to prevention efforts:

To effectively prevent violence against Aboriginal and Torres Strait Islander women, we need to properly understand and explain what causes or drives this violence. We can then ensure that we are 'treating the cause, not the symptom' by designing prevention strategies that directly address these deeper underlying issues. This fundamental principle — aligning strategies and actions with the specific underlying drivers of violence — is the essence of a prevention approach.

Too often, however, there is a lack of attention to the determinants of violence against Aboriginal and Torres Strait Islander women. This is reflected in media reporting and public debate. Media coverage of violence can under-report violence against First Nations women, and when this violence is reported or discussed, there is sometimes limited recognition or consideration of the potential underlying causes or drivers of this violence, beyond pointing to alcohol and drug addiction, factors that are themselves frequently symptoms of a deeper issue. This limited analysis is a significant barrier to prevention efforts.²¹

5.23 The National Plan to End Violence against Women and Children 2022–2032 (the National Plan) acknowledges that every sector has a role to play in ending violence against First Nations women and children:

The media have a critical role in shaping how the community thinks and talks about violence against women. Currently, there is limited evidence-based education for journalists on the drivers of violence or how

¹⁹ Dr Amy McQuire, private capacity, *Committee Hansard*, 22 February 2023, pp. 11–12.

²⁰ Indigenous Law and Justice Hub, University of Melbourne, *Submission 82*, p. 23.

²¹ Our Watch, *Submission 16*, p. 7. Also see: A. Naser, 'The Media's Complicity in the Indigenous Femicide', *Court of Conscience*, Issue 15, 2021, <http://classic.austlii.edu.au/au/journals/UNSWLawSocCConsc/2021/6.pdf> (accessed 7 February 2024).

to safely and ethically report it, either as part of their formal qualifications or on the job. News reports often reinforce community attitudes that condone or tolerate violence. However, the media can also work in a positive way to raise awareness of support services for victim-survivors and provide supportive messaging about holding those who choose to use violence accountable.²²

Media protocols

5.24 The Queensland Family and Child Commission submitted that the media has an important role in ensuring that First Nations people have the same visibility as non-Indigenous people. To facilitate investigation efforts for murdered and disappeared women and children, it suggested the development of media protocols.²³

5.25 The NPY Women's Council emphasised the importance of having a story and that this story can be told in a culturally appropriate manner:

Moving forward with Anangu, it is important for her name and information to be told – the silence cannot continue. If names cannot be spoken on the news you can say “kumantye [surname]” or “kunmanara [surname]”. There are ways to tell these stories with respect, dignity and the recognition they deserve. To successfully share these stories there needs to be greater partnership and voice given to communities and Aboriginal controlled organisations in order to appropriately advise on what is needed for communities and families to heal after events such as these.²⁴

5.26 The Special Broadcasting Service (SBS), including National Indigenous Television (NITV), illustrated how issues relating to violence against First Nations women and children can be explored in depth and with appropriate sensitivity:

SBS and NITV have produced and published a wide range of news stories and programs which serve to ensure that the issues surrounding violence against First Nations women and children, are both prominent and presented from a First Nations perspective [for example, the documentary series *Vanished, See what you made me do* and *We say no more*].²⁵

5.27 In 2019, Our Watch issued national guidelines to ensure that media reporting does not further harm victim-survivors and is part of the solution to end

²² Commonwealth of Australia, National Plan to End Violence against Women and Children 2022–2032, p. 57, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 3 June 2024).

²³ Queensland Family and Child Commission, *Submission 20*, p. [2].

²⁴ Ngaanyatjarra Pitjantjatjara Yankunytjaya Women's Council, *Submission 56*, p. 6. Also see: Domestic Violence NSW, *Submission 37*, p. 19, which submitted that, with permission, stories should be publicly told so that women and children 'do not simply become numbers and can be remembered with dignity'.

²⁵ Special Broadcasting Service, *Submission 9*, pp. 1–5.

violence against women and their children (*How to report on violence against women and their children, 2019 National Edition*).²⁶

- 5.28 Similarly, the Domestic Violence Legal Service and Northern Territory Legal Aid Commission noted that the Tangentyere Women's Safety Group, Tangentyere Council and Galiwin'ku Women's Space have collaborated to produce media guidelines suitable to the Northern Territory (*Media Changing the Story – Media Guidelines for the Reporting of Domestic, Family and Sexual Violence in the Northern Territory*):

These guidelines aim to provide advice for news stations, media organisations and media professionals on how to report safely and ethically about domestic, family and sexual violence in the Northern Territory.²⁷

Honouring and commemorating loved ones

- 5.29 The NPY Women's Council highlighted that it is important to remember the First Nations women and children who have gone missing or been murdered. The effluxion of time does not diminish the memory of loved ones, as the Baramadagal Dharug Tribal Governing Council Aboriginal Corporation explained:

We descend from our apical ancestor Margaret "Peggy" Goldspink nee Reid, who was born in Parramatta/Baramada. The first record of Peggy's life was created in 1820 when she was 8 years old, becoming the 34th child 'admitted' into Parramatta Native Institute where she was given her colonial name, she was later transferred to the Blacktown Native Institute before being entered into 'domestic service', an early form of slavery in the Colony.

Peggy was married at age 19, she had 13 children, and lived to the age of 85. There are numerous records created about Peggy which both confirm her Aboriginality and her birthplace of Parramatta/Baramada. However, we have no record of Peggy's parents, on Peggy's death certificate her parents are recorded as "unknown".

In the mid-1990's our family were informed by an Aboriginal researcher at the Australian Institute of Aboriginal and Torres Strait Islander Studies that Peggy's parents were murdered.

We maintain Peggy's Mother/Wayanga remains among many of the early cases of missing and murdered First Nations Women, and specifically both

²⁶ Our Watch, *How to report on violence against women and their children, 2019 National Edition*, 2019, p. 2, https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2019/09/09000510/OW3989_NAT_REPORTING-GUIDELINES_WEB_FA.pdf (accessed 7 February 2024). Note: the guidelines cover matters such as framing and context, damaging stereotypes, cultural protocols and consideration of sources: pp. 9–10.

²⁷ C. Brown, M. Taylor, C. Simpson and S. Campbell, *Media Changing the Story*, 2021, p. 5, https://genderinstitute.anu.edu.au/sites/default/files/docs/2022/11/Media_Changing_the_Story_Media_Guidelines_for_the_reporting_of_DFSV_in_the_Northern_Territory_%281%29.pdf (accessed 6 March 2024). Also see: Domestic Violence Legal Service and Northern Territory Legal Aid Commission, *Submission 33*, p. 10.

Peggy and her Mother/Wayanga were victims of the most serious forms of State-sanctioned violence. We suspect Peggy had at least one sibling who also remains missing. If not for Peggy's survival, any trace of Peggy's Mother's/Wayanga existence would have been completely erased from the memory of this place.

According to our old ways of being, we know that Peggy's Mother/Wayanga was a Baramadagal woman. However, we do not know her name, the traditional names she gave her children, or the details of her life and death. She remains missing, and from what we understand, murdered. We make this submission, as a way to speak about our old ones who walked this sacred land before us, with the care, love, respect and remembrance they deserve.²⁸

Recognition and remembrance

- 5.30 Some submitters argued that the first way to honour the memory of those who have been murdered or disappeared is to expose and render visible what has happened to them and other First Nations women and children over the generations. Carrie's Place submitted that invisibility has prevented the women and children from being remembered, honoured and commemorated:

The deaths of many First Nations women have gone unnoticed and unheard of by the general public. In doing so, we have failed to publicly acknowledge the tragedy of their deaths and have missed an important opportunity to honour and commemorate their lives...We want our First Nations women and children to be respected and honoured, we want them to be mourned and not forgotten. We want them to be present and visible in the minds of all Australians. We want justice.²⁹

- 5.31 The Australian Human Rights Commission (AHRC)—and others—supported honouring and commemorating missing and murdered First Nations women and children, provided that this is done in 'a culturally respectful and appropriate way' and as determined by the families and their communities.³⁰
- 5.32 The VALS highlighted that, in Aboriginal communities, the cultural practices that take place after someone's death (Sorry Business) vary:

There is no one specific way a person or community will conduct Sorry Business, just as there is no set timeframe for Sorry Business activities. As such, it is important that any commemoration scheme for missing and murdered First Nations women and children does not have limitations on when a person's family can elect to have their loved one commemorated.

²⁸ Baramadagal Dharug Tribal Governing Council Aboriginal Corporation, *Submission 55*, pp. [1–2]. Also see, for example: Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 62*, pp. [7–8] ('Sally'); Chapter 3.

²⁹ Carrie's Place, *Submission 31*, pp. 2–3. Also see: The Healing Foundation, *Submission 10*, p. 10.

³⁰ Australian Human Rights Commission, *Submission 34*, p. 10. Also see, for example: Seeds of Affinity – Pathways for Women Inc., *Submission 1*, p. 3; Carrie's Place, *Submission 31*, p. 3.

Any commemoration activities must not limit a family's ability to engage with cultural activities and grieve at their own pace or on their own terms.³¹

- 5.33 ALHR shared the view that First Nations families and communities must determine how their loved ones are to be remembered:

There is only one appropriate way to answer [the question of how to honour and commemorate loved ones] – consult with those that are affected by the decision. The ways that various First Nations communities will honour and commemorate their loved ones will differ immensely. Only by asking and listening will we uncover and understand the appropriate way to achieve this goal. Importantly, when ideas are shared, they should be heard, respected and implemented in the precise way that they are explained, with full commitment to the traditions, customs, practices and wishes of the families.³²

Some submitters suggested practical measures to honour and commemorate missing and murdered First Nations women and children: an honour roll or remembrance day,³³ a dedicated awareness period or time of mourning,³⁴ a fund for community remembrance events,³⁵ and commemorative markers or other forms of memorial.³⁶

Personal impacts of grieving

- 5.34 Several First Nations families and community representatives shared their lived experience with the committee, and highlighted the strength required to deal with the initial loss of a loved one and to persevere in the search for truth and justice (also see Chapter 3).

- 5.35 Mrs Debbie Kilroy OAM, Chief Executive Officer of Sisters Inside, said:

The strength and resilience displayed by the women's families who tirelessly seek their loved ones out without any institutional support is as inspiring as it is heartbreaking. Their journey is marred with immense pain and frustration as the very systems meant to protect and serve all citizens further perpetuate their suffering...The crisis of disappeared and murdered Aboriginal and Torres Strait women in Australia demands urgent action...We owe it to them and to the memory of these women who have

³¹ Victorian Aboriginal Legal Service, *Submission 59*, p. 18.

³² Australian Lawyers for Human Rights, *Submission 39*, p. 24. Also see: Change the Record and Djirra, *Submission 85*, p. [36]; Mr Greg Douglas, Chief Executive Officer, Kempsey Local Aboriginal Land Council, *Committee Hansard*, 21 February 2023, p. 4; Ms Rachael Cavanagh, private capacity, *Committee Hansard*, 22 February 2023, p. 9.

³³ Domestic Violence NSW, *Submission 37*, p. 19.

³⁴ First Nations Women's Legal Service Queensland, *Submission 38*, p. 19.

³⁵ Domestic Violence NSW, *Submission 37*, p. 19.

³⁶ Victorian Aboriginal Child Care Agency, *Submission 6*, p. 35. Also see: Change the Record and Djirra, *Submission 85*, p. [36], which cautioned that 'government-sponsored monuments are not necessarily appropriate'.

disappeared to create a system that truly seeks justice and offers support, rather than one that perpetuates harm and neglect.³⁷

- 5.36 This and other evidence drew attention to the need to support grieving and traumatised individuals. Ms Delphine Charles, for example, described one family's intergenerational and ongoing pain:

Even the children who didn't know Clinton are affected by his loss. They have felt the grief of their parents, the families and the community. They feel helpless that they have not been able to help alleviate this. We have given them a legacy of sadness...because these murders haven't been resolved.

...

Clinton's mother would always be crying. She got no proper counselling and of course we didn't know how to console her. She still feels her son is with her and plays music for him. For her, Clinton is still there and she will never get over his loss.³⁸

- 5.37 Ms Patricia Edwards, Chairperson of the Bowraville Local Aboriginal Land Council, said:

...our community went through hell...32 years ago...The families are all torn apart. They're still going through hell. They're still going through grief ...Our whole community was broken in two when that happened to our three children...[N]ot only the parents needed counselling; there were a lot of other people who needed counselling too in that community. Back then I was a preschool teacher, and I was...the little girl's teacher. Evelyn...spent most of her waking hours at preschool with us...[I]t really broke my heart. I, at that time, needed counselling too...It's very, very hard to speak about that.³⁹

- 5.38 The First Nations Women's Legal Service Queensland (FNWLSQ) submitted that there is an '[obvious] need for trauma counselling for families and loved ones of victims'.⁴⁰ Jumbunna advised, however, that there is no such support available:

There is a distinct lack of **mental health and social and emotional wellbeing support** made available to grieving and justice-seeking families after the death of their loved one. Surviving families, often left without answers, are expected to go away and deal with the legacy of violence and often its continuation. Community controlled services are under-resourced for the scale of emotional, social and mental injury from this. They must be

³⁷ Mrs Debbie Kilroy OAM, Chief Executive Officer, Sisters Inside, Committee Hansard, 15 May 2024, pp. 3–4.

³⁸ Ms Delphine Charles, *Submission 48*, p. 2. Also see: Ms Leonie Duroux, *Submission 46*, p. 1; Ms Michelle Jarrett, *Submission 49*, pp. 1–2.

³⁹ Ms Patricia Edwards, Chairperson, Bowraville Local Aboriginal Land Council, *Committee Hansard*, 21 February 2023, p. 5.

⁴⁰ First Nations Women's Legal Service Queensland, *Submission 38*, p. 19.

further resourced to actively care for mob who have been traumatised, not only from the act of violence, but from their painful experiences of the settler legal and policy systems that [attempt] to address it.⁴¹

5.39 Mr Malcom Brunton, a clinical psychologist, explained that many mental health specialists are apprehensive in this space, as they do not understand ‘the social, cultural and spiritual aspects of Aboriginal communities and how different they are and how similar they are’. He acknowledged that there is also some reluctance on the part of First Nations people to engage with these specialists with the perception being that the specialists ‘just don’t get it’.⁴²

5.40 Ms Rachael Cavanagh suggested that, over the last 30–40 years, the heightened awareness of what causes trauma has not led to improvements. Her evidence highlighted funding concerns and, similar to Mr Brunton, workforce issues:

...it is because they're not looking at the root cause of anything; they're just looking at that bandaaid fix of what you're presenting with. That's because services are at absolute capacity. There are not enough resources that are being delivered to the services that are actually doing the work. Then finding the right people to fit into those places is really difficult...Over my life I have gone to a number of different counselling or different sessions...[I]t's really hard to go into a room with a non-Indigenous [person] and try to talk to your ways of knowing and being. You just can't.⁴³

5.41 Ms Tracey Singleton, Chief Executive Officer from the Galambila Aboriginal Health Service, pointed out that workers within support services are also part of the local community and can be deeply affected by trauma:

You can't switch off. You've already got trauma in your life...Our stories are not all the same, but there is trauma. Then you go into a community, or your own community, where you try to keep everything at an arm's length, then that vicarious trauma is layers upon layers again...If that's not recognised really quickly it could be quite damaging.⁴⁴

Systemic changes to eradicate violence

5.42 Some submitters considered that loved ones should be honoured and commemorated by addressing the systemic causes of violence to ensure that no

⁴¹ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 24 (emphasis in original). Also see: Carrie's Place, *Submission 31*, p. 6, who queried the availability of culturally appropriate pathways in small communities where the perpetrator and/or their family might continue to reside.

⁴² Mr Malcolm Brunton, private capacity, *Committee Hansard*, 22 February 2023, p. 3. Note: Mr Brunton added that there are few Aboriginal people qualified and practising in the specialised areas of psychology, and clinical psychology and psychiatry.

⁴³ Ms Rachael Cavanagh, private capacity, *Committee Hansard*, 22 February 2024, p. 4.

⁴⁴ Ms Tracey Singleton, Chief Executive Officer, Galambila Aboriginal Health Service, *Committee Hansard*, 22 February 2023, pp. 4–5.

more First Nations women and children are murdered or disappeared. Change the Record and Djirra submitted:

The best way to ‘commemorate’ the many lives that have been lost is to bring about systemic and structural change so that Aboriginal and Torres Strait Islander women, gender diverse people and children live free from violence.⁴⁵

5.43 Jumbunna similarly stated:

...one clear desire [victims’] families had in commemorating them was **change**. We respectfully suggest that systemic change and governments making good on the recommendations of inquiries like these and others is one of the most crucial memorialisations within a settler government’s control.⁴⁶

5.44 The VALS remarked that government is responsible for eradicating violence and ensuring the safety and lives of First Nations women and children, and should therefore not solely focus on remembrance initiatives:

...we must not focus efforts on honouring those who are victims...without also investing considerable resources into eradicating any form of violence against women and children. The Government cannot diminish [its] responsibility to protect the safety and lives of Aboriginal women and children by simply investing in a commemoration platform for those who are missing and murdered.⁴⁷

Effecting change and responses to violence

5.45 ALHR submitted that federal, state and territory governments employ a variety of ad hoc and inconsistent approaches to manage, reduce and prevent violence against First Nations women and children. Similar to the VALS, it argued that the Commonwealth government has primary responsibility in this space and should adopt a human rights-based approach (see Chapter 6):

Human rights-based frameworks are an anchor for engaging nation states in their responsibilities regarding violence against women, as enshrined in international instruments and agreements. While other stakeholders also need to play a part, the need (and obligation) for the state to take primary responsibility for this work is clear. These obligations are articulated in the United Nations conventions to which Australia is a signatory.⁴⁸

⁴⁵ Change the Record and Djirra, *Submission 85*, p. [37].

⁴⁶ Jumbunna Institute for Indigenous Education and Research, *Submission 44*, p. 24 (emphasis in original). Also see: Josephite S.A. Reconciliation Circle, *Submission 42*, p. 6.

⁴⁷ Victorian Aboriginal Legal Service, *Submission 59*, p. 18.

⁴⁸ Australian Lawyers for Human Rights, *Submission 39*, p. 10. Also see: Dr Tania Penovic, Senior Chair, Women and Girls’ Rights, Australian Lawyers for Human Rights, *Committee Hansard*, 28 July 2023, pp. 61–62.

5.46 The inquiry received information on various prevention measures, some of which are discussed in the following sections of this chapter, preceded by the overarching comments of First Nations women.⁴⁹

Wiyi Yani U Thangani (Women's Voices) project

5.47 In 2022, as part of the *Wiyi Yani U Thangani (Women's Voices)* project (see Chapter 3), the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, hosted the *Wiyi Yani U Thangani (Women's Voices)* First Nations Women's Safety Policy Forum (Women's Safety Policy Forum).⁵⁰

5.48 The Women's Safety and Policy Forum identified seven overarching factors that it considered essential to improve existing frameworks for the protection of First Nations women and children:

- **First Nations self-determination** to guarantee that First Nations women lead in the development and delivery of a stand-alone plan, and inform the program, policy and legislative decisions that impact their lives, consistent with human rights, especially [the United Nations Declaration on the Rights of Indigenous People].
- Elevating, embracing and designing specific engagement processes to include the voices of **First Nations women, gender diverse people, and our families in all their diversity** including our old people, our Stolen Generations, people living remotely, those with, and caring for people with disabilities, LGBTQIA+SG people, those in incarceration, and children in the juvenile detention or child protection system.
- **Centring the voices of First Nations children**, especially girls who are at increased risk of sexual abuse in the development of the stand-alone plan to ensure specific child-centred actions, and to support community-controlled organisations and other mainstream services to work effectively with children and families impacted by violence.
- Grounding the plan in a **human-rights based approach** that recognises Australia's obligations to the treaties it has ratified and endorsed.
- Ensuring the plan takes a **holistic culturally informed family-oriented approach** to understand the drivers of violence and how all people are affected by violence and ensuring that men are not excluded, that they are included as part of the solutions, and that evidence-based perpetrator responses are developed and accessible.

⁴⁹ Australian Lawyers for Human Rights, *Submission 39*, pp. 11–13. Note: the three categories (primary prevention, early/secondary intervention, and tertiary prevention/intervention) and related measures are outlined in the submission.

⁵⁰ Australian Human Rights Commission, 'Wiyi Yani U Thangni First Nations Women's Safety Policy Forum Outcomes Report November 2022', <https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yanu-u-thangani-6> (accessed 12 March 2024).

- Recognising all forms of **intersectional discrimination** as major drivers of violence, including but not limited to racism, sexism, ableism, homophobia and transphobia.
- Understanding and addressing the violence caused by individual, **systemic and institutional racism**, how racism is present within policies and legislation, and the particular effects it has on First Nations women and children in everyday life and when interacting with services, the public and when seeking help.⁵¹

Changing the picture

5.49 Our Watch aims to ‘drive nation-wide change in the culture, behaviours, attitudes and social structures that drive violence against women and their children’.⁵²

5.50 Ms Patty Kinnersly, the Chief Executive Officer for Our Watch, explained that the organisation has specific structures and strategies to ensure a culturally appropriate and informed approach to First Nations people:

For example, there are three Aboriginal and Torres Strait Islander members of the Our Watch board, including our deputy chair. Written into our board charter is that our deputy chair will always be Aboriginal or Torres Strait Islander. We have established an internal Aboriginal and Torres Strait Islander steering committee, which provides insight and direction across all of our work. That is co-chaired by our most senior Aboriginal staff member.⁵³

5.51 In 2018, Our Watch published its key national framework *Changing the picture*, part of which outlines a comprehensive set of prevention actions to address the underlying and intersecting drivers of violence against First Nations women and to support the prevention of this violence:

1: Address the legacies and ongoing impacts of colonisation for Aboriginal and Torres Strait Islander people, families and communities, through actions that:

- Heal the impacts of intergenerational trauma, strengthening culture and identity
- Strengthen and support Aboriginal and Torres Strait Islander families
- Implement specific initiatives for Aboriginal and Torres Strait Islander women and girls, boys and men, and children and young people
- Challenge the condoning of violence in Aboriginal and Torres Strait Islander communities
- Increase access to justice for Aboriginal and Torres Strait Islander people

⁵¹ Australian Human Rights Commission, 2022 *Wiyi Yani U Thangani First Nations Women’s Safety Policy Forum, Delegates Statement*, 2022, p. 4 (emphasis in original), https://humanrights.gov.au/sites/default/files/delegate_statement_wyut_womens_safety_forum_final_2.pdf (accessed 3 May 2024).

⁵² Our Watch, *Submission 16*, p. 3.

⁵³ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 10.

2: Address the legacies and ongoing impacts of colonisation for non-Indigenous people, and across Australian society, through actions that:

- Challenge and prevent all forms of racism, indifference, ignorance and disrespect towards Aboriginal and Torres Strait Islander people and cultures
- Address racialised power inequalities and amend discriminatory policies and practices
- Challenge the condoning of violence against Aboriginal and Torres Strait Islander people

3: Address the gendered drivers of violence against Aboriginal and Torres Strait Islander women, through actions that:

- Implement intersectional approaches to preventing violence against women across the Australian population
- Challenge the condoning of violence against Aboriginal and Torres Strait Islander women by challenging both racist and sexist attitudes and social norms
- Support Aboriginal and Torres Strait Islander women's participation in leadership and decision making
- Challenge gender stereotypes, and the impacts of colonisation on men's and women's roles, relationships and identities
- Strengthen positive, equal and respectful relationships between women and men, girls and boys
- Engage both Indigenous and non-Indigenous men to challenge harmful and violence supportive ideas about masculinity and relationships.⁵⁴

5.52 The Aboriginal and Torres Strait Islander Women's Advisory Group, that guided the project, described *Changing the picture* as follows:

This resource is a way forward, a way of understanding the roots of this issue and discussing solutions that can keep our women and children safe-holistic solutions that also work for our men and our children and young people. Solutions that break the cycle of violence and heal, support, strengthen and empower Aboriginal and Torres Strait Islander families and communities.⁵⁵

Existing prevention initiatives

5.53 *Changing the picture* provides examples of existing prevention initiatives around Australia. Our Watch cautioned that these examples have not been evaluated but are 'promising' and could possibly be adapted and applied in different contexts:

⁵⁴ Our Watch, *Submission 16*, p. 11. Also see: p. 4; Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 11, who noted that, to address the violence, all parts of the system must work together across all four areas of the National Plan to End Violence against Women and Children 2022–2032.

⁵⁵ Our Watch, *Submission 16*, p. 4.

These examples acknowledge and highlight the work that many Aboriginal and Torres Strait Islander organisations and communities, and some non-Indigenous stakeholders, are already doing to address this issue — often with very limited resources.⁵⁶

- 5.54 Ms Kinnersly emphasised that early intervention has not been well funded and she acknowledged that ‘primary prevention isn’t working quickly enough’:

At one level, Our Watch is well funded. We have \$76 million in project funding over five years, but that’s for five years and eight states. That \$76 million comes to \$2 million per state, per year or some such. It looks like a lot of money, but, actually, if we’re going to do this work deeply, it requires a lot more investment of time and money. Particularly in Aboriginal and Torres Strait Islander communities, if we’re genuine about the work being Aboriginal and Torres Strait Islander led, in partnership, where it’s relevant, with a non-Aboriginal organisation, that takes even longer because we’ve got to build trust and start from scratch.⁵⁷

- 5.55 ALHR concurred that, throughout Australia, there are culturally appropriate and community-controlled services, such as community policing:

Groups of elders and senior members of communities walk around remote communities, ‘keeping an eye on things’ and negotiating when disputes arise rather than the imposition of sanctions (such as arrest if police were to be involved). The patrollers have the cultural, community, and linguistic knowledge to de-escalate and resolve the issues in the community and strengthen community and family relationships. Some examples of night patrols include the Remote Area Night Patrol in Tangentyere, NT and the Yuendumu Women’s Night Patrol also in NT.⁵⁸

- 5.56 Our Watch highlighted the Tangentyere Council Aboriginal Corporation’s Family Violence Prevention Program, which includes the ‘Mums Can Dads Can/Girls Can Boys Can’ project.

- 5.57 Dr Chay Brown, Post Doctoral Fellow at the Australian National University and Managing Director of Her Story Consulting, said that this family-based and holistic model is successful for a number of reasons:

...what makes this program really successful is that it’s incredibly innovative and creative and resourceful, working in a very low-resource setting. None of the programs have a huge amount of funding, so they’re working really creatively. It’s also the community driven nature of those programs, the fact that it’s being led by town campers, by local people, and it’s really focused on that holistic response and working in partnership and

⁵⁶ Our Watch, *Submission 16*, p. 9.

⁵⁷ Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 10.

⁵⁸ Australian Lawyers for Human Rights, *Submission 39*, p. 21. Also see: Queensland Indigenous Family Violence Legal Service, *Submission 3*, p. 3 (Kullarri Patrol in Broome, Western Australia); Queensland Aboriginal and Islander Health Council, *Submission 7*, p. 7 (Marie Saunders Women’s Shelter in Woorabinda); Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, p. 33 (Orange Door pilot program).

participating in a number of multi-agency forums. So it's working as part of an integrated and coordinated response to domestic, family and sexual violence.⁵⁹

5.58 Dr Brown added that she developed the Hopeful Together framework, a list of 10 principles of good practice to prevent violence against women in the Northern Territory, which has transference in conjunction with localised place-based initiatives: 'many national services or national responses don't fit, and they don't work here'.⁶⁰

5.59 In New South Wales, Ms Rachael Cavanagh described how women in the Clarence Valley formed the 'Djinders' to support First Nations women who were experiencing domestic and family violence:

...we were able to secure a community gathering area, which we called the Djinders block. It was out in the middle of the bush. It was only 20 minutes from Grafton. So we were able to take families out and invite services to come in to talk to the women, or we would just have a barbeque or camp out just to take that pressure off and to give the women the support and the cultural safety to be able to speak to all of that.⁶¹

5.60 Ms Cavanagh described Djinders' work as successful but indicated that the work was undermined by having no available and effective support services. She concluded: 'our communities need to be listened to and resourced really well, because most of the time our communities have the solutions to these things that are happening'.⁶²

5.61 Professor Muriel Bamblett AO from the Aboriginal and Torres Strait Islander Advisory Council commented further on the issue of funding for First Nations-based prevention initiatives. She said that most of the funding goes to mainstream organisations, which then need to be held to account for not delivering. She highlighted that the Victorian government has instituted a minimum commitment for Aboriginal community-controlled organisations (ACCOs):

...what the Victorian government is committed to now is that 10 per cent of all funding must go to Aboriginal, so I think what we need to do is get government to commit if there's a close the gap and there's a commitment to Aboriginal shared decision-making and Aboriginal investment into control. The only way we're going to play catch-up is for government to put a figure on the table and say that, proportionate to the overall

⁵⁹ Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, p. 5.

⁶⁰ Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, pp. 5 and 6.

⁶¹ Ms Rachael Cavanagh, private capacity, *Committee Hansard*, 22 February 2023, p. 2.

⁶² Ms Rachael Cavanagh, private capacity, *Committee Hansard*, 22 February 2023, p. 3. Also see: Mr Malcolm Brunton, private capacity, *Committee Hansard*, 22 February 2023, p. 3.

representation, we have to be able to fund our [ACCOs] across the nation. Too much of the funding goes to mainstream NGOs, with no account built in for outcomes, and our people don't get the service they need in the communities where they need it.⁶³

- 5.62 Dr Brown concurred that First Nations communities are not getting the services they need, even in the Northern Territory which has disproportionate levels of domestic, family and sexual violence (DFSV, see Chapter 2):

...governments would like an answer which is simple, cheap and quick, and the answer and the solutions are not simple nor are they quick, nor are they cheap...[C]urrently the Northern Territory receives 1.8 per cent of federal funding for domestic, family and sexual violence. I think the federal government may dispute that, but that's the figures that we have. In the past they have made commitments to developing a methodology for needs-based funding, but that is nowhere to be seen. I don't think we can make any progress in this issue without the funding and resources, because here in the Northern Territory not only do we have these extraordinarily, totally unacceptably high rates, but also service delivery is significantly more expensive here.⁶⁴

- 5.63 Ms Zara O'Sullivan, Acting Managing Solicitor of the Domestic Violence Legal Service (DVLS), agreed that needs-based funding is essential:

...the current funding model remains insufficient in adequately addressing the complexities of domestic, family and sexual violence and its impact upon Aboriginal and Torres Strait Islander women and children. DVLS has joined others in the NT's DFSV sector in calling for needs-based funding for core DFSV service delivery that is long term and not reactionary. Such funding, as suggested by its name, would be based on the actual need for the funding, as opposed to simply looking at population numbers...[T]here must be needs-based funding. The current system leads to a disjointed and fragmented response from all service providers—from police to legal services to support services—that lets these women down and places them at risk of further harm or death. We need to invest in trauma informed, culturally sensitive responses, which are simultaneously guided by the voices of victims-survivors and ensure that staff and services are able to invest in training and retention, as opposed to working on 12 or 24-month funding cycles.⁶⁵

⁶³ Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 43.

⁶⁴ Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, p. 4.

⁶⁵ Ms Zara O'Sullivan, Acting Managing Solicitor, Domestic Violence Legal Service, *Committee Hansard*, 18 April 2024, p. 10.

First Nations-led and culturally appropriate primary prevention

5.64 ALHR defined the primary prevention approach, as follows:

A primary prevention approach works to change the underlying social conditions that produce and drive violence against women, and that excuse, justify, ignore or even promote it. It works across the whole population to address the attitudes, norms, practices, structures and power imbalances that drive violence against women and girls. Individual behavioural change (to stop people using violence) may be the ultimate aim of prevention activity, but behavioural change cannot be achieved prior to, or in isolation from, broader and deeper change in these underlying drivers of violence, which are embedded within relationships, families, communities, organisations, institutions and society as a whole.⁶⁶

5.65 Our Watch commented that prevention initiatives often focus on how to respond to the impacts of violence against First Nations women and children (early/secondary intervention and tertiary intervention): ‘this rightly leads to calls for expansion of, and improvements to, crisis and response systems, services and processes’.⁶⁷

5.66 Our Watch argued, however, that focussing only on responding to violence fails to address its underlying causes or drivers:

Treating the symptoms of a problem can never be enough in the long term. As Aboriginal and Torres Strait Islander service providers and advocates point out, this approach also tends to rely heavily on simplistic ‘law and order’ solutions and, as such, not only fails to address the ‘root causes of violence’ and ‘the underlying reasons why individuals come into contact with the justice system in the first place’, but also ‘only perpetuates cycles of trauma and disadvantage, and will not make our communities safer in the long term’.⁶⁸

5.67 For this reason, several submitters endorsed justice reinvestment measures, whereby funding is diverted from law-and-order responses to community prevention initiatives. Australians for Native Title and Reconciliation and the Australian Lawyers Alliance submitted, for example:

A justice reinvestment model centres around place-based, community-driven solutions to criminal justice issues which can be adjusted to the specific needs in each jurisdiction by providing housing, employment, health care and education.⁶⁹

⁶⁶ Australian Lawyers for Human Rights, *Submission 39*, p. 11.

⁶⁷ Our Watch, *Submission 16*, p. 10.

⁶⁸ Our Watch, *Submission 16*, p. 10. Also see: Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, p. 31, who described such an approach as ‘funding the ambulance at the bottom of the cliff’.

⁶⁹ Australians for Native Title and Reconciliation and Australian Lawyers Alliance, *Submission 35*, p. 20. Also see: Seeds of Affinity – Pathways for Women Incorporated, *Submission 1*, p. 3; National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*,

5.68 Our Watch argued that what is required is a primary prevention approach:

It is only by developing a prevention approach — one that identifies and addresses the deeper drivers of violence against First Nations women — that we can start to reduce and ultimately prevent this violence from occurring in the first place.⁷⁰

5.69 Our Watch emphasised that prevention strategies must be implemented in First Nations communities and social settings. Further, this work must be developed and led by First Nations people, implemented by ACCOs and guided by the principles of self-determination and community ownership.⁷¹

5.70 Change the Record and Djirra shared the views of Our Watch:

A consistent call from participants in the Wiyi Yani U Thangani report, from [Family Violence Prevention Legal Services] and other Aboriginal and Torres Strait Islander community-controlled organisations, and communities is for a refocusing from crisis responses to prevention, with a focus on self-determined, place-based, trauma-informed, holistic and restorative support and healing services.⁷²

5.71 Ms Jacqueline McGowan-Jones, the WA Commissioner for Children and Young People, stated that cultural awareness and safety training cannot replace the understanding and support provided by ACCOs:

...you can't give somebody a cultural lens that they've never grown up with...[Y]ou can try to give them enough cultural learning to try to behave in a culturally safe way and be able to provide a culturally responsive service...Aboriginal community-controlled organisations understand our culture, understand our approaches and know how best to work with our people...When Aboriginal community controlled organisations deliver the services, we have a much better understanding.⁷³

5.72 Ms Christine Robinson from the Wirringa Baiya Aboriginal Women's Legal Centre broadly agreed that community-controlled organisations work differently with First Nations women and children, compared to mainstream organisations.⁷⁴

pp. 9–10 and 12–13; Law Council of Australia, *Submission 12*, p. 23; Commonwealth of Australia, *Budget Paper No. 2, 2022–23*, p. 49, https://archive.budget.gov.au/2022-23-october/bp2/download/bp2_2022-23.pdf (accessed 17 March 2024), which provided \$81.5 million over four years for justice reinvestment initiatives to be delivered in partnership with First Nations communities.

⁷⁰ Our Watch, *Submission 16*, p. 10.

⁷¹ Our Watch, *Submission 16*, p. 12. Also see: Ms Rachael Ozanne-Pike, Lawyer, North Queensland Women's Legal Service, *Committee Hansard*, 2 November 2023, p. 9.

⁷² Change the Record and Djirra, *Submission 85*, p. [24].

⁷³ Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, p. 33.

⁷⁴ Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 5. Also see: Change the Record and Djirra, *Submission 85*, pp. 19–

Gendered violence

5.73 In 2017, the United Nations Special Rapporteur on the rights of Indigenous Peoples, Ms Victoria Tauli-Corpuz, visited Australia and observed in her report to the General Assembly:

Discrimination against Aboriginal and Torres Strait Islander women on the grounds of gender, race and class is structurally and institutionally entrenched. This discrimination, coupled with the lack of culturally appropriate measures to address the issue, fosters a disturbing pattern of violence against Aboriginal and Torres Strait Islander women.⁷⁵

5.74 Several submitters and witnesses referred to the violence perpetrated against First Nations women and children by men who are not First Nations people. In this context, there is a broader societal issue of gendered violence which needs to be considered.

5.75 Mr Martin Hodgson, Senior Advocate with the Foreign Prisoner Support Service, stated, for example:

All the families I currently represent, whose loved ones — Aboriginal women and children — are missing and/or murdered, involve non-Indigenous men as the prime suspects...I would also point to evidence given to the Yoorrook Justice Commission just this week in Victoria and last week that showed that 85 per cent of Aboriginal women are in relationships with non-Indigenous men....[T]here is a misunderstanding that the majority of these murders are carried out by Aboriginal men, when it's simply not the case.⁷⁶

5.76 Ms Antoinette Gentile, Acting Chief Executive Officer of Djirra, stated that 'the narrative on so-called Aboriginal family violence' must be changed, facilitated by more reliable and comprehensive data:

The assumption that Aboriginal family violence is a community problem is false. It is a gendered problem. In Victoria, for example, the Crime Statistics Agency, which is based on Victoria Police data, states that Aboriginal men commit 60 per cent of the violence against our women. This has not been Djirra's experience. We know that more than 90 per cent of family and sexual violence goes unreported. We also know that two out of three women accessing Djirra's legal services and 72 per cent of women accessing our

20, which outlined a case study of an incarcerated First Nations woman ('Melinda') to illustrate the 'critical importance of access to non-discriminatory and community-based support services'; Northern Territory Women's Legal Services, *Submission 24*, p. 6.

⁷⁵ United Nations, General Assembly, Human Rights Council, *Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia*, 36th Session, 11–29 September 2017, A/HRC/36/46/Add.2) paragraph 94, <https://documents.un.org/doc/undoc/gen/g17/234/24/pdf/g1723424.pdf?token=LMdZKEhQpwFIEbYoNj&fe=true> (accessed 6 June 2024). Also see: Dr Tania Penovic, Senior Chair, Women and Girls' Rights, Australian Lawyers for Human Rights, *Committee Hansard*, 28 July 2023, pp. 61–62, who commented on the recent attention by a range of United Nations human rights bodies and specialist mandates.

⁷⁶ Mr Martin Hodgson, Senior Advocate, Foreign Prisoner Support Service, *Committee Hansard*, 18 June 2024, pp. 30–31.

individual support service had a non-Aboriginal partner in 2023. These men have often had little or no prior contact with the criminal justice or child protection systems, so they are not counted in much of the official family violence and crime data.⁷⁷

- 5.77 The Law Council of Australia (Law Council) cautioned that care must be taken when describing violence against First Nations women and children. It noted that First Nations women experience family and other forms of violence:

Aboriginal and Torres Strait Islander women can also experience violence in a non-family and non-intimate context, such as from colleagues, classmates and strangers. Furthermore, legal and policy responses must recognise that domestic and partner violence against Aboriginal and Torres Strait Islander women can be perpetrated by men from any cultural background.⁷⁸

- 5.78 The Boorndawan Willam Aboriginal Healing Service highlighted that the positive aspects of gendered relations were destroyed by colonisation ‘and in its place violence has spawned’.⁷⁹

- 5.79 In 2008, the Central Australian Aboriginal Congress hosted the first Aboriginal Male Health Summit at Alice Springs. Nearly 400 men met to discuss different strategies to assist them in resuming their role as protectors of the family and broader community. The participants presented an apology—the *Inteyerrkwe* Statement—to Aboriginal women and children, which read in part:

We acknowledge and say sorry for the hurt, pain and suffering caused by Aboriginal males to our wives, to our children, to our mothers, to our grandmothers, to our granddaughters, to our aunties, to our nieces and to our sisters. We also acknowledge that we need the love and support of our Aboriginal women to help us move forward.⁸⁰

- 5.80 Dr Janet Hunt from the Centre for Aboriginal Economic Policy Research at the Australian National University submitted that there is a gender bias in public policy, which explains why governments have not responded to First Nations women’s calls for action:

There has been a gender bias in public policy in relation to violence against First Nations people over many decades. For example, despite the fact that a comparable number of First Nations women have died as a result of violence against them, as First Nations men have died in custody, it is the latter issue that attracted far more public policy attention, including through

⁷⁷ Ms Antoinette Gentile, Acting Chief Executive Officer, Djirra, *Committee Hansard*, 18 June 2024, p. 2.

⁷⁸ Law Council of Australia, *Submission 12*, p. 7.

⁷⁹ Boorndawan Willam Aboriginal Healing Service, *Submission 11*, p. [6]. Also see: Dr Janet Hunt, *Submission 28*, pp. 3–4. Also see: Government of Canada, ‘National Inquiry into Missing and Murdered Indigenous Women and Girls’, www.rcaanc-cirnac.gc.ca/eng/1448633299414/1534526479029 (accessed 14 February 2024).

⁸⁰ Aboriginal Male Health Summit 2008—“Inteyerrkwe Statement” [2008] IndigLawB 26.

an early Royal Commission...There is now data on deaths in custody. There is still no data on national deaths of First Nations women by violence.⁸¹

- 5.81 Dr Hunt argued that addressing gender inequality is part of the solution to ending violence in First Nations communities, including the murder and disappearance of women and girls:

The focus of much discussion about violence in First Nations communities in Australia is on the impact of colonisation and ignores gender oppression. The Canadian Inquiry nailed the relationship between these factors. They cannot be separated and programs to end violence in First Nations communities and to end the deaths and disappearances of women and girls, must be very clear about this. Gender inequality has to be addressed in such programs along with racial inequality and healing from the ongoing trauma of colonisation.⁸²

- 5.82 The Western NSW Community Legal Centre and Western Women's Legal Support argued that gender inequality has created a cultural context in which violence against women has been normalised. They submitted that this culture must be dismantled with a focus on the behaviour and accountability of men:

...violence is based in gender inequality, both within a societal construct as well as specific interpersonal relationships. This normalisation has created a cultural context in which men presume and believe they are legitimately empowered to exert their influence and control over women and children... The disempowerment and lack of resources (such as suitable housing and legal protections) available to women and children to leave such violence serves to reinforce the legitimacy of the male's actions. There is still a stigma and expectation that responsibility lies with the woman to leave the relationship and protect her children, as opposed to the male being held accountable by society for his actions...Social constructs must be dismantled and the focus shifted to the behaviour and accountability of men for their behaviour, in order to assist with reducing systemic causes of [domestic and family violence, DFV].⁸³

- 5.83 Similarly, the North Queensland Women's Legal Service (NQWLS) submitted that community attitudes must change, especially 'disrespectful attitudes held by men and boys', to address 'toxic male entitlement and female subservience':

We must not lose sight of the fact that it is the decision to use harmful physical behaviours by men and boys against women and girls that is the ultimate *cause* of the problem. This is true for all perpetrators of violence against any victim. To achieve any sustainable change, we must address the attitudes that men and boys hold, and that broader communities hold

⁸¹ Dr Janet Hunt, *Submission 28*, pp. 4–5.

⁸² Dr Janet Hunt, *Submission 28*, p. 5. Also see: Australian Lawyers for Human Rights, *Submission 39*, p. 4, which submitted that 'systemic and intersectional discrimination and entrenched inequality results from and manifests in violence against First Nations women and children'.

⁸³ Western NSW Community Legal Centre and Western Women's Legal Support, *Submission 19*, p. 5. Also see, for example: North Queensland Women's Legal Service, *Submission 13*, p. 7.

supporting men and boys' beliefs that it is acceptable to treat women and girls in harmful ways.

...

Communities must encourage and empower First Nations women and girls to expect respectful relationships and to expect to live free of domestic/sexual violence. Community leaders, bystanders, families and individuals need to recognize and call out deviant behaviour as harmful and abnormal behaviour and there must be consequences for such behaviour.⁸⁴

- 5.84 Ms Alison Bairnsfather-Scott, whose sister was murdered in 2019, queried how the perpetrators can be held to account when the violence is so widespread:

...we need to look at how we can better hold perpetrators to account in our community. Violence is so wide spread people just aren't as shocked by it anymore. How can our community make the perpetrators accountable for their bad behaviour? What mechanisms do we have and what supports are available for those people that are brave enough to call this violence out because that is a lonely, sometimes dangerous, place to be.⁸⁵

Men's behaviour change programs

- 5.85 Multiple submitters and witnesses commented that there must be a focus on early interventions for perpetrators. Ms McGowan-Jones advised that perpetrator programs are not as common as women-focussed supports and services: 'often perpetrators are affected by mental health and/or drug and alcohol substance misuse, and it's about providing the right supports'.⁸⁶
- 5.86 The Boorndawan Willam Aboriginal Healing Service advised that there are specific problems with the programs that are available: 'the mainstream programs that address toxic masculinity are offered too late in the piece and are not appropriate for First Nations men'.⁸⁷
- 5.87 The Central Australian Aboriginal Congress concurred that mainstream men's behaviour change programs (MBCPs) are not particularly well suited to Aboriginal men:

In Central Australia, attempts to run [MBCPs] for Aboriginal men are reportedly well received, but need substantial adaptation from mainstream models due to language and cultural differences. Such programs in the

⁸⁴ North Queensland Women's Legal Service, *Submission 13*, p. 13. Also see: North Queensland Women's Legal Service, *Submission 13*, p. 3; Central Australian Aboriginal Congress, *Submission 18*, p. 7.

⁸⁵ Ms Alison Bairnsfather-Scott, *Submission 80*, pp. 2–3.

⁸⁶ Ms Jacqueline McGowan-Jones, Commissioner for Children and Young People (WA), *Committee Hansard*, 4 October 2023, p. 33. Also see: Commissioner McGowan-Jones, answers to questions on notice, 4 October 2023 (received 13 October 2023), which identified some of the programs available in Australia.

⁸⁷ Boorndawan Willam Aboriginal Healing Service, *Submission 11*, p. [8]. Also see: Kimberley Community Legal Services, *Submission 53*, p. 16.

Central Australian Aboriginal context also need to be trauma-informed and healing-focused given the high levels of complex trauma amongst Aboriginal men. Culture and spirituality are important in addressing trauma and family violence through supporting resilience, positive social and emotional well-being, and life free of addiction.⁸⁸

- 5.88 Similar to wrap-around services for First Nations men in the judicial system (see paragraph 3.126), Ms Robinson from Wirringa Baiya Aboriginal Women's Legal Centre supported wrap-around services for men in and exiting custody:

We really need to invest in how we support people in prison and how we transition them out. It is about how we have those supports and what those wrap-around supports are. It is not just about getting a roof over your head. It is also about how you live and how you change. One of those men said to me in the program, 'I just want to see more posters.' He said, 'If I get up every day and I look at a poster that says "don't be violent" or "don't hit", it's just a memory thing for me.' It's just a different way people are. We have to talk to people and ask, 'What works for you? What works for other people?' One size doesn't fit all. We need to remember that.⁸⁹

- 5.89 Ms Rachael Ozanne-Pike from the NQWLS said that 'there's a fantastic opportunity up at the domestic violence courts to try to effect change' through MBCPs. She argued that the courts should be able to order respondents to go to a MBCP provided by an ACCO.⁹⁰

- 5.90 Mr Lachlan Withnall from the Kimberley Community Legal Services indicated that, in WA, 'there is a mechanism...for the court to order the respondent to attend a behavioural change program, which would afford some perpetrator accountability and lead to some long-term behavioural change'. However, there are no approved providers:

...although we have this limited mechanism under the law, we have no available providers on the ground to deliver that service, which means that quite often perpetrators are not held to account for the family violence they inflict until such time as a police complaint is made.⁹¹

- 5.91 Australia's National Research Organisation for Women's Safety referenced a report from Professor Marcia Langton AO et al, which found that long-term,

⁸⁸ Central Australian Aboriginal Congress, *Submission 18*, p. 20. Also see: Mrs Rachel Neary, Coordinator, Kunga Stopping Violence Program, North Australian Aboriginal Justice Agency, *Committee Hansard*, 18 April 2024, p. 14.

⁸⁹ Ms Christine Robinson, Chief Executive Officer, Wirringa Baiya Aboriginal Women's Legal Centre, *Committee Hansard*, 28 July 2023, p. 9.

⁹⁰ Ms Rachael Ozanne-Pike, Lawyer, North Queensland Women's Legal Service, *Committee Hansard*, 2 November 2023, p. 10.

⁹¹ Mr Lachlan Withnall, Principal Solicitor, East Kimberley, Kimberley Community Legal Services, *Committee Hansard*, 4 October 2023, p. 44.

evidence-based and First Nations-led and culturally safe services for male perpetrators are under-resourced, particularly in remote and rural areas:

...men's healing programs, which are run by Aboriginal and Torres Strait Islander organisations and focus on yarning, camping, and speaking with Elders to empower men to prevent perpetration of family violence, can function as an alternative to mainstream MBCPs. However, these programs do not meet the minimum standards for MBCPs and this may impact whether Aboriginal and Torres Strait Islander perpetrators are referred to the programs, and whether the programs themselves receive resourcing. Aboriginal and Torres Strait Islander perpetrators of family violence also need increased access to support services to address substance use, mental illness and neurological disability. These issues are associated with increased severity of family violence...Addressing barriers to First Nations male perpetrators of family violence accessing holistic support services is critical to reducing rates of family violence against First Nations women and children.⁹²

- 5.92 The Domestic Violence Legal Service and Northern Territory Legal Aid Commission identified the Tangentyere Council Aboriginal Corporation's Men's Family Violence Prevention Program—Marra'ka Mbarintja (Talking straight to make change)—as the only MBCP which meets the standards set by the Central Australian Minimum Standards for Men's Behaviour Change Programs.⁹³
- 5.93 The Healing Foundation identified three examples of effective First Nations-led healing and behaviour change programs. It noted the programs provided by Dardi Munwurro (Strong Spirit), a specialist First Nations family violence service based in Victoria. In 2021, Deloitte Access Economics conducted an independent study that demonstrated the financial benefit from investing in such programs: 'a cost-benefit analysis indicated that for each dollar invested into Dardi Munwurro there was an estimated return on investment of 50%–190%'.⁹⁴
- 5.94 The Law Council referenced its Access to Justice project (see Chapter 3), which, it submitted, recognised:

⁹² Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 8. Also see: M. Langton, K. Smith, T. Eastman, L. O'Neill, E. Cheesman and M. Rose, 'Family violence policies, legislation and services: Improving access and suitability for Aboriginal and Torres Strait Islander men', Research report 26/2020, ANROWS.

⁹³ Domestic Violence Legal Service and Northern Territory Legal Aid Commission, *Submission 33*, p. 2.

⁹⁴ The Healing Foundation, *Submission 10*, p. 6. Also see: Deloitte Access Economics, *Strengthening Spirit and Culture A cost-benefit analysis of Dardi Munwurro's men's healing programs*, November 2021, www.dardimunwurro.com.au/wp-content/uploads/2021/11/HF_Strengthening_Spirit_and_Culture_Dardi_Munwurro_Report_Oct2021_V5.pdf (accessed 4 June 2024).

...the need for investment in tailored, evidence-based rehabilitative behaviour-change programs for perpetrators to break the cycle of violence in families, as well as evaluations to ensure the programs' effectiveness. This should include expanded access to culturally competent programs.⁹⁵

5.95 The Queensland Aboriginal and Islander Health Council submitted that the Aboriginal and Torres Strait Islander Community Controlled Health Organisations have not seen an increase in funding for MBCPs, despite Priority Reform 2 of the National Agreement ('Build the Aboriginal and Torres Strait Islander community-controlled sector').⁹⁶

5.96 Ms Anna Davis, Director of the Domestic, Family and Sexual Violence Reduction Division at the Department of Territory Families, Housing and Communities, advised that the NT Government supports initiatives other than incarceration as a solution to violence, including MBCPs:

There are two men's behaviour change programs operating at the moment. One is run by Tangentyere Aboriginal Council in Alice Springs, and the other one is run by CatholicCare NT in Darwin and in Wadeye...[T]he funding for those services has been more than tripled...in order to meet some of the existing and anticipated demand for those services. We have also been fortunate to receive funding under the National Partnership Agreement from the Commonwealth government to establish a new men's behaviour change program in the Katherine area. That program comes under the innovative perpetrator response grant, and the innovative nature of that is to have a more holistic view of domestic and family violence in relation to alcohol and other drugs use. The program, which is currently being shaped—it's not ready yet—will be looking at both domestic and family violence and alcohol and other drugs offending as they interrelate with each other, and that program will be delivered by an Aboriginal community controlled organisation.⁹⁷

5.97 The National Indigenous Australians Agency (NIAA) and the Attorney-General's Department (AGD) submitted that the Commonwealth government funds services for perpetrators seeking to change their behaviour, including in conjunction with state and territory governments:

This [funding] includes \$10.8 million to continue funding No To Violence for a Men's Referral Service, confidential telephone counselling and referrals for perpetrators of family and domestic violence to help change their behaviour, the Brief Intervention Service (which provides multi-session telephone counselling to men seeking support to change their violence or controlling behaviour), and \$25.0 million to partner with States and Territories to apply innovative approaches to address family and domestic violence perpetrator behaviour. \$34.8 million has also been provided for a

⁹⁵ Law Council of Australia, *Submission 12*, p. 23.

⁹⁶ Queensland Aboriginal and Islander Health Council, *Submission 7*, p. 8.

⁹⁷ Ms Anna Davis, Director, Domestic, Family and Sexual Violence Reduction Division, Department of Territory Families, Housing and Communities (NT), *Committee Hansard*, 18 April 2024, p. 53.

new early intervention trial for young men and adolescent boys aged 12 to 18 years who present with adverse childhood experiences including family or domestic violence, and who are at risk of perpetrating family, domestic or sexual violence.⁹⁸

Commonwealth government response

5.98 The NIAA and the AGD acknowledged:

Reducing the rates of violence requires community-driven, trauma informed approaches that prioritise cultural healing, family restoration and the strength of First Nations families. Solutions must support frontline and prevention services, while also addressing the structural and systemic drivers of violence.⁹⁹

National Agreement on Closing the Gap

5.99 The National Agreement on Closing the Gap (the National Agreement) aims to ‘overcome the entrenched inequality faced by too many Aboriginal and Torres Strait Islander people so that their life outcomes are equal to all Australians’ (paragraph 1.29).¹⁰⁰

5.100 The National Agreement explicitly recognised the need to support ACCOs, as they are ‘better for Aboriginal and Torres Strait Islander people, achieve better results, employ more Aboriginal and Torres Strait Islander people and are often preferred over mainstream services’.¹⁰¹

5.101 National Agreement Priority Reform 2 (Building the Community Controlled Sector) therefore aims to ‘increase the amount of government funding for Aboriginal and Torres Strait Islander programs and services going through Aboriginal and Torres Strait Islander community-controlled organisations’.¹⁰²

5.102 As with the National Plan to End Violence against Women and Children 2022–32 (the National Plan), the Commonwealth government has funded a range of activities to support and achieve the National Agreement targets.¹⁰³

⁹⁸ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 13.

⁹⁹ National Indigenous Australians Agency and Attorney-General’s Department, *Submission 6*, p. 5.

¹⁰⁰ National Agreement on Closing the Gap (National Agreement), July 2020, paragraph 15, <https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf> (accessed 25 January 2024).

¹⁰¹ National Agreement on Closing the Gap, July 2020, paragraph 43, <https://static1.squarespace.com/static/62ebb08a9ffa427423c18724/t/64467ee62c9e8f38067d2352/1682341610670/National-Agreement-on-Closing-the-Gap-July-2020.pdf> (accessed 7 June 2024).

¹⁰² National Agreement on Closing the Gap, July 2020, paragraph 15.

¹⁰³ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, p. 11.

5.103 In relation to Target 13, funded measures include a \$203 million investment from 2020–21 to 2024–25, for Family Violence Prevention Legal Services providers, and an additional capability development measure to support DFV service providers, including ACCOs.¹⁰⁴

5.104 The NIAA and the AGD advised that the Commonwealth government has also committed to a further range of measures to address violence against First Nations women and children. One of its key reforms is:

\$38.6 million for the Closing the Gap Outcomes and Evidence Fund, which will fund Aboriginal Community Controlled Organisations to deliver projects to people experiencing (or at risk of) child removal and/or family violence, focusing on building an evidence base for service impacts informed by First Nations-specific reporting and evaluation models.¹⁰⁵

5.105 As foreshadowed in Chapter 2, the Productivity Commission (PC) is not able to report progress on National Agreement Target 13, with measures and data for the target and indicators yet to be developed.¹⁰⁶

National Plan to End Violence against Women and Children 2022–32

5.106 As noted in Chapter 3, to support the National Plan, the Commonwealth government has funded measures in the category of sector strengthening measures. The NIAA and the AGD submitted:

The Government is working to strengthen the family safety sector by improving the capability of service providers to deliver accessible, integrated, trauma informed, and culturally safe services for First Nations peoples through a number of initiatives.¹⁰⁷

5.107 Most relevant to this inquiry is the \$3.2 million Connected Family Safety Services initiative, which aims to empower remote First Nations communities and organisations to map family safety services and identify gaps, with a view

¹⁰⁴ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, pp. 7 and 10.

¹⁰⁵ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, pp. 11–12.

¹⁰⁶ Productivity Commission, *Annual Data Compilation Report*, July 2023, p. 41. Also see: Productivity Commission, 'Closing the Gap Information Repository', www.pc.gov.au/closing-the-gap-data/dashboard/se/outcome-area13 (accessed 7 June 2024). Also see: Mr Ben Burdon, Group Manager, Social Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 11, who said 'it's quite clear that we've still got a long way to go on some indicators'.

¹⁰⁷ National Indigenous Australians Agency and Attorney-General's Department, *Supplementary submission 6.1*, p. 17.

to developing a community plan that suits them (an action item in the Aboriginal and Torres Strait Islander Action Plan).¹⁰⁸

Additional actions

5.108 The NIAA and the AGD highlighted that, on 24 March 2024, the Commonwealth government released the Working for Women: A Strategy for Gender Equality (the Strategy), which aims to achieve ‘the government’s vision for gender equality—an Australia where people are safe, treated with respect, have choices, and have access to resources and equal outcomes no matter their gender’.¹⁰⁹

5.109 Also, on 1 May 2024, the National Cabinet met to discuss gender-based violence and agreed a number of priorities and outcomes to complement the National Plan, including:

- strengthening prevention efforts through targeted, evidence-based approaches to build on the current universal approaches to ending gender-based violence. The Government committed \$1.3 million in the 2024-25 Budget to establish an independent expert panel to undertake a rapid review of the approach to violence prevention and advise Government on additional efforts to end the cycle of violence.
- ...
- improving information and data sharing about perpetrators across systems and jurisdictions, led by Data and Digital Ministers and Women and Women’s Safety Ministers.
- maintaining a focus on missing and murdered First Nations people throughout this work.¹¹⁰

5.110 First Ministers are expected to report back to the National Cabinet on this gender-based violence in the third quarter of 2024.

¹⁰⁸ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, p. 17.

¹⁰⁹ Department of the Prime Minister and Cabinet, ‘Working for Women: A Strategy for Gender Equality’, www.pmc.gov.au/office-women/working-women-strategy-gender-equality (accessed 13 June 2024).

¹¹⁰ National Indigenous Australians Agency and Attorney-General’s Department, *Supplementary submission 6.1*, p. 19.

Chapter 6

Commonwealth government leadership

- 6.1 According to Our Watch, to prevent violence against First Nations women, action is needed by multiple stakeholders in both First Nations and ‘mainstream’ or non-Indigenous contexts. However:

Governments have a critical responsibility to prevent violence against First Nations women, and specific obligations under international human rights law to do so. Work at the community or organisational level is important, but should be accompanied by legislative, institutional and policy actions by governments to protect Indigenous people’s human rights, promote racial and gender equality, and ensure accountability for violence and discrimination.¹

- 6.2 Dr Hannah McGlade, Associate Professor of the Law School at Curtin University and member of the United Nations (UN) Permanent Forum on Indigenous Issues, questioned whether all Australian governments are genuinely committed to ending the violence against First Nations women and children:

I've found from my own lifetime of working in this area that we're not valued and there's not been appropriate value placed on working with Indigenous women and investing in women's leadership, designing appropriate programs, investing in programs and addressing the systemic and structural issues, in particular with child welfare, policing and the justice system...I hope that the federal national action plan...can really engage with and influence state governments to be doing better, because we're doing very poorly.²

- 6.3 Ms Patty Kinnersly, Chief Executive Officer of Our Watch, stated that stronger leadership is required, a view shared by Ms Nerita Waight, Chief Executive Officer of the Victorian Aboriginal Legal Service, who said:

The Commonwealth does have a role, not only to encourage jurisdictions to implement necessary reforms. They also have a very powerful lever when it comes to resources, and that is often the barrier that is put in front of us.³

- 6.4 Particularly with respect to state and territory-based police services, Ms Waight argued that the Commonwealth government has a role. In addition to its international human rights obligations (see ‘International human rights

¹ Our Watch, *Submission 16*, p. 12.

² Dr Hannah McGlade, Associate Professor, Curtin Law School, Curtin University, *Committee Hansard*, 4 October 2023, p. 17.

³ Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, pp. 34–35. Also see: Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 16.

framework' below), Ms Waight said: 'it is our federal government, and these are issues that affect, us just like health and education'.⁴

- 6.5 Dr Chay Brown, Post Doctoral Fellow at the Australian National University and Managing Director of Her Story Consulting, particularly questioned federal, state and territory governments' commitment to collaborative partnerships:

I don't think that all levels of government are invested in those national partnership principles, certainly not in partnership nor in meaningful self-determination. Our only pathway out of a lot of these issues and problems is for these solutions to be community led. But something we repeatedly see, particularly in environments like Alice Springs, is externally imposed interventions again and again and again, which simply don't work.⁵

- 6.6 Similarly, Change the Record and Djirra submitted:

Contemporary policy responses to violence against Aboriginal and Torres Strait Islander women and children have been primarily government-directed and mainstream, failing to centre our needs and expertise. Mainstream, top-down government responses to family violence have made things worse, not better, for Aboriginal and Torres Strait Islander women, children and communities.⁶

- 6.7 This chapter focuses on:

- the international human rights framework;
- Commonwealth-led frameworks; and
- previous inquiries, reviews, studies, reports and recommendations.

International human rights framework

- 6.8 Dr Tania Penovic, Senior Chair of Women and Girls' Rights at Australian Lawyers for Human Rights (ALHR), stated that violence against women is probably the key human rights concern in Australia, with the shocking rates of violence directed at First Nations women and children being a critical issue:

...violence against First Nations women and children is so much greater; it's experienced disproportionately. So it's a critical human rights issue, and UN organs are beginning to recognise violence against Indigenous women and children globally [see, for example, paragraph 5.73]. Australia has certainly not distinguished itself in being a leader in this regard. We're not doing well;

⁴ Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service, *Committee Hansard*, 18 June 2024, p. 37.

⁵ Dr Chay Brown, Post Doctoral Fellow, Australian National University and Managing Director, Her Story Consulting, *Committee Hansard*, 18 April 2024, p. 4. Also see: Ms Patty Kinnersly, Chief Executive Officer, Our Watch, *Committee Hansard*, 18 June 2024, p. 16.

⁶ Change the Record and Djirra, *Submission 85*, p. [13].

there is significant work to be done in this area and we're failing to meet our human rights obligations.⁷

6.9 Several submitters and witnesses contended that international human rights obligations should found Australia's response to violence against First Nations women and children.⁸ In this respect, they noted the various international instruments that provide the right to live free from violence, for example, the:

- Convention on the Elimination of All Forms of Discrimination against Women;
- Convention on the Rights of the Child
- International Convention on the Elimination of All Forms of Racial Discrimination; and
- International Covenant on Economic, Social and Cultural Rights.⁹

6.10 In 2020, the *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* set out the international human rights context for upholding the safety of First Nations women and children, and commented:

All people have the right to live and grow in healthy and safe homes and communities, free from the threat of violence, abuse and discrimination. Guaranteeing basic rights, such as secure housing, education, financial security, health and non-discrimination, as well as maintaining connection to culture, is critical in reducing community-wide harms and interactions with the criminal justice and child protection systems. In recognising these rights, and grounded in our right to culture and self-determination, we can advance the equality, safety and wellbeing of our women and children.¹⁰

United Nations Declaration on the Rights of Indigenous Peoples

6.11 The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) establishes a universal framework of minimum standards for the survival, dignity and well-being of Indigenous people. It also elaborates on existing

⁷ Dr Tania Penovic, Senior Chair, Women and Girls' Rights, Australian Lawyers for Human Rights, *Committee Hansard*, 28 July 2023, p. 65.

⁸ See, for example: Law Council of Australia, *Submission 12*, p. 10; Australian Human Rights Commission, *Submission 34*, p. 10; Australian Lawyers for Human Rights, *Submission 39*, pp. 3–5; Change the Record and Djirra, *Submission 85*, p. 6.

⁹ Note: Australian Lawyers for Human Rights noted that these core international human rights instruments are all underpinned by the meta principle of equality and non-discrimination: *Submission 39*, p. 4.

¹⁰ Australian Human Rights Commission, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report*, 2020, p. 123. Also see: p. 124.

human rights standards and fundamental freedoms as they apply to Indigenous people.¹¹

6.12 The Law Council of Australia (Law Council) acknowledged that the UNDRIP is not a treaty and does not create legally binding obligations. However, it argued that the articles rely and elaborate upon many obligations articulated in international treaty and customary law. Therefore, '[UNDRIP] provides a useful and focused framework for identifying norms binding on Australia as they apply to the situations of First Nations peoples'.¹²

6.13 The Australian Human Rights Commission (AHRC) and the Law Council especially highlighted article 22(2) of the UNDRIP:

States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.¹³

6.14 The AHRC submitted that Australia must progress implementation of the relevant international human rights instruments, including the UNDRIP, to end violence against First Nations women and children.¹⁴

6.15 The Australian Lawyers Alliance (ALA) strongly endorsed the UNDRIP and supported its implementation into federal, state and territory legislation. It argued that the declaration would impose a broad duty on the Commonwealth government to consult First Nations peoples and their representatives, and would act to increase the safety of First Nations women and children:

Enactment of the UNDRIP will ensure that the structures and processes within Australia's legislative and policy landscape consider the duties and principles enshrined in the UNDRIP when developing or reforming laws and policies. This will extend to laws and policies that contribute to a systemic reduction in the causes of violence against First Nations women and children, and that contribute to an increase in initiatives that protect First Nations women and children's safety.¹⁵

6.16 Some submitters argued alternatively that Australia should legislate a Bill of Rights or Human Rights Charter, to better protect the human rights of all

¹¹ Australian Human Rights Commission, 'UN Declaration on the Rights of Indigenous Peoples', <https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1> (accessed 10 June 2024).

¹² Law Council of Australia, *Submission 12*, p. 11.

¹³ Law Council of Australia, *Submission 12*, p. 12; Australian Human Rights Commission, *Submission 34*, p. 11.

¹⁴ Australian Human Rights Commission, *Submission 34*, p. 11.

¹⁵ Australian Lawyers Alliance, *Submission 29*, pp. 13–14.

Australians, including those of First Nations women and children (see 'Parliamentary Joint Committee on Human Rights' at paragraph 6.30).¹⁶

Self-determination

6.17 Several submitters and witnesses referred to article 3 of the UNDRIP, which sets out the right of First Nations people to self-determination: 'Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development'.¹⁷

6.18 The Law Council explained:

The right to self-determination has been articulated as involving and protecting, at a minimum, an 'ongoing process of choice' for Indigenous peoples, who are entitled to have control over their destiny and be treated respectfully. It is paramount that responses to violence against First Nations women and children are driven by a process that is consistent with these principles, as these principles assist to empower communities and create tangible change.¹⁸

6.19 Dr McGlade stated, however, that the right of First Nations women to self-determination has not been respected in Australia. Adjunct Professor Muriel Bamblett AO, Adviser on the Aboriginal and Torres Strait Islander Advisory Council, called on Australian governments to align all legislative and policy reforms with the right to self-determination, as well as other UNDRIP principles.¹⁹

6.20 It is noted that the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs conducted an extensive inquiry in relation to the application of UNDRIP in Australia, including options to improve adherence to its principles in Australia. The report was handed down in November 2023.²⁰

¹⁶ See, for example: Australian Lawyers Alliance, *Submission 29*, pp. 14–15; Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 62*, p. [9]; Victorian Aboriginal Child Care Agency, *Submission 65*, p. 4.

¹⁷ United Nations Declaration on the Rights of Indigenous Peoples (adopted by the General Assembly 13 September 2007), www.un.org/development/desa/indigenouspeoples/wp-content/uploads/sites/19/2018/11/UNDRIP_E_web.pdf (accessed 11 March 2024). Also note: article 18 (the right to participate in decision-making) and article 19 (the right to consultation and cooperation in good faith).

¹⁸ Law Council of Australia, *Submission 12*, p. 12.

¹⁹ Adjunct Professor Muriel Bamblett AO, Adviser, Aboriginal and Torres Strait Islander Advisory Council, *Committee Hansard*, 5 October 2022, p. 38. Also see: Dr Hannah McGlade, Associate Professor, Curtin Law School, Curtin University, *Committee Hansard*, 4 October 2023, p. 13, who noted other relevant international human rights law obligations that are not being upheld in Australia: pp. 13–14; Seeds of Affinity – Pathways for Women Inc., *Submission 1*, p. 2.

²⁰ Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia*, November

Self-determined responses to violence

6.21 As reflected throughout this report, submitters and witnesses called for self-determined responses to violence against First Nations women and children, including service design and delivery by Aboriginal community-controlled organisations (ACCOs, see Chapters 3 and 5).²¹

6.22 ALHR submitted, for example:

One of the most important ways to ensure effective policies and programs in First Nations communities is to involve First Nations people (especially elders) in the design and implementation processes. Time and time again initiatives have failed because they neglect to take into account the nuances and features of First Nations customs, traditions and culture. This is a fatal blow to any policy or program targeting First Nations communities.²²

6.23 Similarly, the Commission for Children and Young People (Victoria) submitted:

A lack of investment in culturally appropriate and culturally safe support networks, particularly [ACCOs] has further contributed to a lack of suitable supports for First Nations women and children experiencing family violence, homelessness and poverty, contributing to increasing numbers of missing and murdered First Nations women and children.²³

6.24 Australia's National Research Organisation for Women's Safety (ANROWS) highlighted that First Nations women may prefer supports that enable them to stay in communities, to maintain connections to Country, community and family. In one study:

...participants expressed the universal belief that current government policies on family and domestic violence were designed to "break up" Aboriginal families...Participants emphasised that Aboriginal peoples' stories are different to those [of] non-First Nations people and therefore require a different response that is underpinned by closely working with Aboriginal peoples.²⁴

6.25 Across the country, submitters and witnesses advised that effective programs and services are undermined by limited and short-term funding. ALHR submitted that is a need for consistent and adequately funded support services:

Much like the Men's Shed initiative in the Northern Territory, many well-designed and effective strategies fail to launch or are terminated early due to lack of funding. For initiatives to be effective and achieve the

2023, [www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal and Torres Strait Islander Affairs/UNDRIP/Report](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Aboriginal_and_Torres_Strait_Islander_Affairs/UNDRIP/Report) (accessed 5 July 2024).

²¹ See, for example: Law Council of Australia, *Submission 12*, p. 5.

²² Australian Lawyers for Human Rights, *Submission 39*, p. 23. Note: the submission highlighted Men's Sheds in the Northern Territory as a highly successful but now discontinued community-informed initiative: pp. 23–24.

²³ Commission for Children and Young People (Victoria), *Submission 50*, p. 2.

²⁴ Australia's National Research Organisation for Women's Safety, *Submission 23*, p. 7.

long-term goal of reducing and eventually eradicating violence against First Nations women and children, consistent and adequate funding commitments from local, state and federal governments is a must.²⁵

- 6.26 The Ngaanyatjarra Pitjantjatjara Yankunytjatjara (NPY) Women's Council provides self-determined strategies to women across the NPY region. Its practice framework—'Strengthening Community Capacity to End Violence'—is similar to the Northern Territory's 'Men's Sheds' program. The NPY Women's Council supported calls for 'adequate funding':

Recognising community expertise and already established ways of working with women experiencing violence is vital if we are to reduce rates of violence against women in remote Aboriginal communities. Community involvement is crucial and adequate resourcing is necessary to ensure these solutions are able to be enacted and sustained. Solutions will not thrive if they are interrupted by short term funding cycles, change in policies and priorities and [Key Performance Indicators] that are not embedded with self-determination and cultural understanding.²⁶

- 6.27 Ms Dixie Link-Gordon, Program Coordinator for the NSW Aboriginal Women's Advisory Network, referenced the work conducted by her organisation. She agreed that it is not a good idea to time limit such programs:

It's like, 'Okay. Here's two years. Go and sort that out.' I always focus on how our community can have a good yarn, a good truth telling amongst each other. We all have the right to be safe in our homes, in our bedrooms. Our children have the basic human right to wake up with safety and love in their families, not their mother being beaten to death in the lounge room or out the back door or something.²⁷

- 6.28 The Northern Territory's Office of the Children's Commissioner noted the specific challenges of service delivery and interventions in the Northern Territory (also see Chapter 5):

Stakeholders in the Northern Territory have advocated for sustainably funded, culturally safe and Indigenous-led initiatives to produce successful and sustainable change. More generally, the Northern Territory service landscape is limited and struggles to offer a wide range of suitable and effective services and interventions, especially to Aboriginal women and children.

The impacts of intergenerational trauma, ongoing socio-economic inequality and institutional racism have contributed to diminished trust and uptake of non-Aboriginal focused policies and services from non-Aboriginal organisations. For these reasons, it remains critical to strengthen funding,

²⁵ Australian Lawyers for Human Rights, *Submission 39*, p. 24.

²⁶ Ngaanyatjarra Pitjantjatjara Yankunytjayjara Women's Council, *Submission 62*, p. [5]. Also see: Northern Territory Women's Legal Services, *Submission 24*, p. 9.

²⁷ Ms Dixie Link-Gordon, Program Coordinator, NSW Aboriginal Women's Advisory Network, *Committee Hansard*, 28 July 2023, p. 7.

capacity building and culturally appropriate program and policy design and evaluation with Aboriginal Community Controlled organisations.²⁸

- 6.29 Mr Greg Douglas, Chief Executive Officer of Kempsey Local Aboriginal Land Council, gave evidence that First Nations organisations have difficulty obtaining funding from the Commonwealth government:

From 2011 there has been a major federal government initiative around economic development for communities, but when the community organisation worked and formed partnerships to come together and make applications for support through that, the end result was that very few actually received any support and the moneys went to providers from outside or established providers under the procurement spheres of government funding. That stuff is still going on now.²⁹

Parliamentary Joint Committee on Human Rights

- 6.30 The Parliamentary Joint Committee on Human Rights (PJC HR) recently inquired into Australia's Human Rights Framework, including consideration of whether the Australian Parliament should enact a federal Human Rights Act.³⁰

- 6.31 The PJC HR tabled its report on 30 May 2024 with 17 detailed recommendations, including that the Commonwealth government legislate for the comprehensive and effective protection of human rights through a Human Rights Act (HRA, Recommendation 1).³¹

- 6.32 With respect to First Nations people, the PJC HR reported:

The committee also received evidence that other rights relating to specific groups, such as Aboriginal and Torres Strait Islander people...should be protected...The committee acknowledges the importance of protecting the rights of specific vulnerable groups, particularly in light of their experience of systemic discrimination. However, the committee considers that the [model legislation proposed by the AHRC] would adequately protect the rights of these specific groups, noting that many of these specific rights are drawn from the core rights contained in the [International Covenant on Civil

²⁸ Office of the Children's Commissioner (NT), *Submission 17*, p. [2]. Note: the submission noted particularly the Tangentyere Council Aboriginal Corporation's primary prevention 'Mums Can Dads Can/Girls Can Boys Can' project: p. 3.

²⁹ Mr Greg Douglas, Chief Executive Officer, Kempsey Local Aboriginal Land Council, *Committee Hansard*, 21 February 2023, p. 3.

³⁰ Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, May 2024, p. xv, www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework (accessed 10 June 2024).

³¹ Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, May 2024, Recommendation 1, paragraph 9.11.

and Political Rights] and the International Convention on Economic, Social and Cultural Rights (ICESCR).³²

- 6.33 The PJC HR specifically noted the importance of the right to self-determination but expressed a view that expert legal advice must be obtained before any decision on how to include this right in a HRA:

The committee notes that the AHRC has suggested including the right to self-determination within a preamble as an overarching principle of a HRA rather than a stand-alone right due, in part, to the vagueness and complexity of the term. The committee acknowledges the complexity of including this right within a HRA, particularly noting it is a collective right of 'peoples' rather than individuals. However, noting the particular significance of this right to Aboriginal and Torres Strait Islander people, the committee considers further legal advice should be sought as to whether the right to self-determination could be included in a HRA as an enforceable collective right, including advice from relevant Aboriginal and Torres Strait Islander experts.³³

- 6.34 As at the time of writing, the Commonwealth government has not responded to the recommendations of the PJC HR.

Commonwealth-led frameworks

- 6.35 The National Plan to Reduce Violence against Women and their Children 2010—2022 (the National Reduction Plan) provided a framework for actions by governments to reduce violence against women and their children. It also aimed to improve how governments work together, increase support for women and their children, and create innovative and targeted ways to bring about change.³⁴
- 6.36 First Nations leader Professor Marcia Langton AO was quoted in media, saying that the National Reduction Plan did 'not work for us' and Indigenous representatives must be involved in designing local initiatives:

'Nobody listens to us. They talk over the top of us, they tell us what we are going to have in our communities, and no one listens to the women in the communities, the women in the towns, the women in the suburbs who have to deal with all those young women and older women and children fleeing from violence...Lives are being lost because people who think they know better than us will not listen to us and will not act on our advice'.³⁵

³² Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, May 2024, paragraph 9.24.

³³ Parliamentary Joint Committee on Human Rights, *Inquiry into Australia's Human Rights Framework*, May 2024, paragraph 9.14.

³⁴ Council of Australian Governments, National Plan to Reduce Violence against Women and Children, 2010, p. 10, www.dss.gov.au/sites/default/files/documents/08_2014/national_plan1.pdf (accessed 11 March 2024).

³⁵ Professor Marcia Langton AO quoted in K. Curtis, '“Nobody listens to us”: Indigenous women call for separate domestic violence plan', *Sydney Morning Herald*, 6 September 2021,

6.37 Change the Record and Djirra agreed that the National Reduction Plan failed First Nations women and children:

Despite the disproportionate violence and trauma experienced by First Nations peoples, the [National Reduction Plan] failed to centre the voices and needs of Aboriginal and Torres Strait Islander women, gender diverse people and children. It continued the Australian tradition of governments making decisions about First Nations peoples without consultation and consent in policy development, implementation and evaluation.³⁶

6.38 The National Reduction Plan expired in 2022 and was replaced by the National Plan to End Violence Against Women and Children 2022–2032 (the National Plan):

The National Plan commits to 10 years of sustained action, effort and partnership across sectors and levels of government towards our vision of ending violence against women and children in one generation. It outlines what needs to happen to achieve our vision. This includes building the workforce, growing the evidence base and strengthening data collection systems, while delivering holistic, coordinated and integrated person-centred responses. To achieve this, we must listen to and be guided by victim-survivors and people with lived experience.³⁷

6.39 The National Plan explicitly acknowledges the key role and contributions of First Nations people in creating the new framework:

We recognise the leadership role Aboriginal and Torres Strait Islander peoples have played in the development of the National Plan and the role Aboriginal and Torres Strait Islander peoples will play in the implementation and monitoring of the National Plan. This includes thanks to the Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence which has worked in partnership with government to inform the development of this plan and is leading the development of the underpinning Aboriginal and Torres Strait Islander Action Plan.³⁸

6.40 The Department of Social Services (DSS) Acting Group Manager of the Women's Safety Group Ms Greta Doherty explained that the National Plan benefits from the experience of the National Reduction Plan:

[The National Reduction Plan] put a lot of effort into building the evidence base and building our understanding of both the drivers of violence and the impacts of violence through society at an individual level, a social level and

www.smh.com.au/politics/federal/nobody-listens-to-us-indigenous-women-call-for-separate-domestic-violence-plan-20210906-p58p97.html (accessed 18 March 2024).

³⁶ Change the Record and Djirra, *Submission 85*, p. [15].

³⁷ Commonwealth of Australia, National Plan to End Violence against Women and Children, 2022–2032, 2022, p. 18, www.dss.gov.au/sites/default/files/documents/10_2023/national-plan-end-violence-against-women-and-children-2022-2032.pdf (accessed 18 March 2024).

³⁸ Commonwealth of Australia, National Plan to End Violence against Women and Children, 2022–2032, 2022, p. 18.

a community level. I acknowledge there are still significant gaps...[T]he [National Plan] will acknowledge there is a lot of work to still be done to continue to build on the evidence base, but we are certainly not starting from scratch.³⁹

Aboriginal and Torres Strait Islander Action Plan 2023–2025

- 6.41 During the development of the National Plan, the National Summit on Women’s Safety met in Canberra (6–7 September 2021). That summit concluded with the release of a Delegates Statement that explicitly recognised:

Aboriginal and Torres Strait Islander peoples must have their own First Nations specific Action Plan to address family safety under the National Plan and be empowered to lead all actions and responses in their communities.⁴⁰

- 6.42 In 2023, the DSS and the Aboriginal and Torres Strait Islander Advisory Council on family, domestic and sexual violence delivered the Aboriginal and Torres Strait Islander Action Plan 2023–2025 (First Nations Action Plan):

This is the first dedicated Action Plan created to provide targeted action to address the disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander women and children. The Action Plan is aligned with the National Agreement on Closing the Gap, the 4 Priority Reforms and 17 socio-economic outcomes. Specifically, with a focus on outcome area and Target 13...The Action Plan also corresponds with other existing strategies and targets for realising the rights of Aboriginal and Torres Strait Islander women and children at the Commonwealth and state/territory levels. Its activities will occur alongside a range of initiatives already being implemented by states and territories under their individual plans.⁴¹

First Nations National Plan

- 6.43 In 2022, the *Wiyi Yani U Thangani (Women’s Voices)* First Nations Women’s Safety Policy Forum (First Nations Women’s Safety Policy Forum) convened to ‘inform the longer-term formation of the Australian Government’s proposed stand-alone First Nations National Plan to end violence against women and children’ (12 September).⁴²

³⁹ Ms Greta Doherty, Acting Group Manager, Women’s Safety Group, Department of Social Services, *Committee Hansard*, 5 October 2022, p. 39.

⁴⁰ National Summit on Women’s Safety 2021, *Statement from Delegates – 2021 National Summit on Women’s Safety*, 2021, p. 4, <https://az659834.vo.msecnd.net/eventsairaueprod/production-regonsite-public/e626677d4b4c4a5ebfe33a68b05bdd6b> (accessed 10 June 2024).

⁴¹ Commonwealth of Australia, Aboriginal and Torres Strait Islander Action Plan 2023–2025, 2023, p. 16, www.dss.gov.au/sites/default/files/documents/08_2023/np-atsi-action.pdf (accessed 18 March 2024).

⁴² Australian Human Rights Commission, 2022 *Wiyi Yani U Thangani First Nations Women’s Safety Policy Forum Delegates Statement*, 2022, p. 3, https://humanrights.gov.au/sites/default/files/delegate_statement_wyut_womens_safety_forum_final_2.pdf (accessed 10 June 2024).

- 6.44 On conclusion, the forum issued a Delegates Statement, which set out seven overarching themes and priorities for formulation on the National Plan, including:

First Nations self-determination to guarantee that First Nations women lead in the development and delivery of a stand-alone plan, and inform the program, policy and legislative decisions that impact their lives, consistent with human rights, especially UNDRIP.

...

Centring the voices of First Nations children, especially girls who are at increased risk of sexual abuse in the development of the stand-alone plan to ensure specific child-centred actions, and to support community-controlled organisations and other mainstream services to work effectively with children and families impacted by violence.

Grounding the plan in a **human-rights based approach** that recognises Australia's obligations to the treaties it has ratified and endorsed.

...

Understanding and addressing the violence caused by individual, **systemic and institutional racism**, how racism is present within policies and legislation, and the particular effects it has on First Nations women and children in everyday life and when interacting with services, the public and when seeking help.⁴³

- 6.45 Several submitters expressly supported the outcomes of the First Nations Women's Safety Policy Forum. Change the Record and Djirra, for example, outlined their longstanding support for 'a standalone, self-determined National Safety Plan for First Nations Women to implement community-led responses to violence'. The Boorndawan Willam Aboriginal Healing Service submitted that 'there must be an investment in a first nations national plan and that its success hinges on First Nations women being positioned to lead this piece of work'.⁴⁴
- 6.46 The Law Council particularly noted Recommendations 1–2, 5–6 and 8–9 of the First Nations Women's Safety Policy Forum's Outcomes Report, which was released in November 2022. These recommendations focussed on design considerations and structural reforms, such as, 'ensure Plans consider the interrelationship between state, territory and Commonwealth governments to promote shared responsibility'.⁴⁵

⁴³ Australian Human Rights Commission, 2022 *Wiyi Yani U Thangani First Nations Women's Safety Policy Forum Delegates Statement*, 2022, p. 4 (emphasis in original). Also see: Australian Lawyers for Human Rights, *Submission 39*, pp. 13–14.

⁴⁴ Boorndawan Willam Aboriginal Healing Service, *Submission 11*, p. [11]; Change the Record and Djirra, *Submission 85*, p. [15]. Also see: Law Council of Australia, *Submission 12*, p. 18; Australian Lawyers for Human Rights, *Submission 39*, pp. 14–15.

⁴⁵ Law Council of Australia, *Submission 12*, p. 19. Also see: Australian Human Rights Commission, *First Nations Women's Safety Policy Forum Outcomes Report*, November 2022, pp. 40–43,

- 6.47 The AHRC argued that, like the National Plan, the First Nations National Plan should clearly acknowledge children and young people as victim-survivors in their own right:

The rights and needs of children – both boys and girls – must be considered at each point of the strategy, from prevention to early intervention and through to the response and recovery domains.⁴⁶

Commonwealth government response

- 6.48 The National Indigenous Australians Agency (NIAA) and the Attorney-General's Department (AGD) recognised the need to centre the voices of First Nations women:

First Nations experiences and culture must be at the centre of our approach to understand and safeguard First Nations women and children from violence. All levels of governments need to understand the five elements that drive cultural strength – Land, Lore, Language, Family and Ceremony. These elements operate collectively and work to keep culture and community strong, which in turn empowers First Nations peoples to feel safe and proud of their identity.⁴⁷

- 6.49 In mid-2022, the Minister for Social Services, the Hon Amanda Rishworth MP (the minister), announced that 'the Australian Government will work with Aboriginal and Torres Strait Islander women to develop a stand-alone National Plan to set out a long-term strategy'.⁴⁸
- 6.50 On 24 January 2024, the minister announced jointly with the Minister for Indigenous Australians, the Hon Linda Burney MP, the appointment of the new First Nations National Plan Steering Committee to provide advice on the development of the standalone First Nations National Plan to address Target 13 of the National Agreement on Closing the Gap 2020–2030.⁴⁹

<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6> (accessed 10 June 2024).

⁴⁶ Australian Human Rights Commission, *Submission 34*, p. 16.

⁴⁷ National Indigenous Australians Agency and Attorney-General's Department, *Submission 6*, p. 5.

⁴⁸ Hon Amanda Rishworth MP, Minister for Social Services, 'Critical federal meeting on First Nations women's safety', *Media Release*, 28 July 2022, <https://ministers.dss.gov.au/media-releases/8666> (accessed 18 March 2024).

⁴⁹ Hon Amanda Rishworth MP, Minister for Social Services, and Hon Linda Burney MP, Minister for Indigenous Australians, 'Expert First Nations Steering Committee to advise on reducing rates of family violence and abuse', *Joint Media Release*, 24 January 2024, <https://ministers.dss.gov.au/media-releases/13681#:~:text=Target%2013%20states%20that%3A%20By,cent%2C%20as%20progress%20towards%20zero> (accessed 10 June 2024).

6.51 In the Federal Budget 2023–24, the Commonwealth government committed \$7.8 million over five years from 2022–23 (and \$4.0 million in 2027–28) to support the development of the First Nations National Plan.⁵⁰

Previous inquiries, reviews, studies, reports and recommendations

6.52 Many submitters and witnesses commented that, in addition to the *Wiyi Yani U Thangani (Women's Voices)* project (see Chapter 3), there is an existing and substantial body of work that can inform responses to family, domestic and sexual violence against First Nations women and children, for example:

- the 1987–1991 Royal Commission into Aboriginal Deaths in Custody;
- the Australian National University First Nations-led *Family and Community Safety for Aboriginal and Torres Strait Islander Peoples Study (FaCtS)*;
- Our Watch's 2018 *Changing the Picture: a national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*; and
- the Secretariat of National Aboriginal and Islander Child Care – National Voice for our Children, National Family Violence Prevention Legal Service and National Aboriginal and Torres Strait Islander Legal Service 2017 collaboration, *Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander Children and Families*.⁵¹

6.53 The Law Council, the AHRC, the Law Reform and Social Justice Research Hub at the Australian National University and the First Nations Women's Legal Service Queensland also highlighted international reports and experiences (such as Canada's National Inquiry into Missing and Murdered Indigenous Women and Girls and New Zealand's Waitangi Tribunal's Mana Wāhine inquiry).⁵²

6.54 The AHRC submitted that 'future plans to end violence against First Nations women and children must not begin from scratch but should build on the findings and recommendations that already exist'. It argued, however, that 'many of the same recommendations are repeated across reports and research over decades but lack a consistent approach for taking action and tracking progress'.⁵³

⁵⁰ Commonwealth of Australia, 2023–24 *Federal Budget, Budget measures: Budget Paper No. 2*, p. 90.

⁵¹ See, for example: Law Council of Australia, *Submission 12*, pp. 25–26; Australian Human Rights Commission, *Submission 34*, pp. 22–23.

⁵² Australian National University, Law Reform and Social Justice Research Hub, *Submission 2*, pp. [14–16]; Law Council of Australia, *Submission 12*, pp. 26–27; Australian Human Rights Commission, *Submission 34*, pp. 16–17; First Nations Women's Legal Service Queensland, *Submission 38*, p. 2.

⁵³ Australian Human Rights Commission, *Submission 34*, p. 21.

- 6.55 Several submitters agreed that implementation of earlier recommendations has been lacking. The Wirringa Baiya Aboriginal Women's Legal Centre submitted, for example:

...we note many recommendations in these reports have not been implemented, and inconsistency in addressing First Nations disadvantage stubbornly persists. For example, in 2007, when our Commonwealth Government was developing the Closing the Gap initiative (to tackle First Nations disadvantage) - on the international stage Australia was voting against the adoption of the United Nations Declaration on the Rights of Indigenous People. It took another two years before this occurred in 2009. Such inconsistencies result in documented further marginalization of First Nations women and children in particular.⁵⁴

- 6.56 Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner stated that various national commissions of inquiry have highlighted past and current forms of violence perpetrated against First Nations peoples, and documented the lasting effects of colonialism. In their view, the failure to implement recommendations to address these matters is tantamount to genocide:

The lack of implementation of many, if not most, of the recommendations in these reports is further evidence of Australia's continuing violation of its international human rights obligations, among which is Australia's obligation not to commit genocide. Instead of making meaningful reparations for past and present rights violations, governments have increasingly relied on punitive measures as a response despite knowledge and growing awareness of the destruction these responses cause for First Nations people and how they increase exposure of First Nations women and children to violence and abuse. The lack of commitment and action to progress recommendations for reform supports the argument that the genocide continues.⁵⁵

- 6.57 In another example, Change the Record and Djirra submitted:

...there has been Royal Commission after Royal Commission, reports, inquiries, strategies and partnerships but little to no implementation of recommendations. There continue to be deaths in and out of custody, with little or no consequences. More children than ever are being stolen from their mothers, families and communities. Lip service is paid to acknowledgement of country, reconciliation and cultural awareness training, but there is a complete lack of commitment to developing institutional cultural awareness or building it into accountability structures.⁵⁶

⁵⁴ Wirringa Baiya Aboriginal Women's Legal Centre, *Submission 62*, p. 3. Also see: First Nations Women's Legal Services Queensland, *Submission 38*, p. 21.

⁵⁵ Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner, *Submission 79*, pp. 18-19. Also see: First Nations Women's Legal Services Queensland, *Submission 38*, p. 21.

⁵⁶ Change the Record and Djirra, *Submission 85*, p. [14].

- 6.58 The Victorian Aboriginal Child Care Agency suggested that accountability be improved by the Commonwealth government regularly reporting its progress to Parliament on the implementation of recommendations from the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families and the Royal Commission into Aboriginal Deaths in Custody.⁵⁷
- 6.59 NIAA representative Ms Ursula Carolyn, Branch Manager for Families and Safety, acknowledged that, in 2018, nine per cent of recommendations directed toward the Commonwealth government from the Royal Commission into Aboriginal Deaths in Custody had not been implemented.⁵⁸
- 6.60 Mr Ben Burdon, Group Manager of Social Policy and Programs at the NIAA, advised:
- ...we haven't achieved the overall outcomes of the royal commission, and it's something that the government takes very, very seriously and has made a range of commitments to keep working on.⁵⁹

⁵⁷ Victorian Aboriginal Child Care Agency, *Submission 65*, p. [5].

⁵⁸ Ms Ursula Carolyn, Branch Manager, Families and Safety, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 7. Also see: Deloitte Access Economics, *Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody*, Department of the Prime Minister and Cabinet, August 2018, p. xi, www.niaa.gov.au/sites/default/files/documents/publications/rciadic-review-report.pdf (accessed 5 July 2024), which showed that, on average, the Commonwealth had completed or mostly completed implementation of over 90 per cent of its recommendation responsibilities.

⁵⁹ Mr Ben Burdon, Group Manager, Social Policy and Programs, National Indigenous Australians Agency, *Committee Hansard*, 5 October 2022, p. 12.

Chapter 7

Conclusions and recommendations

- 7.1 The committee commenced this inquiry aware that its work would require engaging with distressing personal experiences; indeed, the very worst experience for many families. The experiences shared with the committee were difficult to hear and confronting. The stories of loss, grief and trauma suffered by First Nations peoples are heart breaking. As Senator Dorinda Cox remarked, ‘this is truth telling, and this is hard’.¹
- 7.2 The committee is both humbled and indebted to the families willing to relive their experiences and discuss the abuse, violence and trauma they have suffered, and the failure of institutions and systems tasked with protecting them.
- 7.3 The strength and resilience of the families whose loved ones have been murdered or disappeared was palpable. Their fight for justice—in some cases over decades—is inspiring. That those families, and many other First Nations families, have had to pursue justice over such lengthy periods of time is evidence of the failure of the institutions and systems meant to provide justice for all Australians.
- 7.4 For many First Nations women and children who have been murdered or disappeared, there has been little, if any, justice. In too many instances, the suspected or identified perpetrator has not been held to account for their shocking crime. What happened to these women and children is reprehensible. Often, it was predictable and preventable. And it continues to happen.
- 7.5 In circumstances where, over many years, there have been numerous inquiries and reports investigating the abuse and violence inflicted upon First Nations people generally, and First Nations women and children specifically, the committee wholeheartedly agrees that yet more acknowledgement of problems already recognised and recommended solutions already identified, is not the answer. The committee heard loud and clear the exasperation, frustration and, in some cases, well-founded anger of those with whom it engaged. In response, the committee intends this report to be a call to action.

Extent of the murders and disappearances

- 7.6 The committee heard that the raw data on disappeared and murdered First Nations women and children is collected by the states and territories.
- 7.7 In relation to missing people, data collection inconsistencies across jurisdictions—such as for Indigenous status—mask the true extent of the

¹ Senator Dorinda Cox, *Committee Hansard*, 21 February 2023, p. 2.

disappearances, however, the available data shows that there is a high and grossly disproportionate number of disappeared First Nations women and children, compared to their non-Indigenous counterparts. Across the whole of Australia, the data is deeply disturbing. In the Northern Territory, the data is horrendous.

- 7.8 In relation to homicide victims, the data again shows that First Nations women and children are significantly over-represented as homicide victims. It is extremely disconcerting to note the extended trend data and the fact that this is happening in contemporary Australia.
- 7.9 The committee also heard that state and territory data are affected by under-reporting. First Nations children and young people in out-of-home care are often not reported absent or missing from residential care, the implication being that they are getting lost in care and protection systems. Equally concerning, the committee heard that First Nations people do not report incidents, or choose to withhold their Indigenous status, due to fear of police and child protection services.
- 7.10 There have been and are ongoing efforts to improve the data, through, for example, the Police Consultative Group on Missing Persons development of a Missing Persons Minimum dataset, the Data Development Plan 2022-2032 and the recent announcement of funding for First Nations-led research into domestic, family and sexual violence (DFSVM).
- 7.11 At present, the outcome of these efforts is indeterminate; however, it is an improvement on the current position, where there are discernible data gaps with respect to disappeared and murdered First Nations women and children. Once complete, the data will serve to better inform policy, services and program development, as well as recognise the loss suffered within our communities.
- 7.12 This is an area which deserves further monitoring and oversight by the Parliament. For convenience, we deal with this in Recommendation 3.

Recognition

- 7.13 Stakeholders identified the ongoing impacts of colonisation and gendered factors as the key causes and drivers of violence against First Nations women and children.
- 7.14 The committee heard evidence that these factors are intersectional and exacerbated by intergenerational trauma resulting from racist and/or colonial policies, laws and practices, particularly the forced removal of First Nations children from their families, communities and lands. The committee saw firsthand the trauma inflicted on First Nations women and children across generations.
- 7.15 To support healing, the committee considers it essential for governments, the media and the Australian community to better understand that First Nations

women and children are being murdered and disappeared to a much greater extent than their non-Indigenous counterparts.

- 7.16 To this end, the committee considers that it would be entirely proper for those women and children to be recognised and remembered in a culturally appropriate and nationally significant way, with First Nations families and communities to determine how.

Recommendation 1

- 7.17 The committee recommends that federal, state and territory governments codesign with First Nations families and communities, and on behalf of all Australians, a culturally appropriate and nationally significant way in which to recognise and remember the First Nations women and children who have been murdered or disappeared.**

Policing and criminal justice system

- 7.18 The committee heard evidence that Australia's policing and criminal justice systems discriminate against First Nations people, including women and children, and that this discrimination manifests in substandard (racist, sexist, disrespectful, unprofessional and negligent) responses to missing persons reports and homicide investigations.
- 7.19 Police forces, prosecutors and coroners rejected that their responses distinguished between First Nations and non-Indigenous people, and argued that everyone is treated equally.
- 7.20 The committee notes that there have been apologies issued by governments and police services in relation to some of the cases considered by the committee. In some cases, this has taken years of advocacy. Further, the Northern Territory Police Commissioner made an apology at the most recent Garma Festival. Shortcomings have been recognised. The focus now must be on ensuring that all is being done to implement best practice police services across Australia to address the issues considered in this report.
- 7.21 The committee received clear evidence from families and other stakeholders of the impact of discrimination and racist attitudes. Some of the stories shared with the committee were appalling and shocking.
- 7.22 Amongst First Nations communities, distrust of the police and other government institutions and systems is rife and persists. In many cases this leads to First Nations women and children not seeking assistance, even in the most desperate of circumstances. This is deeply troubling to the committee. It must be addressed.
- 7.23 Police forces, prosecutors and coroners provided information regarding the cultural awareness, cultural safety and trauma-informed training within their

organisations, as well as the representation, support and promotion of First Nations people within them.

- 7.24 These measures are welcome and are intended to improve interactions and engagement with the policing and criminal justice systems. There has been further reform and refinement of programs over the last few years in a number of jurisdictions. The quality and extent of existing training varies, and consistent implementation will be critical to promoting better outcomes.
- 7.25 The committee was very pleased to hear of the positive and proactive work by the Directors of Public Prosecution (DPPs) in New South Wales (NSW) and Western Australia (WA) to improve their engagement with First Nations families, particularly with respect to decisions made by prosecutors.
- 7.26 Similarly, the committee was heartened by reforms in the Coroners Court of NSW and Coroners Court (Queensland) that recognise their practices have traditionally been a barrier to First Nations families receiving meaningful outcomes from coronial processes and are seeking to address this.
- 7.27 While there is more work to be done to ensure First Nations families are engaged in effective and purposeful ways by public prosecutors and coroners, the committee commends the DPPs in NSW and WA and the coroners in NSW and Queensland for taking these important first steps. The committee urges other states and territories to follow this lead. The barriers to First Nations people being able to fully participate in the justice system and receive the justice to which they are entitled must be removed.
- 7.28 While the committee is optimistic about reforms by DPPs and coroners in some jurisdictions, the committee remains gravely concerned about the evidence it received in relation to policing practices, notwithstanding the reforms in some jurisdictions. This is because of the strong evidence received by the committee of the importance of police practices in addressing the issues considered in this report.
- 7.29 On the basis of the evidence received, the committee shares the reservations expressed by the former Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO, who has emphasised that reform of police practices and behaviours is not occurring at the pace or scale required (paragraph 4.2). The committee did receive evidence of further reform and refinement of police practices and behaviours in some jurisdictions in the last few years. That is to be commended, but must be viewed in the context of the horrendous case studies provided to the committee.
- 7.30 The committee cannot over emphasise how disturbed it was by the case studies presented to it. In these studies, First Nations women and children in their most vulnerable moments were failed by the police services meant to protect them and their family. Whilst reforms have been implemented in some jurisdictions, the goal must be to ensure that all is now being done across the whole of

Australia to implement best police practices so that the systems and culture are in place to address the disturbing issues considered in this report. It is only in this way that trust can be built between our police services and First Nations women and children.

- 7.31 There must be independent and effective mechanisms to deal with complaints about the conduct of police and police investigations, including those concerning homicide investigations and responses to missing persons reports involving First Nations women and children. For there to be confidence and trust in the justice system, police forces should not be solely responsible for handling complaints about, and conducting reviews into, their own mistakes and alleged misconduct, with no external oversight.
- 7.32 In view of the extensive information received during this inquiry about police culture and practices, it is clear that there must be further urgent action to ensure that best police practices are implemented across Australia in relation to police interactions with First Nations people. There is an opportunity for police services across Australia to work with each other, learning from each other's experiences and the success or otherwise of previous reforms, to implement best police practices across Australia that will build trust between police services and our First Nations women and children.
- 7.33 The Commonwealth government does not have responsibility for state and territory police services. However, there is an opportunity for the Attorney-General to advance the matter through the Police Ministers Council and to provide leadership. The committee sincerely hopes that state and territory police services will be open to cooperatively working with each other on these issues.

Recommendation 2

- 7.34 **The committee recommends that the Attorney-General tasks the Police Ministers Council to review existing police practices in each jurisdiction, consider the learnings from each jurisdiction and aim to implement and harmonise best police practices across Australia by no later than 31 December 2025, with the goal of ensuring all interactions with First Nations people are consistent and of a high standard, including standards of cultural awareness and safety. In performing this role, the committee recommends that the following practices and procedures be considered:**
 - ongoing and mandatory cultural awareness training for all employees (that is, both sworn and civilian members);
 - training courses developed and led by First Nations people, including components on lived experience, trauma-informed practice and effective communication;
 - recruitment, support and promotion of First Nations people, including to senior management positions; and

- appropriate guidelines for the review of past cases involving disappeared and murdered First Nations women and children where families are seeking review. These should be replicated through the justice system as recommended by the NSW State Coroner in the inquest into the death of Mona Lisa Smith and Jacinta Rose Smith (referred to in this report).

Recommendation 3

- 7.35 The committee recommends that the Senate Legal and Constitutional Affairs Legislation Committee or the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs, or such other appropriate body, monitors progress in meeting Recommendation 2 and the progress of measures to address the issues relating to discernible data gaps (paragraph 7.11).**
- 7.36 Participants in the inquiry repeatedly emphasised that the experiences and voices of First Nations people, especially women, must be central to addressing abuse and violence towards them. First Nations women are strong and resilient. They are the people best placed to outline the solutions that will work for them and their communities.
- 7.37 Consistent with this view, the committee considers that the Domestic, Family and Sexual Violence Commission should be resourced to enable the appointment of a First Nations person with specific responsibility to advocate for First Nations women and children and to collaborate on policy, programs and services specific to them.

Recommendation 4

- 7.38 The committee recommends that the Commonwealth government appoints a First Nations person with specific responsibility for advocating on behalf of and addressing violence against First Nations women and children within the Domestic, Family and Sexual Violence Commission. Detailed consideration should be given to the way in which the position is created within the Domestic, Family and Sexual Violence Commission (for example, should it be Commissioner or Deputy Commissioner level), the powers of such position and the necessary funding for such position to maximise effectiveness.**

Access to the legal system

- 7.39 In relation to the legal system, the committee heard—not for the first time—that legal assistance providers and interpreter services are under-funded and are therefore ill equipped to meet demand from First Nations women. Stakeholders particularly identified a need to better resource gendered specialist services (women’s legal services and First Nations women’s legal services), including those with wrap-around, holistic and drop-in services, and those which operate in regional and remote areas.

- 7.40 The committee is concerned that First Nations women who do not receive these services are unaware of their legal rights and entitlements, and might therefore find it difficult to leave abusive relationships. As shown throughout this report, that entrapment can have tragic consequences.
- 7.41 A month prior to the tabling of this report, Dr Warren Mundy completed an independent review of the National Legal Assistance Partnership 2020–2025. Dr Mundy made multiple recommendations to reform legal assistance funding.
- 7.42 The committee especially agrees with Dr Mundy’s recommendations that will promote sustainable, needs-based funding in regional and remote areas for First Nations women attending gendered and Aboriginal community-controlled specialist services and Aboriginal community-controlled services.

Recommendation 5

- 7.43 The committee recommends that the Australian government urgently gives effect to the relevant recommendations in the Independent Review of the National Legal Assistance Partnership 2020–2025, in particular Recommendations 2–3, 9 and 11–12, and specifically addresses the need to increase the geographic spread and capacity of Family Violence Prevention Legal Services.**

Breaking the cycle of violence

- 7.44 The committee acknowledges the invaluable work of the *Wiyi Yani U Thangani (Women’s Voices)* project; this project has provided expert guidance and input from First Nations women on how best to address the violence against women and children in their communities.
- 7.45 The committee endorses calls for systemic and structural changes to end the cycle of violence, acknowledging that governments will need to invest considerable resources into achieving this outcome. However, simply throwing money alone at the problem is not the answer: there must be informed and evidence-based investment.
- 7.46 Nationwide, submitters and witnesses consistently emphasised a key theme: support mainstream services for First Nations women and children affected by DFSV but more importantly, support Aboriginal community-controlled organisations (ACCOs) to design and implement local solutions to local problems.
- 7.47 The committee heard that there are multiple needs in Aboriginal communities—such as access to legal services, accommodation, safe havens, men’s behaviour change programs, mental health supports, et cetera—some of which can only be effectively provided by First Nations people, especially in regional and remote communities.

- 7.48 Having listened to the evidence, the committee considers that preventative 'solutions that break the cycle of violence and heal, support, strengthen and empower Aboriginal and Torres Strait Islander families and communities' must be prioritised (paragraph 5.51).
- 7.49 The Commonwealth government is striving to address DFSV against all Australian women and children, as it should and must. However, for First Nations women and children, these efforts appear to have been hampered by what can best be described as well-intentioned misdirection.
- 7.50 The committee welcomes recent efforts to engage First Nations women and children in policy development and formulate responses that centre their needs. The committee cautions against losing this focus and momentum, as governments look to address the broader societal issue of DFSV.
- 7.51 The committee heard that there are increasing examples of effective, holistic and First Nations community-led programs that reduce violence against women and children. However, these programs have been undermined and sabotaged by a lack of sustainable and adequate funding.
- 7.52 The most recent Federal Budget—and other Federal Budgets—have committed funding to support ACCOs that provide DFSV services and the future delivery of projects, subject to 'building an evidence base for service impacts' (paragraph 5.104).
- 7.53 The committee is troubled about the ongoing identification but limited delivery of concrete and effective actions to increase the safety of First Nations women and children, as well as the funding commitments that do not begin to address the concerns raised by inquiry participants.

Recommendation 6

- 7.54 **The committee recommends that the Department of Social Services, the Department of the Prime Minister and Cabinet, the Attorney-General's Department and the National Indigenous Australians Agency develop, for implementation, a sustainable funding mechanism to provide ongoing support services for First Nations people, including women and children, experiencing domestic, family and sexual violence. This funding must prioritise service and program delivery by Aboriginal community-controlled organisations who demonstrate evidence-based primary prevention initiatives that are independently evaluated for efficacy, including for delivery in regional and remote areas.**

Recognition of human rights

- 7.55 The Commonwealth government has a pivotal role in ending violence against First Nations women and children, and should do all things reasonably necessary to end this scourge of violence.

- 7.56 The obligation to safeguard, promote and ensure the health and well-being of First Nations women and children is articulated throughout domestic and international law, including in article 22(2) of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).
- 7.57 However, in spite of decades of inquiries and reviews, the necessary responses and reforms have failed to eventuate or to uphold the right to live free from violence. It defies reason why this remains the case. The committee empathises with the families and communities who are frustrated and disillusioned, believing that no-one cares and that the situation will never change.
- 7.58 The committee recognises the recent work of the Parliamentary Joint Committee on Human Rights (PJC HR, see Chapter 6). The committee notes that a majority of the PJC HR recommended that the Commonwealth government should introduce—and the Parliament should legislate—for the comprehensive and effective protection of human rights in Australia.
- 7.59 The committee notes the significant concern that the human rights of Australia's First Nations peoples, as encompassed in the UNDRIP, should not be subsumed, as it were, under a broad human rights banner (paragraph 6.32). Further, the committee notes the significant concern that this would neither respect nor promote the recognition and consideration of the human rights afforded to them as Indigenous peoples.
- 7.60 For the purposes of this inquiry, the committee unanimously agrees that the Commonwealth, state and territory governments, in addressing the issues considered in this report, must consider the principles contained in UNDRIP when formulating and implementing reforms.

Recommendation 7

- 7.61 The committee recommends that the Australian government empowers First Nations women to lead the design and implementation of services and supports that address violence in their communities, as consistently advocated by the *Wiyi Yani U Thangani (Women's Voices)* project, and reflecting the principles contained in the United Nations Declaration on the Rights of Indigenous People.**

Oversight and accountability

- 7.62 Since at least 2008, the federal, state and territory governments have made commitments and agreed dozens of actions to reduce and end violence against Australian women and children. One of the latest agreements—the National Plan to End Violence against Women and Girls 2022–2032—builds on and is distinguished from earlier efforts by the key role and contributions of First Nations people.

- 7.63 The committee heard, however, that while policy development and institutional responses continue apace, First Nations communities are seeing little progress in eradicating DFSV, particularly on Country and in remote and regional areas, where the services that are most needed are the least available. This information from submitters and stakeholders was consistent with what can be gleaned from the Closing the Gap Information Repository (especially in relation to Target 13).
- 7.64 The committee understands that responses to violence must be evidence-based, designed and implemented in collaboration with First Nations people, the latter being a component only recently recognised by government. The question arises: how long does this take? More than 15 years after the National Indigenous Reform Agreement (and its six Closing the Gap targets), the committee heard that federal, state and territory governments are still gathering data and piloting projects to inform the related plans in each jurisdiction.
- 7.65 In the committee's view, the existing performance monitoring and reporting frameworks, combined with national progress reports, are useful. However, it is abundantly clear that what is urgently required is action; genuine, meaningful action. There must be greater transparency and accountability—and consequences—for inaction that is resulting in the deaths of First Nations women and children.

Recommendation 8

7.66 The committee recommends that:

- **the Australian National Audit Office (ANAO) gives serious consideration to auditing the Attorney-General's Department (noting the independence of the ANAO), as part of its Annual Audit Work Program 2025–2026, to assess whether the department is effectively delivering on the commitments agreed by the Australian government under the:**
 - **National Agreement on Closing the Gap (in particular, Target 13);**
 - **National Plan to End Violence against Women and Children 2022–2032;**
 - **Aboriginal and Torres Strait Islander Action Plan 2023–25;**
 - **the First Nations National Plan, once in effect; and**
- **not later than six months after the conclusion of any ANAO audit, the Senate directs the Legal and Constitutional Affairs References Committee or the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs to consider the ANAO's findings and assess the Attorney-General's Department's response to the audit. In the event that the ANAO declines to undertake the audit, then another independent body should be tasked with conducting the audit on the basis referred to above.**

Media reporting

- 7.67 In relation to media reporting, it is important that media stakeholders understand the depths of concern among First Nations people that when their women and children are murdered or disappeared, there is less attention from the media. This was a consistent theme across the *in camera* hearings held with families.
- 7.68 There have been examples of outstanding reporting by journalists in relation to the issue of murdered or disappeared First Nations women and children which have assisted to bring the issue to light. The committee applauds the journalists involved. The value of that reporting cannot be overstated. As indicated in the National Plan to End Violence against Women and Children 2022–2023, the media plays an important role in relation to responding to domestic violence.
- 7.69 In addressing this issue, there was consensus that this is a matter which needs to be reflected upon carefully by the media, including with respect to the concerns of First Nations families and communities that the murder and disappearance of their loved ones is not treated the same as other Australians.
- 7.70 The committee notes that the Australian Press Council has Standards and Advisory Guidelines. There is an Advisory Guideline with respect to the reporting of Family and Domestic Violence Reporting which was prepared in consultation with relevant stakeholders. It does include a section on cultural sensitivities with respect to First Nations peoples. However, it does not deal with the issues specifically considered by the committee in this inquiry.

Recommendation 9

- 7.71 The committee recommends that the Australian Press Council considers and reflects on the evidence given in this inquiry, with regard to how the media portrays cases of murdered and disappeared First Nations women and children, and considers how the concerns of First Nations communities and families can be positively addressed, including through the introduction of additional Standards or Advisory Guidelines or amendment of the existing Standards and Advisory Guidelines.**

Other initiatives

- 7.72 The committee received many recommendations and suggestions from a range of stakeholders in relation to various initiatives that could be adopted to address particular issues relating to the subject of this inquiry. In the committee's view, it is worthwhile for the Commonwealth government to review these suggestions in a systematic way to identify whether there is an opportunity to fund and implement such initiatives.

Recommendation 10

7.73 The committee recommends that the Australian government systematically considers the many recommendations and suggestions made to this inquiry. This includes recommendations relating to:

- **trauma informed healing, including the recommendations made by the Healing Foundation and White Ribbon Australia;**
- **implementation of a violence prevention framework for men and boys;**
- **development of Aboriginal community-based support programs for men; and**
- **initiatives which promote a sense of individual and community responsibility for the issue of male violence against Aboriginal women.**

7.74 The committee recognises that the terms of reference for this inquiry cover a wide range of complex and sensitive matters, many of which fall outside the Commonwealth's scope of responsibilities. The committee thanks the state and territory governments and agencies that engaged with and assisted the inquiry. The committee hopes that any discomfort and criticism states and territories may have endured as a result of their engagement has not been dismissed, but recognised as an opportunity to do better.

7.75 The committee is also conscious that, internationally, governments have committed greater time and resources to inquiries of a similar nature. This inquiry was a Senate committee inquiry, which differs from the work of other investigative and inquiry bodies, such as Royal Commissions. The committee has strived to address the issues it was asked by the Senate to consider, given the limited resources available to it, and done its best to deliver meaningful conclusions and recommendations.

7.76 The committee considers it right and fitting that its final words pay tribute to First Nations women and children. Those who have been murdered or disappeared should never have met those fates. Those First Nations women who continue in their tireless and tenacious advocacy have had an indelible impact on committee members. That you have to continue in that advocacy to eliminate violence against First Nations women and children should shock all Australians, and inspire us all to do everything within our means to ensure that it stops. Now.

Senator Paul Scarr
Chair

Additional Comments from Government Senators

Introduction

- 1.1 Labor Senators would like to thank witnesses that came forward during this inquiry, who were willing to share their experiences of immense tragedy and loss with the committee.
- 1.2 The evidence heard throughout this inquiry clearly demonstrates a need for collective action across all governments on missing and murdered First Nations women and children.

Division of state and territory responsibilities

- 1.3 While Labor Senators agree on the need for action to address the clearly identified problems in this report, we wish to note our concern that the implementation of some of the mechanisms put forward in the majority report as solutions may not be practical.
- 1.4 In particular, a number of recommendations to the Commonwealth are also the responsibility of states and territories.
- 1.5 In relation to Recommendation 2, for example, the Commonwealth Attorney-General does not have the power to impose standards and practices on state and territory police forces. We believe this recommendation would be better targeted at state and territory governments. This concern extends to the related Recommendation 3.

Independence of the Australian National Audit Office (ANAO)

- 1.6 The ANAO is an independent body, and as such it is vital its integrity be maintained. Although Recommendation 8 notes its independence, it still seeks to direct ANAO to do particular work. Labor Senators hold concerns about any interference of the independence of the ANAO.
- 1.7 However, scrutiny is important and we note existing mechanisms – including Senate estimates – to hold government departments to account on the implementation of their commitments.

Conclusion

- 1.8 Labor Senators believe it is important that the focus on First Nations missing and murdered women and children does not end with this committee report.
- 1.9 We have an obligation to the families who came forward and shared their trauma to ensure that this report is not the end of an important inquiry but the start of important work to make things better. Labor Senators are committed to fulfilling that obligation.

Senator Nita Green
Deputy Chair

Senator Varun Ghosh
Member

Additional Comments from the Australian Greens

Remarks from Senator Dorinda Cox

- 1.1 Firstly, I would like to acknowledge all First Nations people that provided this inquiry with the important and compelling evidence about missing and murdered First Nations women and children in Australia. I want to thank them for humbly welcoming us into their lands and sharing their experiences with the committee.
- 1.2 I thank the family members and survivors who shared their painful truths about their tragic experiences at our hearings. I am honoured to have shared your tears, hugs and hopes for a better future.
- 1.3 I will always be inspired by your resilience. I have special admiration for the grassroots people and activists who continue to confront the violence against First Nations women and children. They knew – they have always known – that the violence has to stop.
- 1.4 This is Australia's first federal inquiry which seeks to address violence against First Nations women and children and to identify its systemic causes. With an ever-increasing prevalence of violence in our communities, fulfilling our mandate was a daunting task. It was also an important opportunity for the truth to be heard and acknowledged.
- 1.5 This report honours the lives lost and those still missing (disappeared) through systemic failures that have led to losses of dignity, humanity and, in too many cases, losses of life. This report is about deliberate actions and the failure of systems that have racial and gendered violence at their centre.
- 1.6 As a nation, we face this crisis. Regardless of which number of missing and murdered First Nations women and children is cited, the number is far too great. The continuing murders, disappearances and violence prove that this crisis has escalated to a national emergency that calls for timely and effective responses. These violent acts amount to nothing less than a deliberate, often covert campaign of genocide against First Nations women and children.
- 1.7 I believe, especially after witnessing the resilience of First Nations families, survivors and communities, that change will happen. This begins with recognising the truth. Within the short time we have had to do our work, families and survivors have provided important truths. These truths force us to reconsider where the roots of violence lie, and in doing so, push us to reconsider the solutions.

- 1.8 This inquiry was intended, through its terms of reference, to achieve two things:
- (a) 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; and
 - (b) ways to honour and commemorate the missing and murdered First Nations women and children in Australia.
- 1.9 The current data and statistics don't reflect the magnitude of this issue. First Nations women and children continue to vanish from the landscape, physically gone but also disappeared from the caseloads of many different government departments, and some oversight bodies.
- 1.10 The system thinks our loved ones are forgotten, because there is no legacy or permanent reminder retained by the institutions. There are no memorials in parks or on streets for our missing and murdered women and children that families can visit or gather around. We don't have a public narrative that educates our future generations on the role history has played.
- 1.11 This was a Senate-led inquiry, so I must also recognise the reality of the relationship between Australia and its First Peoples. The Australian Parliament operates under a system of laws and institutions that continually perpetuate violations of First Peoples' basic human and Indigenous rights. Because of this and many other challenges, some truths have remained untold and unknown.
- 1.12 There has been, and will be, criticism of our work. That is vitally important. I hope that the criticism will be constructive and never end. I take the critics and their criticism as indications of the great passion that exists about the issue of violence against First Nations women and children, but the hope this report carries is that knowing the truths revealed here can, and will, contribute to a better understanding of the lived experiences of First Nations people and the violations of their rights when they are targeted for violence.
- 1.13 This violence is not what Australia is supposed to be about. It is not what it claims to stand for. Australia can be a great country – the one many Australians believe it is. Collectively, we must settle for nothing less. For non-Indigenous Australians, this means rethinking commonly held stereotypes, confronting racism in every context and tackling without fear the reinforcement of these.
- 1.14 First Nations women and our children are at the heart of our communities and our link to the next generation, so protecting them is paramount. They must never be invisible or forgotten. Bringing light to the enormity of this issue must be the reckoning for our nation.
- 1.15 For me, achieving change will require vision, courage and leadership from our governments at all levels. They must invest and take the actions that we urgently need.

- 1.16 We can't erase the past, but we can build a better future that recognises and protects our strong culture and identity. Our shared past is like the sleeping creator being. He is now awake. Our creation story is painful for us to tell, and for some even more painful to hear, but it is our truth.
- 1.17 Not with violence – this is not our way – it is our resistance to oppression.
- 1.18 Creating safety is all of our responsibility, so we must stand together with our allies to face our truths and build our future fire, one of nurturing spirit and strength.
- 1.19 Our future generations of women and children, in our way, will always be reminded by our old people that they are standing on the shoulders of cultural giants. It is in this power that we must continue to meet this issue with love, care, and humility.

Key issues

Racist and discriminatory policing

- 1.20 Racist and discriminatory policing was raised by many witnesses and was a key issue identified by families in particular.
- 1.21 Respectful and professional communication from police with families whose loved ones are missing or murdered should be a non-negotiable expectation and reality for First Nations families who have lost a loved one. Instead, many families are treated with gross disrespect, often scorn, are kept in the dark on key issues and are further retraumatised by their experience with the criminal justice system.
- 1.22 One further solution to this is to create a national minimum policing standard for their interactions with First Nations people and communities. This would be a standard we could hold police to in their interactions with First Nations people. It would be an important step towards making those interactions culturally safe.
- 1.23 Of course, the guidelines themselves would not be sufficient, they would need to be accompanied by more empowered and senior First Nations police, First Nations community-controlled organisations being funded and supported to train police, and a careful co-design process for the standards themselves. This would necessarily incorporate learnings from past cases involving disappeared and murdered First Nations women and children, such as the reforms recommended by the NSW State Coroner in the inquest into the deaths of Mona Lisa and Jacinta Rose Smith.
- 1.24 Time after time in this inquiry we heard confronting evidence of First Nations women approaching police for support and being disrespected, ignored, humiliated and even, on occasion, being recast from survivor and victim to

perpetrator. This is not a recent development and it presents an often impossible barrier to First Nations women obtaining justice and protecting their families.

- 1.25 We also heard evidence from senior and experienced police (Gary Jubelin for example) that the evidence and actions taken in the first 24 hours of a missing person case are critical for the success of police investigations. When First Nations women are facing these barriers at the time they present to police, this too often means a substandard, sometimes tragically so, police response. The evidence we heard is that when First Nations women go to police stations alone to report violence towards themselves or their families they often do not feel safe and police response negates their concerns in such a way that is hard to comprehend until you hear their firsthand accounts. This cannot continue.
- 1.26 Some small part of this problem can be overcome by more police training and cultural awareness, but the extent of the disconnect, and the lack of trust from First Nations communities is so apparent that we cannot rely on this alone making First Nations women feel safe approaching police.
- 1.27 This is why we asked the committee to adopt a further recommendation in the following terms:

Recommendation 1

- 1.28 **That the government urgently acts to provide sufficient funding, including through additional National Legal Assistance Partnership support, to deliver and expand First Nations led community services that are able to provide advocacy and support services to assist First Nations women to report incidents of violence and threats of violence to police in a way they will be both respected and heard.**
- 1.29 Despite this not being accepted for inclusion in the majority report, we remain of the view that this is a critical learning from the evidence and is an essential element in responding to the gross injustices we saw.

The Commissioner

- 1.30 The majority report, at Recommendation 4, includes the phrase, 'Detailed consideration should be given to the way in which the position is created within the Domestic, Family and Sexual Violence Commission'. We are convinced that the position should be that of a Commissioner to tackle the issue with leadership and urgency based on the unacceptable rates of violence against First Nations women and children.

Recommendation 2

- 1.31 **That the position on the Domestic, Family and Sexual Violence Commission should be that of a Commissioner.**

Children and Young People

- 1.32 There is little mention of children and young people throughout the recommendations. We believe that priority should be given to First Nations led approaches, that are culturally based, to the safety and protection of children. Healing centres have a role to play here. In addition, more work must be done to create an Aboriginal and Torres Strait Islander violence prevention framework for men and boys, with an emphasis on early intervention with boys. Healing was a key theme in the evidence presented by witnesses.

Recommendation 3

- 1.33 That the Australian government works with First Nations communities to develop an Aboriginal and Torres Strait Islander violence prevention framework for men and boys.**

Use of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs

- 1.34 At Recommendation 3 in the majority report, it is suggested that the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs (JSCATSLIA) should measure progress for Recommendation 2. A parliamentary committee is not the appropriate body in our view. This process must not be institutionalised into another government report with no accountability for the serious crimes committed and the predictable and preventable harm to communities.

Recommendation 4

- 1.35 That an alternative body to the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs be developed for measuring progress regarding the development of harmonised best police practices across federal, state, and territory police forces (Recommendation 2 in the majority report).**

International oversight

- 1.36 The majority report does not provide for international oversight over Australia's progress on the issue of missing and murdered First Nations women and children. Without oversight from an independent observer, Australia's efforts could fall victim to local politics. We suggested the use of the United Nations' formal mechanisms for gender and Indigenous rights.

Recommendation 5

- 1.37 That the Australian government works with the United Nations' existing formal mechanisms for gender and Indigenous rights to provide international oversight over Australia's progress on the issue of missing and murdered First Nations women and children.**

Key performance indicators for police

- 1.38 The majority report expresses the need for improvements in police training and methodology, but there are no targets or goals that can be pinned down. We recommended the following:

Recommendation 6

- 1.39 That the Australian government develops clear, best practice policies for the timely provision of information, including autopsy results and coroners' reports, to the families of missing and murdered women and children.

Recommendation 7

- 1.40 That the Australian government ensures that specialised resources for missing persons cases are used, and that cultural safety and trauma-informed protocols are incorporated into police procedures.
- 1.41 All of this should be informed by the Australian and New Zealand Policing Advisory Agency's anti-racism and cultural diversity principles. We are also asking for some targets around the elimination of racial profiling and the identification of victims as perpetrators.

Recommendation 8

- 1.42 That the Australian government develops targets around the elimination of racial profiling and the identification of victims and perpetrators.

Recommendation 9

- 1.43 That the Australian government provides support for First Nations community services, to provide advocacy to assist First Nations women to report violence and threats.
- 1.44 Women must be able to report incidents to police in a way that will be respected and heard.

Integrated data

- 1.45 This point is crucial. No funding or planning can be effective without context and a strong idea of the problem at hand. The majority report does not place targets on efforts to improve the national database. As with some other recommendations, there are no targets or goals that can be pinned down.
- 1.46 We need a strong idea of the kinds of data-points that must be collected. For example, in some jurisdictions, there is no record of the ethnicity of missing and murdered people. We need to define the data-points that we expect from each jurisdiction and place targets on their effective collection and availability across the network.

Recommendation 10

- 1.47 That the Australian government clearly defines the data-points that we expect from each jurisdiction and places targets on their effective collection and availability across the network.**

The big picture and accountability mechanisms

- 1.48** We need a First Nations-specific, stand-alone national plan of action, best practice policing processes, and measurement against Target 13 of the Closing the Gap agenda. We must also provide data and information systems that target police resources effectively, and we need procedures that are consistent with the involvement of, and advice from, relevant non-police agencies.
- 1.49** The government should undertake a review and table a comprehensive report detailing the connection between missing and murdered First Nations women and children and the failure to implement the outstanding recommendations of the *Royal Commission into Aboriginal Deaths in Custody and Bringing Them Home* reports. The government must also publicly commit to fully implementing the recommendations of the JSCATSIA on the United Nations *Declaration for the Rights of Indigenous People*.

Recommendation 11

- 1.50 That the Australian government develops a stand-alone national plan of action, including best practice policing processes and measurement against Target 13 of the Closing the Gap agenda.**

Recommendation 12

- 1.51 That the Australian government reviews and tables a comprehensive report detailing the connection between missing and murdered First Nations women and children and the failure to implement the outstanding recommendation of the *Royal Commission into Aboriginal Deaths in Custody and Bringing Them Home* report.**

Recommendation 13

- 1.52 That the Australian government publicly commits to fully implementing the recommendations of the Joint Standing Committee on Aboriginal and Torres Strait Islander Affairs on the UN Declaration for the Rights of Indigenous People.**

**Senator Dorinda Cox
Greens Senator for Western Australia
Greens Spokesperson for First Nations**

**Senator David Shoebridge
Greens Senator for New South Wales
Greens Spokesperson for Justice**

Additional Comments from Senator Lidia Thorpe: Indigenous Femicide in so-called Australia

Opening remarks

- 1.1 I acknowledge the unceded Sovereignty of First Peoples across this continent, and honour the lives, stories, and loved ones of the First Nations women, girls and gender-diverse people who have been disappeared and murdered since the invasion of this country.

Disappearance, murder, and racialised and gendered violence in the settler colony of Australia

- 1.2 I would like to begin by acknowledging that 'Aboriginal women don't just go missing; someone makes them disappear'.¹ Indeed, 'what is missing are the white male perpetrators of this violence, whether they be strangers on the street or agents of the state'.²

'Disappearing' is a framework that understands that Aboriginal women experience multiple forms of interlapping violence not just in the home or in public spaces but state sanctioned violence—the violence of jails, the child jails, the child protection system and the health system. 'Disappearing' incorporates the Aboriginal women who are the fastest-growing incarcerated population in the world, who are being locked up as victims of family violence, and the Aboriginal women who are killed in custody...A framework of 'disappearance' allows us to understand how Aboriginal women are specifically targeted for violence in a settler colony, which has, at its very heart, the need to disappear Aboriginal peoples from Aboriginal lands.³

I want to echo concerns raised by a palawa woman, Maggie Blanden, who takes issue with the word 'missing' because our women continue to be violently and forcibly disappeared. The passive language of 'missing' only further compounds that level of indifference to our people.⁴

- 1.3 The racial and gendered violence that is perpetrated against our women and girls today is the same systemic and colonial violence perpetrated as it has been

¹ Professor Chelsea Watego, Director, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 7.

² Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 15.

³ Dr McQuire, private capacity, *Committee Hansard*, 15 May 2024, pp. 2–3.

⁴ Ms Nerita Waight, Chief Executive Officer, Victorian Aboriginal Legal Service (VALS), *Committee Hansard*, 18 June 2024, p. 33.

since the first invasion and the Frontier Wars, and 'like other forms of colonial violence, it has been rendered invisible by the very agencies that perpetuate it'.⁵

There is a pervasive history of sexual violence against Aboriginal women. There was mass sexual abuse of Aboriginal women...Rape and murder were very common on the frontier, and the police were often complicit in that. Many of our people were also killed by the brutal conditions of slavery in Australia...[T]he colonists enslaved and trafficked our people.⁶

Violence is one of the key stories told of Aboriginal communities, and yet Aboriginal women are silenced in these conversations, seen as without agency or as bodies on which acts of violence are perpetrated. In this way, the active resistances of Aboriginal women throughout their lives, and the resistances of their families, their communities and their personhood, are disappeared. To speak is to speak an end to an unsafe space in which these violences are continually weaponised against whole communities, leading to unsafe policy outcomes like more police, more jailing and draconian racist policy responses, like the NT intervention, which only reproduce the violence, leading to further pain, wounding and harm.⁷

- 1.4 I also would like to acknowledge that this committee, through its inquiry, is engaging with expertise and stories that are habitually denied effort and attention in politics, media and investigations. Independent, black media should be funded to report on First Nations matters. As said by Dr Amy McQuire:

...that's the only way that we can actually speak about these issues the way they deserve to be spoken about.⁸

Concerns raised about the committee inquiry process

- 1.5 I want to thank and acknowledge the good and important work that went into this inquiry from all involved, including the committee members who dedicated their time and energy to this process.
- 1.6 It must however be noted that aspects of this inquiry itself, unfortunately, served as a continuation of the colonial legacy of violence, and created an environment that led many women and families to opt out, fearing further trauma or believing their voices would not be genuinely heard. This non-participation reflects widespread mistrust in processes seen as unsafe and reinforcing colonial power dynamics rather than addressing the root causes of violence. Further:

This inquiry has participated in the silencing of racial and gendered violence against Indigenous women...The lack of communications and media about the inquiry process compounds the idea that the disappearance of

⁵ Professor Watego, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 4.

⁶ Ms Waight, VALS, *Committee Hansard*, 18 June 2024, p. 33.

⁷ Dr McQuire, private capacity, *Committee Hansard*, 15 May 2024, p. 2.

⁸ Dr McQuire, private capacity, *Committee Hansard*, 22 February 2023, p. 16.

Indigenous women is unremarkable, unimportant and resistant to legal redress.⁹

- 1.7 These concerns were raised by Dr McQuire, Professor Chelsea Watego and her colleagues from the Institute for Collaborative Race Research, Deb Kilroy of Sisters Inside and other First Nations women who have extensive expertise and decades of work with the families of those who have lost loved ones, and whose submissions, and appearances at the committee hearings should be the first point of reference for those engaging with this topic.¹⁰
- 1.8 The committee at times demonstrated a failure in understanding and disrupting the functions of silencing and erasure discussed by Dr McQuire in her submission to this inquiry, and did not proactively address coloniality, white supremacy and the role of gendered and racialised violence as relevant to undertaking the inquiry or as being critical to ensuring the safety of potential participants. Indeed, the committee at times demonstrated an unfortunate dismissal of the expertise of key community members and advocates, and a derogation of their duty to build respectful relationships with grieving families.

...there was little attempt from the inquiry to build meaningful, respectful relationships with grieving families who are resisting this violence or to provide support for their testimony to this committee. Indeed, the inquiry contacted us as advocates to ask for grieving families' contact details, yet also refused to include our expertise where it could've contributed to shaping this process towards justice for them.¹¹

Concerns raised with the terms of reference and recommendations

- 1.9 Although this committee borrowed much of the terms of reference from the widely known and praised Canadian Inquiry, it fell short of undertaking the same grounded and community-led approach to inform its processes, which ultimately impacted the quality and sufficiency of some of the recommendations produced.

Grieving families are not asking you to keep better count of our dead, or seeking commemorations and condolences for our losses, as the terms of reference seem to imply. These families want justice for racial and gendered violence against Indigenous women. These families want accountability and safety for our communities now.¹²

What is missing in the Terms of Reference is any explicit reference to the unique form of racialized and gendered violence that Aboriginal and Torres Strait Islander women are subject to in a settler colonial context. This is ironic

⁹ Professor Watego, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 5.

¹⁰ Professor Watego, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 4.

¹¹ Professor Watego, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 5.

¹² Professor Watego, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 5.

given the influence of the Canadian inquiry, the report of which explicitly names Indigenous femicide as a form of racial and colonial genocide.¹³

- 1.10 There were some good recommendations that have come out of this inquiry, however, the overall failure to name and address within the actual recommendations the role of colonisation, white supremacy, and the ongoing genocide falls short of truth-telling, justice, healing, and does a disservice to those who participated in this inquiry.

The only way we can understand rates of victimisation of Indigenous women, girls and gender diverse people is by examining the structure of violence created by colonisation. Colonisation continues to be an extremely violent experience for Indigenous peoples, and police and state agencies are on the frontline of that violence.¹⁴

The cause of missing and murdered Indigenous women, girls and gender diverse people is ultimately the colonial structure of white supremacy, where a supremacist ideology valorising a white *humanitas* is operationalised by police, courts, individual predators and media. This structure creates a culture of impunity for some and terror for others.¹⁵

- 1.11 Within this context, and despite overwhelming evidence, the committee failed to properly hold accountable and identify the perpetrators of violence towards First Nations women – including individuals, police, courts, media and state agencies.

The Canadian Inquiry found that these state behaviours create a culture within which people can perpetrate violence against Indigenous women and know that they are safe from consequences.¹⁶

- 1.12 As pointed out by Darumbal and South Sea Islander woman, Dr McQuire, the practice of mainstream media of reiterating, without question, the information provided by police, in turn compromises both outcomes and the quality of the investigations and outcomes.¹⁷ The result is the dehumanisation of victims of violence and erasure of their stories, and allows perpetrators to feel empowered to continue their actions without consequence. This impunity is a key factor driving the high rates of violence experienced.

There are many violent, racist, hate filled men in our nation who rely upon this national apathy, shocking police practices and the landscape of

¹³ Dr McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 16.

¹⁴ Dr McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 8.

¹⁵ Dr McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 5.

¹⁶ Dr McQuire, Sisters Inside and the Institute for Collaborative Race Research, *Submission 54*, p. 5.

¹⁷ Dr McQuire, private capacity, *Committee Hansard*, 22 February 2023, pp. 14–15.

gendered violence to commit femicide against First Nations women and children.¹⁸

- 1.13 Despite acknowledging that passive terms like 'missing' are a misnomer and serve to hide the violence of the perpetrators in Chapter 1 of the majority report, the committee then continues to use the same language in Chapter 7, being its conclusions and recommendations, when referring to the system of state sanctioned child removal system:

First Nations children and young people in out-of-home care are often not reported absent or missing from residential care, the implication being that they are getting lost in care and protection systems.¹⁹

'Lost' is a person who essentially has control over their own actions and is temporarily disoriented. 'Missing' is either voluntary or involuntarily missing and then, of course, missing-murdered.²⁰

...the challenge with this terminology is that it puts the onus completely on the child—that the child has gone missing; the child is absent. It's as if these actions of going missing and absent are somehow the decisions that are made by a child in their full capacity with no other trauma that they're experiencing or no other life problems that they're dealing with...I see a lot of shaping of language, of service delivery, that makes it easier for the organisation or the department, whoever is providing the service, to blame the child or blame the person who is completely vulnerable, who's in the worst possible situation of their life.²¹

- 1.14 The implication is that these children are 'getting lost' is a disrespect to the First Peoples who participated in this inquiry, the thousands of families and friends who are still mourning their loved ones. Moreover, it is an active erasure of the role of state institutions as perpetrators, who systemically disappear First Nations children, in what has been described as ongoing genocide. The ongoing violation of First Nations continued to be raised in both the 1991 Royal Commission into Aboriginal Deaths in Custody Report and the 1997 Bringing Them Home report which called the removal of children as genocidal.

The Australian practice of Indigenous child removal involved both systematic racial discrimination and genocide as defined by international

¹⁸ Mr Martin Hodgson, Senior Advocate, Foreign Prisoner Support Service, *Committee Hansard*, 18 June 2024, p. 29.

¹⁹ Majority report, paragraph 7.9, p. 172.

²⁰ Dr Samantha Bricknell, Researcher, Australian Institute of Criminology, *Committee Hansard*, 5 October 2022, p. 25.

²¹ Ms Meena Singh, Commissioner for Aboriginal Children and Young People, Commission for Children and Young People, *Committee Hansard*, 18 June 2024, p. 24.

law. Yet it continued to be practised as official policy long after being clearly prohibited by treaties to which Australia had voluntarily subscribed.²²

- 1.15 In addition, the committee fell short of naming the police as perpetrators of violence, and to properly hold them accountable for their criminalisation of First Peoples, and failure to investigate instances of a loved-one's disappearance or murder.

The first and most prevalent risk factor for an Aboriginal woman or child being murdered or going missing, is having been over policed and criminalised.²³

- 1.16 It must be noted there was no admission of accountability from the police or carceral institutions themselves, as concluded by the committee at paragraph 7.19 where it is stated that 'Police forces, prosecutors and coroners rejected that their responses distinguished between First Nations and non-Indigenous people, and argued that everyone is treated equally'.²⁴

Despite turning to the police for assistance, families frequently encounter indifference or outright neglect rooted in the racial and gendered violence entrenched within the policing system...The reliance on police to investigate these disappearances and murders is frequently flawed, when these same police forces have historically failed even to search for disappeared Aboriginal women adequately.²⁵

I can say that the coronial process is often used as a means to exonerate the state. It's not about finding justice for the family or finding out what happened to their loved ones.²⁶

- 1.17 Recommendation 1 and Recommendation 2 of the majority report emphasise reform within policing and carceral institutions, which often means more funding to enact this change.

Recommendations that simply reinforce or extend the powers of the existing systems of the racial and gendered violence of policing and incarceration will only result in more Aboriginal and Torres Strait Islander women disappearing and being murdered, with their families left to bear the burden of seeking justice alone.²⁷

²² Human Rights and Equal Opportunity Commission, [*Bringing them home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families*](#), 1997, p. 231. Also see: Change the Record and Djirra, *Submission 85*, p. 16.

²³ Mr Hodgson, *Submission 60*, p. [2].

²⁴ Majority report, paragraph 7.19, p. 174.

²⁵ Mrs Deborah Kilroy, Chief Executive Officer, Sisters Inside Inc, *Committee Hansard*, 15 May 2024, p. 3.

²⁶ Dr David Singh, Co-Director, Institute for Collaborative Race Research, *Committee Hansard*, 15 May 2024, p. 9.

²⁷ Mrs Kilroy, Sisters Inside Inc, *Committee Hansard*, 15 May 2024, p. 3.

- 1.18 The propping up of carceral solutions was advised against by many submitters throughout the inquiry who argued that it perpetuates the very systems of oppression that contribute to violence against First Nations women. The reliance on punitive measures ignores the need for community-based, restorative approaches that exist outside of the carceral system, and address the social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women, girls and gender-diverse people.
- 1.19 Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Adviser with the First Nations Women's Legal Service Queensland, noted that housing, one factor that drives violence against First Nations women and children, is a critical issue.²⁸
- 1.20 Indeed, the one recommendation clearly proposed by many advocates, was a truly independent police watchdog, which the committee fell short of including as a stand-alone recommendation, though mentioned in paragraph 7.31 of its report.

There have been numerous inquiries that have highlighted—again, in a number of jurisdictions—that existing police oversight bodies are not effective.²⁹

Conclusion

- 1.21 I want to acknowledge and thank the committee for its work in this space. I understand it had limited resources to undertake its work, and that parliamentary structures are by design difficult to give the space and time necessary to deal with complex spaces of trauma and intersectionality.
- 1.22 In a similar context in Canada, the inquiry was community-initiated and led by First Nations women and families of missing First Nations women, girls and gender diverse people and well-resourced over several years, following comprehensive engagement with affected communities.
- 1.23 Impacted First Nations women, girls, and their families have always, and will always speak out about this silence and injustice: they must be acknowledged as the experts they are. The knowledge holders and leaders in this space. It is time to do the real work and be guided by them in finally taking action to end the disappearing and murdering, and be able to heal.

²⁸ Ms Andrea Kyle-Sailor, Community Development Worker and Cultural Advisor, First Nations Women's Legal Service Queensland, *Committee Hansard*, 2 November 2023, p. 4.

²⁹ Ms Waight, VALS, *Committee Hansard*, 18 June 2024, p. 35.

Justice will only be achieved once self-determined criminal, legal and incarceration systems, along with self-determined family violence sectors, can be negotiated, developed and implemented through treaty negotiations or through other processes. We know this. There have been decades of calls. We've seen numerous inquiries. The things are not new. The solutions are not new. What is needed is the will to enact them.³⁰

Senator Lidia Thorpe
Participating Member

³⁰ Ms Waight, VALS, *Committee Hansard*, 18 June 2024, p. 34.

Appendix 1

Submissions and Additional Information

Submissions

- 1 Seeds of Affinity - Pathways for Women Inc
- 2 Australian National University - Law Reform and Social Justice Research Hub
- 3 Queensland Indigenous Family Violence Legal Service
- 4 Australian Federal Police
 - Attachment 1
 - Attachment 2
- 5 Northern Territory Police, Fire and Emergency Services
- 6 National Indigenous Australians Agency and Attorney-General's Department
 - 6.1 Supplementary to submission 6
- 7 Queensland Aboriginal and Islander Health Council
- 8 Partnership for Justice in Health (P4JH)
- 9 Special Broadcasting Service (SBS)
- 10 The Healing Foundation
 - Attachment 1
- 11 Boorndawan Willam Aboriginal Healing Service
- 12 Law Council of Australia
 - Attachment 1
- 13 North Queensland Women's Legal Service
- 14 The Coalition of Peaks
- 15 Northern Territory, Department of Territory Families, Housing and Communities
- 16 Our Watch
- 17 Office of the Children's Commissioner (NT)
- 18 Central Australian Aboriginal Congress
- 19 Western NSW Community Legal Centre and Western Women's Legal Support
- 20 Queensland Family and Child Commission
- 21 Women's Legal Service NSW
- 22 Office of the Advocate for Children and Young People and the Office of the Children's Guardian
- 23 Australia's National Research Organisation for Women's Safety
- 24 Northern Territory Women's Legal Services
- 25 Aboriginal Legal Service (NSW/ACT)
- 26 Name Withheld
- 27 Australian Christian Lobby
 - Attachment 1
- 28 Dr Janet Hunt

- 29 Australian Lawyers Alliance
- 30 Dr Diana Eades
- 31 Carrie's Place
- 32 Dr Philipp Kastner, Senior Lecturer, Law School, University of Western Australia and Dr Elisabeth Roy-Trudel, Concordia University, Montreal
- 33 Domestic Violence Legal Service and Northern Territory Legal Aid Commission
- 34 Australian Human Rights Commission
 - Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4
 - Attachment 5
- 35 Australians for Native Title and Reconciliation and Australian Lawyers Alliance
- 36 Aboriginal Peak Organisations of the Northern Territory
- 37 Domestic Violence NSW
- 38 First Nations Women's Legal Services Queensland
- 39 Australian Lawyers for Human Rights
- 40 North Australian Aboriginal Family Legal Service
- 41 Women's Legal Services Australia
- 42 Josephite S.A. Reconciliation Circle
- 43 WESNET
- 44 Jumbunna Institute for Indigenous Education and Research
 - Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4
 - Attachment 5
 - Attachment 6
 - Attachment 7
 - Attachment 8
 - Attachment 9
- 45 Mr Elijah Duroux
- 46 Ms Leonie Duroux
- 47 Mr Marbuck Duroux
- 48 Ms Delphine Charles
- 49 Ms Michelle Jarrett
- 50 Commission for Children and Young People (Victoria)
- 51 Legal Aid NSW
- 52 Victoria Police
- 53 Kimberley Community Legal Services

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- 54 Dr Amy McQuire, Sisters Inside and the Institute for Collaborative Race Research
 - 55 Baramadagal Dharug Tribal Governing Council Aboriginal Corporation
 - 56 Ngaanyatjarra Pitjantjatjara Yankunytjatjara Women's Council
 - 57 Tasmanian Government
 - 58 Commissioner for Children and Young People Western Australia
 - 59 Victorian Aboriginal Legal Service
 - 60 Mr Martin Hodgson
 - 61 Name Withheld
 - 62 Wirringa Baiya Aboriginal Women's Legal Centre
 - 63 Violet Co Legal and Consulting
 - 64 Amnesty International
 - 65 Victorian Aboriginal Child Care Agency
 - 66 Northern Territory Council of Social Services
 - Attachment 1
 - Attachment 2
 - Attachment 3
 - Attachment 4
 - Attachment 5
 - 67 Confidential
 - 68 Confidential
 - 69 Confidential
 - 70 Confidential
 - 71 Confidential
 - 72 Confidential
 - 73 Confidential
 - 74 Confidential
 - 75 Confidential
 - 76 Confidential
 - 77 North Australian Aboriginal Justice Agency
 - 78 National Justice Project
 - 78.1 Supplementary to submission 78
 - 79 Dr Francesca Dominello, Scientia Associate Professor Kyllie Cripps and Ms Maia Brauner
 - 80 Ms Alison Bairnsfather-Scott
 - 81 National Aboriginal and Torres Strait Islander Legal Service
 - 82 Indigenous Law and Justice Hub, University of Melbourne
 - 83 Women's Legal Service WA
 - 84 Name Withheld
 - 85 Change the Record and Djirra
 - Attachment 1
 - 86 Office of the Director of Public Prosecutions (Queensland)

87 Mrs Debbie Kilroy OAM and Sisters Inside**Tabled Documents**

- 1** Correspondence from Senator Dorinda Cox to Hon John Quigley MLA, 29 August 2019 (tabled on 28 July 2023)
- 2** Article: The Conversation, McQuire et al 'What happened to the Senate inquiry into missing and murdered Indigenous women?' (2024), tabled by Dr Amy McQuire at a public hearing on 15 May 2024
- 3** Letter from the Institute for Collaborative Race Research, Dr Amy McQuire and Sisters Inside to the Committee, 9 October 2023, tabled at a public hearing on 15 May 2024
- 4** Letter from the Committee to the Institute for Collaborative Race Research, Dr Amy McQuire, and Sisters Inside, 18 October 2024, tabled at a public hearing on 15 May 2024
- 5** Letter from the Institute for Collaborative Race Research, Dr Amy McQuire, and Sisters Inside, 26 October 2024, tabled at a public hearing on 15 May 2024

Answer to Question on Notice

- 1** Australian Bureau of Statistics - Answers to written questions on notice, 29 September 2022 (received 20 September 2022)
- 2** Australian Bureau of Statistics - Answers to written questions on notice, 29 September 2022 (received 20 September 2022)
- 3** Australian Institute of Health and Welfare - Answers to written questions on notice, 29 September 2022 (received 29 September 2022)
- 4** Australian Institute of Criminology - Answers to written questions on notice, 29 September 2022 (received 30 September 2022)
- 5** National Coronial Information System - Answers to written questions on notice, 29 September 2022 (received 4 October 2022)
- 6** Australian Federal Police - Answers to written questions on notice, 29 September 2022 (received 21 October 2022)
- 7** Department of Social Services - Answers to spoken questions on notice, 5 October 2022 (received 4 November 2022)
- 8** Australian Federal Police - Answers to spoken questions on notice, 5 October 2022 (received 11 November 2022)
- 9** Australian Institute of Health and Welfare - Answers to spoken questions on notice, 5 October 2022 (received 10 November 2022)
- 10** Attorney-General's Department - Answers to spoken questions on notice, 5 October 2022 (received 17 November 2022)
- 11** Australian Institute of Criminology - Answers to spoken questions on notice, 5 October 2022 (received 18 November 2022)
- 12** Attorney-General's Department - Answers to spoken questions on notice, 5 October 2022 (received 18 November 2022)

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- 13 Attorney-General's Department - Answers to spoken questions on notice, 5 October 2022 (received 18 November 2022)
 - 14 Law Enforcement Conduct Commission - Answers to spoken questions on notice, 28 July 2023 (received 18 August 2023)
 - 15 New South Wales Police Force - Answers to spoken questions on notice, 28 July 2023 (received 22 August 2023)
 - 16 Department of Communities and Justice (NSW) - Answer to questions on notice, 28 July 2023 (received 30 May 2024)
 - 17 Office of the Director of Public Prosecutions Western Australia - Article from the West Australian provided as an answer to spoken questions on notice, 4 October 2023 (received 12 October 2023)
 - 18 New South Wales Government - Answers to spoken questions on notice, 28 July 2023 (received 16 October 2023)
 - 19 Corruption and Crime Commission (WA) - Answers to spoken questions on notice, 4 October 2023 (received 9 November 2023)
 - 20 Kimberley Community Legal Services - Answer to spoken questions on notice, 4 October 2023 (received 8 November 2023)
 - 21 Office of the Director of Public Prosecutions Western Australia - Extract from the Aboriginal Benchbook for Western Australian Courts provided as an answer to spoken questions on notice, 4 October 2023 (received 4 October 2023)
 - 22 Office of the Director of Public Prosecutions New South Wales - Answers to questions on notice, 28 July 2023 (received 8 September 2023)
 - 23 Commissioner McGowan Jones - Answers to spoken questions on notice, 4 October 2023 (received 13 October 2023)
 - 24 Queensland Indigenous Family Violence Legal Services - Answers to questions on notice, 20 February 2024 (received 12 March 2024)
 - 25 Australia's National Research Organisation for Women's Safety - Answers to spoken questions on notice, 20 February 2024 (received 13 March 2024)
 - 26 Office of the Director of Public Prosecutions Queensland - Answers to spoken questions on notice, 20 February 2024 (received 14 March 2024)
 - 27 Queensland Police Service - Answers to spoken questions on notice, 20 February 2024 (received 22 March 2024)
 - 28 Australian Institute of Criminology - Updated answers to written questions on notice, 23 May 2024 (received 7 June 2024)
 - 29 Australian Federal Police - Updated answers to written questions on notice, 23 May 2024 (received 11 June 2024)
 - 30 Australian Institute of Health and Welfare - Updated answers to written questions on notice, 23 May 2024 (received 14 June 2024)
 - 31 Djirra - Answer to questions on notice, 18 June 2024 (received 24 June 2024)
 - 32 Commissioner for Children and Young People - Answers to spoken questions on notice, 18 June 2024 (received 27 June 2024)

- 33 Djirra - Answers to spoken questions on notice, 18 June 2024 (received 27 June 2024)
- 34 Central Australian Women's Legal Service - Answers to spoken questions on notice, 18 April 2024 (received 2 July 2024)
- 35 Department of Territory Families, Housing and Communities - Answers to spoken questions on notice, 18 April 2024 (received 10 July 2024)

Additional Information

- 1 Published article provided by the National Justice Project as additional support material, following a public hearing on 28 July 2023 (received 11 August 2023)
- 2 NSW Police Force Aboriginal Strategic Direction 2018-2023, Report, provided by the Law Enforcement Conduct Commission, following a public hearing on 28 July 2023 (received 11 August 2023)
- 3 News article: Neill, Rosemary "Police Probe 'shoddy, unprofessional'" (The Australian), provided by Senator Dorinda Cox
- 4 NSW Coroners Court, 'Findings in Inquest into the death of Mona Lisa and Jacinta Smith' 23 April 2024, provided by Senator Dorinda Cox
- 5 Australia's National Research Organisation for Women's Safety, 'Missing , murdered and incarcerated Indigenous women in Australia: A literature review', provided by ANROWS, following a public hearing on 20 February 2024 (received 19 April 2024)
- 6 GUMURRII Centre, Griffith University, 'Young Aboriginal Females Reported Missing to Police: Which Way for Prevention & Service', 2024 (3rd Edition), provided by Dr Catherine Demosthenous (received 20 June 2024)

Correspondence

- 1 Correspondence between the Legal and Constitutional Affairs References Committee and WA Police, regarding the proposed appearance of WA Police at a public hearing on 4 October 2023. Dated 16 August to 19 September 2023.

Media Releases

- 1 Media release of new inquiry, 4 August 2022
- 2 Media release: update on inquiry progress, 15 November 2023

Appendix 2

Public hearings

Friday, 16 September 2022

Parliament House
Canberra, ACT

Wednesday, 5 October 2022

Committee Room 2S1
Parliament House
Canberra, ACT

Department of the Prime Minister and Cabinet (inc. Office for Women)

- Ms Genevieve Quilty, FAS, Social Policy Division
- Ms Kaylene Zakharoff, FAS, Office for Women

National Indigenous Australians Agency

- Ms Ursula Carolyn, Families and Safety
- Mr Ben Burdon, Group Manager

Attorney-General's Department

- Ms Esther Bogaart, FAS, First Nations and Justice Policy Division
- Ms Rebekah Kilpatrick, AS, National Office of Child Safety
- Ms Alana Fraser, AS, Criminal Justice Reform Taskforce
- Ms Claire Crawford, A/g AS, Family Safety Branch

Australian Institute of Criminology

- Dr Rick Brown, Deputy Director
- Dr Samantha Bricknell

Australian Institute of Health and Welfare (via Videoconference)

- Dr Fadwa Al-Yaman, Indigenous Group Head
- Dr Gabrielle Phillips, Housing & Specialised Services Group Head
- Ms Jessica Cargill, Indigenous Health & Performance Framework Unit Head

Australian Federal Police (inc. ACT Policing)

- A/g Deputy Commissioner Operations Lesa Gale, (via Videoconference)
- Assistant Commissioner Peter Crozier, Deputy Chief Police Officer, ACT Policing
- Acting Assistant Commissioner Hilda Sirec, Northern Command (via Videoconference)
- Mrs Susan Williamson-DeVries, Manager, Government and Executive Advice

- Assistant Commissioner Scott Lee, Specialist Protective Command
- Commander Jason Kennedy, Professional Standards

Department of Social Services

- Ms Emma-Kate McGuirk, Group Manager
- Ms Greta Doherty, Acting Group Manager
- Ms Rhiannon Box, Acting Branch Manager (via Videoconference)

Aboriginal and Torres Strait Islander Advisory Council (via Videoconference)

- Professor Muriel Bamblett

Tuesday, 21 February 2023

Toormina Community Centre

Toormina, NSW

Bowraville Land Council

- Mr Phillip Hall, Chief Executive Officer
- Ms Patricia Anne Edwards, Chairperson

Kempsey Local Aboriginal Council

- Mr Greg Douglas, Chief Executive Officer

Wednesday, 22 February 2023

Toormina Community Centre

Toormina, NSW

Wednesday, 22 February 2023

Toormina Community Centre

Toormina, NSW

Galambila Aboriginal Health Service

- Ms Tracey Singleton

Balunbudjabin Consulting

- Ms Rachael Cavanagh

Mr Malcolm Brunton, Private capacity

Jumbunna Institute for Indigenous Education and Research

- Professor Larissa Behrendt, Professor of Law and Director of Research

Jumbunna Institute for Indigenous Education and Research

- Professor Craig Longman

Ms Amy McQuire, Private capacity

Thursday, 27 April 2023

Rivervale Community Centre

Rivervale, WA

Friday, 28 July 2023

Swissotel Sydney

68 Market Street

Sydney, NSW

Wirringa Baiya Aboriginal Women's Legal Centre

- Ms Christine Robinson, Chief Executive Officer

NSW Aboriginal Women's Advisory Network

- Ms Dixie Link-Gordon, Program Coordinator

NSW Police Force

- Superintendent Christopher Nicholson, Commander, Crime Prevention Command
- Detective Superintendent Daniel Doherty, State Crime Command, Homicide Squad
- Detective Inspector Ritchie Sim, State Crime Command, Missing Persons Registry

Law Enforcement Conduct Commission

- Ms Anina Johnson, Commissioner

NSW Director of Public Prosecutions

- Ms Sally Dowling SC, Director

Department of Premier and Cabinet

- Mr Shane Hamilton, Deputy Secretary, Aboriginal Affairs NSW

Department of Communities and Justice

- Mr Brendan Thomas, Deputy Secretary, Transforming Aboriginal Outcomes Division
- Ms Hannah Tonkin, Women's Safety Commissioner & Executive Director, Women, Family & Community Safety Division
- Ms Annette Farrell, A/g Commissioner of Victims' Rights
- Mr Mark Follett, Executive Director, Law Reform & Legal Services Division
- Ms Sussan Maybury, Director, Aboriginal Family Violence, Transforming Aboriginal Outcomes Division

Australian Lawyers for Human Rights

- Dr Tania Penovic, Senior Chair, Women and Girls' Rights Committee

Jumbunna Institute for Indigenous Education and Research

- Professor Craig Longman, Head of Legal Strategies
- Mx Latoya Rule, Research Associate and PhD Candidate

National Justice Project

- Mr George Newhouse, Director and Principal Lawyer

Wednesday, 4 October 2023

Plaza Ballroom 3

Hyatt Regency Perth

99 Adelaide Terrace

Perth, WA

*Western Australia Police Force**Corruption and Crime Commission*

- Ms Emma Johnson, Chief Executive

*Dr Hannah McGlade, Private capacity**Office of the Director of Public Prosecutions for Western Australia*

- Mr Robert Owen, Director of Public Prosecutions for Western Australia
- Ms Alison Finn, Legal Projects Officer

Commissioner for Children and Young People Western Australia

- Ms Jacqueline McGowan-Jones

Kimberley Community Legal Services

- Mr Lachlan Withnall, Principal Lawyer (via teleconference)
- Ms Grace Dudley, Systemic Change Advocate (via teleconference)

National Justice Project

- Mr George Newhouse, Director and Principal Solicitor (via teleconference)
- Ms Emma Hearne, Associate Legal Director (via teleconference)

Women's Legal Service WA

- Dr Jennie Gray, Chief Executive Officer
- Ms Stephanie Monck, Principal Legal Officer

Thursday, 2 November 2023

Stratford Bowls Club

3 Rinks Cl

Stratford, QLD

First Nations Women's Legal Service QLD

- Ms Andrea Kyle-Sailor, Community Development Worker

North Queensland Women's Legal Service

- Ms Rachael Ozanne-Pike, Lawyer

Tuesday, 20 February 2024

Hyatt Regency Brisbane

72 Queen Street

Brisbane, QLD

Ms Karen Iles, Private capacity

Queensland Police Service

- Mr Alan Dewis, Executive Director, First Nations Division
- Superintendent Kerry Johnson, First Nations Division
- Inspector Sam Bliss, First Nations Division
- Assistant Commissioner Mark Kelly, People Capability Command
- Detective Inspector Damien Hansen, Homicide Group, Crime and Intelligence Command

Office of the Director of Public Prosecutions (Qld)

- Mr Todd Fuller KC, Director of Public Prosecutions

Queensland Indigenous Family Violence Legal Service

- Ms Thelma Schwartz, Principal Legal Officer
- Mr Kulumba Kiyingi, Senior Policy Officer

Australia's National Research Organisation for Women's Safety

- Dr Tessa Boyd-Caine, Chief Executive Officer
- Dr Jane Lloyd, Director, Research and Evaluations

Tuesday, 31 October 2023

State Library of Queensland

Brisbane, QLD

Wednesday, 17 April 2024

Darrandirra Child and Family Centre

Malak, NT

Thursday, 18 April 2024

Darrandirra Child and Family Centre

16 Malak Cres

Malak, NT

Tangentyere Council (via teleconference)

- Dr Chay Brown, Family Violence Prevention Manager

North Australian Aboriginal Justice Agency

- Ms Sarah Rowe, Acting Deputy Managing Lawyer
- Mrs Rachel Neary, Coordinator, Kunga Stopping Violence Program (via teleconference)

North Australian Aboriginal Family Legal Service

- Mr James Lowrey, Principal Legal Officer
- Ms Rachael Hill, Senior Partnership and Advocacy Officer

Domestic Violence Legal Service and Northern Territory Legal Aid Commission

- Ms Zara O'Sullivan, Acting Managing Solicitor
- Ms Fiona Hussin, Deputy Director

Northern Territory Women's Legal Services

- Ms Caitlin Weatherby-Fell, Chief Executive Officer, Top End Women's Legal Service
- Ms Siobhan Mackay, Chief Executive Officer and Managing Lawyer, Katherine Women's Legal Service (via teleconference)
- Ms Julianna Marshall, Acting Chief Executive Officer, Central Australian Women's Legal Service

NT Director of Public Prosecutions

- Mr Lloyd Babb SC, Director

Northern Territory Police, Fire and Emergency Services

- Mr Sachin Sharma, Commander, Domestic Violence and Youth

Northern Territory, Department of Territory Families, Housing and Communities

- Ms Seranie Gamble, Executive Director, Domestic, Family and Sexual Violence Reduction
- Ms Anna Davis, Director, Domestic, Family and Sexual Violence Reduction

Wednesday, 15 May 2024

Committee Room 2S1

Parliament House

Canberra, ACT

Dr Amy McQuire, Private capacity

Sisters Inside (Joint Submission 54)

- Mrs Deborah Kilroy OAM, Chief Executive Officer

Institute for Collaborative Race Research (Joint Submission 54)

- Professor Chelsea Watego, Co-director and Principal Researcher
- Dr David Singh, Co-director and Principal Researcher

Tuesday, 18 June 2024

Stamford Plaza
Melbourne, VIC

Tuesday, 18 June 2024

Stamford Plaza
111 Little Collins Street
Melbourne, VIC

Djirra

- Ms Antoinette Gentile, Acting CEO
- Ms Anne Lenton, Director Legal Services
- Ms Rose Hunt, Supporting Senior Policy Lawyer
- Ms Amy Moore, Strategic Advisor

Our Watch

- Ms Patty Kinnersly, CEO
- Ms Karla McGrady, Portfolio manager - Innovation

Mr Gary Jubelin (via teleconference), Private capacity

Commission for Children and Young People (Victoria)

- Ms Meena Singh, Commissioner for Aboriginal Children and Young People

Mr Martin Hodgson (via teleconference), Private capacity

Victorian Aboriginal Legal Service

- Ms Nerita Waight, CEO