

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

11 November 2022

Dear Officer,

RE: Missing and murdered First Nations women and children

The Australian National University Law Reform and Social Justice Research Hub ('ANU LRSJ Research Hub') welcomes the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee, responding to the Senate inquiry into Missing and murdered First Nations women and children.

The ANU LRSJ Research Hub falls within the ANU College of Law's Law Reform and Social Justice program, which supports the integration of law reform and principles of social justice into teaching, research and study across the College. Members of the group are students of the ANU College of Law, who are engaged with a range of projects with the aim of exploring the law's complex role in society, and the part that lawyers play in using and improving law to promote both social justice and social stability.

Summary of Recommendations:

1. Policy making concerning the rights of First Nations women and children should be led by First Nations women whose perspectives, thoughts and experiences are necessary in creating quality legislation with far reaching impacts;
2. The coercive control measure is one which must be thoroughly consulted with First Nations women and through the deep listening of victim-survivors of domestic violence. Without improving police training on handling domestic violence cases within First Nations communities, no real impact can occur;
3. Community housing and violence crisis services must work in tandem to reduce the risk factors of First Nations women who experience violence. If these systems are not improved in their ability to accommodate First Nations women and provide viable alternatives, First Nations women are likely to remain in relationships that exert violence against them;
4. Wherever possible, violence-reduction strategies should be self-determined by First Nations communities, with sufficient resourcing provided by government to ensure community leaders can fully implement strategies. Untied grants should be supplied to communities to support the development and execution of self-determined community-led projects focussed on violence reduction led by Indigenous women;
5. Significant investment is needed to reduce rates of family violence recidivism without contributing to over-incarceration of First Nations peoples;

6. Programs for men and former offenders require investment in order to include male offenders in the process of attitudinal and behavioural change, rather than alienating them further from community standards around violence reduction through criminalisation and over-incarceration; and
7. Programs must ensure a high degree of cultural competency, understanding of the core differences between First Nations' and colonial legal systems and practices, and how these affect attitudes towards violence.

If further information is required, please contact us at anulrsresearchhub@gmail.com.

On behalf of the ANU LRSJ Research Hub,

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Introduction

In this submission for the Inquiry into Missing and Murdered First Nations Women and Children, the discussion surrounds terms of reference (c), (e) and (f).

Within terms of reference (c), the inadequacies of current policies and legislation in targeting the disproportionate rates of domestic violence in First Nations women and child removal rates will be considered. More specifically, this section will delve into the disadvantages for First Nations women and children present within the National Plan to Reduce Violence, the intervention of child protection authorities and the newly drafted bill for coercive control.

In terms of reference (f), the systemic causes of violence against First Nations women and children are considered, alongside additional risk factors such as housing insecurity which may place First Nations women at greater risk of exposure to violence.

In terms of reference (e), international and domestic case studies of strategies aimed at reducing violence towards First Nations women and children will be considered and analysed, including self-determined strategies. This section will provide recommendations and learnings from these case studies to guide the implementation of forthcoming strategies and policies which the committee should implement to combat instances of violence, particularly intimate partner and family violence, against First Nations women and children.

1. Term of Reference (c): the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children

Domestic violence is far more prevalent among First Nations women when compared to non-First Nations counterparts.¹ Evidence highlights this divide is more intensified for First Nations women in rural and remote areas who are 45 times more likely to experience domestic violence than their white peers.² Despite this only five per cent of those who experience such violence feel secure in reporting it to the police.³ As a result, they continue to be disproportionately represented in the victimisation rate.⁴ Moreover, this is a rate which does not encompass many other missing and murdered victims of

¹ Australian Institute of Health and Welfare Canberra, *Family violence among Aboriginal and Torres Strait Islander peoples* (Report, 2006) 3.

² Monique Keel, 'Family violence and sexual assault in Indigenous communities' (September 2004) *Briefing Australia Centre for the Study of Sexual Assault* 5.

³ Jens Korff, 'Domestic and family violence', *Creative Spirits* (Web Page, 16 May 2022) <<https://www.creativespirits.info/aboriginalculture/people/domestic-and-family-violence>>

⁴ Amal Naser, 'The Media's Complicity in the Indigenous Femicide' (2021) 15(1) *Court of Conscience* 41.

domestic violence whose cases and data go unreported.⁵ It is clear that the pervading impact of colonisation, dispossession and intergenerational trauma continue to impact First Nations women and shape their access to policing services and adequate cultural support services as they are treated as the 'other' in policies which concern their lives.⁶ Domestic violence is a key contributor to the removal of First Nations children from their families. The existing legislation and practices reiterate that without improving the self-determination strategies for First Nations women and without demolishing the racist and sexist perspectives which shape policing efforts for First Nations women, legislation will only continue to harm First Nations women and their children.

1.1 National Plan to Reduce Violence & Intervention of Child Protection Authorities

The *National Plan to Reduce Violence* ('Plan') spans over 12 years with four action plans, underpinning the Government's dedication to ensuring the development and implementation of effective strategies.⁷ National Outcome Three of the *Plan* acknowledges the importance of self-determination through fostering the leadership of First Nations women as well as improving the access to appropriate services.⁸ However, the *Plan* has had minimal impacts. A key measure of its success is the reduction of First Nations women who experience domestic violence and increasing the proportion of the women who have a say within their communities.⁹ Since its introduction in 2010, cases of hospitalisation from assault and homicides of First Nations women are at startling numbers. In 2019-20, there were 3,897 hospitalisations for assault injuries among First Nations women and in 2020 it was revealed First Nations women accounted for 21% of total female homicide deaths.¹⁰ Funding for increasing voices of First Nations women experiencing domestic violence has also been axed as the former Morrison Government excluded the National Family Violence Prevention Legal Services Forum ('NFVPLS') from receiving direct additional funding.¹¹ Instead, funding was aimed at increasing services not yet in existence, rather than

⁵ "There's Just Silence": She Fought to Stop Violence against Women. Why Didn't Her Murder Start a Movement?, *ABC News* (online, 23 October 2022) <<https://www.abc.net.au/news/2022-10-24/murdered-and-missing-indigenous-women-four-corners/101546186>>.

⁶ Silke Meyer and Rose-Marie Stambe, 'Indigenous women's experiences of domestic and family violence, help-seeking and recovery in regional Queensland' (2020) 56(3) *Australian Journal of Social Issues* 443.

⁷ Council of Australian Governments, *National Plan to Reduce Violence against Women and their Children 2010-2022* (National Plan, 2010) 12.

⁸ *Ibid* 21.

⁹ *Ibid*.

¹⁰ Senate Standing References Committee, Parliament of Australia, *Australian Institute of Health and Welfare: Response to Written Questions on Notice from the Senate Standing References Committee on Legal and Constitutional Affairs regarding the Inquiry into Missing and Murdered First Nations Women and Children* (29 September 2022), 10; 5.

¹¹ 'Government defunds Indigenous domestic violence body' (2020) 26(9) *Australian Nursing and Midwifery Journal* 4.

funding to meet the demand for existing services.¹² The NFVPLS was also refused a seat within the National Advisory Group, which is strategising on the New National Plan to Reduce Violence that will come to fruition in the next year.¹³ With 95% of its clients being First Nations women and children, the NVPLS is a valuable advisory group with frontline experience on the impact of domestic violence among First Nations women.¹⁴ Recently, the *Plan* also opened a two-week window to receive feedback of its draft National Plan from the public; this is far too little time to evaluate their action plans for the most marginalised groups.¹⁵ The culmination of these events put to doubt how the *Plan* seeks to improve the issue of domestic violence within First Nations communities without the valuable perspectives of First Nations women.

Domestic violence is a key driver of child removal.¹⁶ In response to the disproportionate number of First Nations children in out of home care ('OOHC'), the Australian Government introduced the Aboriginal and Torres Strait Islander Child Placement Policy.¹⁷ The principle which asks for the involvement of First Nations community representatives in decisions concerning First Nations children and ensuring alternative care placements with First Nations care providers have largely been ignored.¹⁸ Most states continue to place children in non-First Nations OOHC providers and community care agencies have identified the poor level of consultation with the community to protect First Nations children.¹⁹ In the year the *Bringing them Home Report* was established 2785 children were in OOHC.²⁰ Currently, there are 20241 First Nations children in OOHC.²¹ What is worse is many children have been removed overseas or interstate, severing their relationship with culture and community indefinitely.²² The *Women's Voices Report* establishes that this is approaching a Stolen Generation removal rate of 10 to 30% of First Nations children.²³ As the NFVPLS identifies, the fear of child protection intervention is one of the biggest preventers of First Nations women reporting cases of domestic violence.²⁴ There are limited systems in place to support mothers who are seeking care, crisis accommodation or other preventative measures.²⁵ The interconnectedness of both issues highlights that without preventative measures to combat

¹² Rachael Knowles, 'National family violence body ignored by Federal Government' *NIT* (online, 13 August 2021) <<https://www.nit.com.au/national-family-violence-body-ignored-by-federal-government/>>

¹³ *Ibid.*

¹⁴ Rachael Knowles, 'Government excludes leading Aboriginal family violence body from advisory group' *NIT* (online, 24 June 2021).

<<https://www.nit.com.au/government-excludes-leading-aboriginal-family-violence-body-from-advisory-group/>>

¹⁵ Georgia Hitch, 'Draft national plan to end violence against women and children released, open for consultation' *ABC* (online, 14 January 2022)

<<https://www.abc.net.au/news/2022-01-14/draft-national-plan-end-violence-against-women-children/100756294>>.

¹⁶ Australian Human Rights Commission and National Indigenous Australians Agency, *Wiyi Yani U Thangani (Women's Voices): Securing Our Rights, Securing Our Future Report* (2020) 219 ('*Securing Our Rights, Securing Our Future*').

¹⁷ *Ibid* 212.

¹⁸ Margaret Ah Kee and Clare Tilbury, 'The Aboriginal and Torres Strait Islander Child Placement Principle is about self determination' (2016) 24(3) *Children Australia*.

¹⁹ *Ibid.*

²⁰ *Securing Our Rights, Securing Our Future* (n 16) 212.

²¹ *Ibid* 213.

²² *Ibid* 214.

²³ *Ibid* 212.

²⁴ *Ibid* 219.

²⁵ *Ibid* 218.

domestic violence these intervention policies are poor responses that will only generate further trauma within communities. Without the leadership of First Nations women who know what works and what does not, no real lasting change can occur, both within the spheres of domestic violence and child removal.

Recommendation 1: Policy making concerning the rights of First Nations women and children should be led by First Nations women whose perspectives, thoughts and experiences are necessary in creating quality legislation with far-reaching impacts.

1.2 Coercive Control

Recently, the NSW and Queensland governments have proposed bills to criminalise coercive control.²⁶ The bills seek to outlaw behaviour which denies victims independence and autonomy such as the controlling of finances and isolation from families, which under the proposed NSW law could lead up to seven years in prison.²⁷ However, this poses a risk for the safety of First Nations women. Criminalising this behaviour is necessary, but the standalone criminalisation and the police-based response does not address the additional layers of the policing efforts surrounding domestic violence among First Nations women. First Nations women struggle to report cases of domestic violence as nothing is rarely done.²⁸ Police have ingrained a long history of misidentifying First Nations victim-survivors as perpetrators; in 90% of cases, First Nations women murdered by their partners were previously identified as the perpetrators of domestic violence.²⁹ Without adequate policing training that dismantles this 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.³⁰

²⁶ The Honourable Shannon Fentiman, 'Legislation to strengthen response to coercive control introduced into Parliament' (Media Statement, 14 October 2022); Attorney General, Minister for Women's Safety and the Prevention of Domestic and Sexual Violence, 'Coercive control bill passes Lower House' (Media Release, 19 October 2022).

²⁷ *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022* (Qld); *Crimes Legislation Amendment (Coercive Control) Bill 2022* (NSW); Emma Buxton-Namisnyk, Althea Gibson and Peta MacGillivray, 'Unintended, but not unanticipated: coercive control laws will disadvantage First Nations women' *UNSW Newsroom* (online, 28 August 2022) <<https://newsroom.unsw.edu.au/news/business-law/unintended-not-unanticipated-coercive-control-laws-will-disadvantage-first-nations>>.

²⁸ Emma Buxton-Namisnyk, 'Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination' (2021) 62(6) *British Journal of Criminology*.

²⁹ Ben Smee, '“Racist”: coercive control laws could harm Indigenous women in Queensland, advocates warn' *The Guardian* (online, 18 May 2021) <<https://www.theguardian.com/australia-news/2021/may/18/racist-coercive-control-laws-could-harm-indigenous-women-in-queensland-advocates-warn>>.

³⁰ Christine Robinson, 'The Effects of Coercive Control Laws on Indigenous Women and Families' (Indigenous Justice Clearinghouse, 7 September 2022)

Without this, coercive control laws will 'retraumatise' than protect the most marginalised of communities. As the Wirringa Baiya Aboriginal Women's Legal Centre details in their submission to the NSW Joint Select Committee on Coercive Control:

[If an] Aboriginal woman is uneasy or unable to persuade a police officer that she is the primary victim of physical violence [under the current law] what hope, or incentive is there to persuade a police officer that she has experienced ongoing psychological and economic abuse [under the new law]?³¹

The issue of misidentification can further increase child protection interventions and enhance the disproportionate rate of First Nations children in OOHC.³² The Queensland and NSW inquiries have acknowledged the unintended consequences for First Nations women the proposed bills may cause and how these may be unanticipated.³³ This is far from the truth. These consequences are anticipated and remain a way to not involve the perspectives of a marginalised group who will face the most dangers from the establishment of this policy.³⁴ By rushing the implementation and not focusing upon improving current policing measures there is no possibility of coercive control having meaningful impacts on the lives of First Nations women and their children.

Recommendation 2: The coercive control measure is one which must be thoroughly consulted with First Nations women and through the deep listening of victim-survivors of domestic violence. Without improving police training on handling domestic violence cases within First Nations communities, no real impact can occur.

<<https://www.indigenousjustice.gov.au/recording-the-effects-of-coercive-control-laws-on-indigenous-women-and-families/>>.

³¹ 'Unintended, but not unanticipated: coercive control laws will disadvantage First Nations women' (n 27).

³² Ibid.

³³ Ibid.

³⁴ Ibid.

2. Term of Reference (f): The systemic causes of violence against First Nations women and children

First Nations women are 11 times more likely to die from family violence than non-First Nations women. Family and domestic violence are intricately related to the epidemic of missing and murdered First Nations women, with 75% of First Nations women who were killed having experienced police inaction and reluctance following disclosures of domestic violence.³⁵

We cannot address and resolve the issue of missing and murdered First Nations women without first understanding and addressing their experiences of both domestic violence and the systemic obstacles that impair protection of women and children in these situations. For them, the impacts of family violence go far beyond a singular experience of violence. In identifying First Nations women as a high-risk group, most strategies focus only on prevalence rates and the special needs and vulnerabilities of First Nations women who experience violence. However, the rates at which First Nations women and children experience violence, far exceed those which are referable to individual experiences. The causes of violence must be recognised as systemic, stemming not only from the trauma of colonisation but from infrastructure that fortifies the colonial legacy of violence against First Nations women. It is only in reckoning with the pervasive causes of violence against women that lead to their disappearances and deaths, that we can chart a course for movement forward.

2.1 Historical Trauma

Historical trauma remains the most common cause of violence against women.³⁶ 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.³⁷ The trauma and oppression that have resulted from colonialism have been transmitted forward, across generations, crystallising as historical trauma.³⁸

³⁵ Bridget Brennan et al., 'The Killings and Disappearances of Indigenous Women across Australia is a crisis hidden in Plain Sight' *Australian Broadcasting Corporation* (online, 24 October 2022) <<https://www.abc.net.au/news/2022-10-24/murdered-and-missing-indigenous-women-four-corners/101546186>>.

³⁶ Catherine Burnette, 'Historical Oppression and Intimate Partner Violence Experienced by Indigenous Women in the United States: Understanding Connections' (2015) 89 (3) *Social Service Review*, 531,531 <<https://doi.org/10.1086/683336>>.

³⁷ Jenevieve Mannell, 'How Colonialism is a Major Cause of Domestic Abuse Against Women Around the World', *The Conversation* (online, 25 April 2022) <<https://theconversation.com/how-colonialism-is-a-major-cause-of-domestic-abuse-against-women-around-the-world-179257>>.

³⁸ Ibid.

Historical trauma cannot be dismissed as a long-gone cause of violence. Comprehensive research conducted on the Indigenous populations of North America has demonstrated that trauma sustained even once, has adverse impacts on health and psychology.³⁹ Similar research demonstrates that past intergenerational and present trauma creates layered, complex trauma that cannot be resolved incidentally.⁴⁰ Colonial racism and sexualisation of First Nations women set the precedent for the ongoing mistreatment of First Nations women. 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.

2.2 Risk factors - Housing Insecurity

Colonisation is relevant beyond the psychological trauma that contributes to violence against women. It has also contributed to increased risk factors that exacerbate women's propensity to experiences of violence, necessarily reducing their ability to remove themselves from homes and partners that use violence. This inability not only exacerbates their vulnerabilities but also increases their children's vulnerability to violence.

The generational poverty and destitution that is a direct product of colonisation, has led to housing instability. The displacement of peoples from their traditional lands, separation of children from their families and the various policies and community services that sever Indigenous ties with culture and kin all contribute to the rate of homelessness amongst Indigenous Australians.⁴¹ The Australian Institute for Health and Welfare ('AIHW') recognises that higher rates of unstable housing relate to complex and interrelated factors including exposure to family violence.⁴² In 2016, Indigenous Australians made up 3.3% of the Australian population, but comprised 22% of all people who were homeless.⁴³ Additionally, 80% of Indigenous households were 'family households', where one or multiple families lived together, increasing their risk of exposure to family violence of some form. 40% of Indigenous Australians who seek

³⁹ Devon Isaacs et al, 'Fighting for our sisters: Community Advocacy and action for missing and murdered Indigenous Women' [2022] (78) *Journal of Social Issues* 53.

⁴⁰ Ibid.

⁴¹ Australian Institute of Health and Welfare, 'Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness' (online, 2019) 60
<<https://www.aihw.gov.au/getmedia/1654e011-dccb-49d4-bf5b-09c4607eccc8/aihw-hou-301.pdf.aspx?inline=true>>

⁴² Ibid.

⁴³ Australian Institute of Health and Welfare, 'Aboriginal and Torres Strait Islanders: A Focus on Housing and Homelessness' (online, 29 March 2019) 1
<<https://www.aihw.gov.au/reports/housing-assistance/indigenous-people-focus-housing-homelessness/contents/sunmary>>.

homelessness services had experienced domestic and family violence, and their homelessness was a direct result of these experiences.⁴⁴

The inadequacy of crisis services and also of community housing in Australia plays a critical role in many women choosing to stay in violent situations.⁴⁵ Australia's Fourth National Action Plan to reduce violence against women ('VAW') and their children makes explicit reference to inadequate housing and overcrowding as a factor in Indigenous experiences of family violence. However, it offers no specific guidelines to overcome these challenges.⁴⁶ Importantly, Australian policy targeting homelessness fails to adequately identify the link between VAW and experiences of homelessness. Furthermore, there has been a lack of cooperation between housing services and crisis services that respond to women in need. This lack of cooperation on a policy and practical level means that even where women fleeing violence can access community housing, most community housing developments and personnel lack the infrastructure, funding and expertise to ensure women's safety.⁴⁷

2.3 Issues with Police Response

The Government's inability to prevent women's experiences of violence by ensuring adequate housing and employment opportunities is further worsened by the typical police response to disclosure of violence. Police officers often have initial contact with victims and perpetrators of violence, and how they respond is often instrumental to a woman's decision to follow through with the reporting, and to pursue court orders to protect them from subsequent instances of violence.

Research conducted by Australia's National Research Organisation for Women's Safety (ANROWS) demonstrates that police culture affects proper identification of victims and perpetrators of violence, which in turn affects the likelihood that complaints of violence are taken seriously. This culture is affected by several factors. Firstly, by racist stereotyping of Indigenous behaviour which informs.

Women in the Northern Territory, specifically in Central Australia where a disproportionate number of Indigenous women originate from, have long reported racist and discriminatory behaviour at the hands of police.⁴⁸ The insular nature of police organisations across the country means that this behaviour has thus far been immune to any legislative efforts. Additionally, police practice in the VAW space is guided by a focus on single incidents of visible or physical violence, rather than an understanding of the nature

⁴⁴ Ibid vii.

⁴⁵ Amber Clough et al., "'Having housing made everything else possible': Affordable, safe and stable housing for women survivors of violence' (2013) 13(5) *Qualitative Social Issues* 671, 677.

⁴⁶ Kylie Cripps and Daphne Habibis, 'Another Stolen Generation Looms unless Women Fleeing Violence can find Safe Housing', *UNSW Sydney* (online, 19 September 2019) <<https://www.unsw.edu.au/news/2019/09/another-stolen-generation-looms-unless-indigenous-women-fleeing->>.

⁴⁷ 'Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness' (n 41), 675.

⁴⁸ Samantha Jonsher and Alex Barwick, 'First Nations women call for change in domestic violence policing after Four Corners revelations' *Australian Broadcasting Corporation* (online, 30 October 2022) <<https://www.abc.net.au/news/2022-10-30/first-nations-women-criticise-domestic-violence-policing-in-nt/101584086>>.

of protracted violence, coercive control and the effect that these can have on women and children.⁴⁹ By focusing on physical violence, police practice does not account for the fact that perpetrators, especially repeat perpetrators, use a variety of tactics to abuse and bypass the system. Often this leads to women being misidentified as perpetrators rather than victims.⁵⁰ In some instances, this has led to their prosecution and incarceration.⁵¹ The fact that women complaining of violence have ended up on the wrong side of Australia's criminal justice system is testament not only to the racism so deeply rooted in our policing structures, but to women's mistrust of the system, and their hesitancy to rely on it. The statistics of domestic and family violence do not include the experiences of women whose arguably well-founded mistrust prevents them from reporting in the first place.

Additionally, police practice is crucial to the safety of women who have reported violence and who have Domestic or Family Violence Orders ('FDVO'). Without police backing, these orders cannot be enforced and are meaningless. Women who apply for FDVOs rely on the police to respond promptly to allegations that respondents have breached those orders.⁵² When police fail to adequately respond, women may be subject to repeated experiences of violence; disillusioned by a system and by people who fail to help. Therefore, the likelihood that these women will report violence to the police again is understandably reduced.⁵³

The challenges with police practice in relation to VAW is exacerbated by the lack of clarity in relation to accountability when making assessments of the appropriateness of FDVOs. These assessments rely largely on the testamentary evidence of the police and their perceptions of First Nations women and men. These are factors bound to be influenced by personal biases, including racist stereotypes of Indigenous communities.

2.4 Australia's approach to violence against women

Australia's approach to violence against women has been a largely criminal justice approach. 'Getting tough on crime' is cheaper and has been more appealing to conservative governments than meaningful structural changes to increase women's social and economic independence (all factors which compound First Nation women's vulnerability to violence and reduce their capacity to remove themselves from violent situations and relationships).⁵⁴ The consequences of Australia's tough-on-crime stance, especially in relation to First Nations men, has serious consequences for women's willingness to report. The

⁴⁹ Australian Domestic and Family Violence Death Review Network, & Australia's National Research Organisation for Women's Safety 'Australian Domestic and Family Violence Death Review Network Data Report: Intimate partner violence homicides 2010–2018' *ANROWS* (online, March 2022) <<https://www.anrows.org.au/publication/australian-domestic-and-family-violence-death-review-network-data-report-intimate-partner-violence-homicides-2010-2018/>>.

⁵⁰ Ibid.

⁵¹ Eileen Cummings et al., 'Innovative models in addressing violence against Indigenous women: Final report' [2018] (1) *Horizons* 25.

⁵² Ibid 44.

⁵³ Ibid 56.

⁵⁴ Heather Nancarrow, 'In search of justice for domestic and family violence: Indigenous and non-Indigenous Australian women's perspectives' (2006) 10(1) *Theoretical Criminology* 87, 92.

criminal justice system is how we demonstrate that society takes something seriously, but when read alongside First Nation communities' historical and present experiences with the criminal justice system, it is understandable that women see reporting as a last-resort measure.

The criminal justice system, in its approach to VAW, fails First Nations women in several ways. Firstly, it is symbolically irrelevant to First Nations communities. The 'justice' that the system accords, is irreconcilable with traditional understandings of retribution and reconciliation. Additionally, the system frequently escalates violence against women and First Nations communities in general. For example, where police interventions are not comprehensive, women may face severe consequences from violent partners, their families and communities who may see the reporting as a defiance of culture and traditional authority.⁵⁵

Australia's reliance on a criminal justice approach that is largely misaligned with First Nations' priorities and aspirations for self-determination, is grossly a result of them being left out of discussions that shape VAW policy and law. For example, the recently finalised 10 Year National Strategy to Eliminate Violence Against Women, fails to explicitly address and acknowledge the unique experiences of First Nations women.⁵⁶

Australia's understanding of violence against women is predominantly white-centric, and tends to exclude First Nations' experiences. Within this framework, domestic violence is understood primarily as a consequence of patriarchal power and seems to suggest that the solution to VAW 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.⁵⁷ 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.⁵⁸

The ongoing social and economic effects of colonisation on First Nations communities, compounded by the political vulnerability of a minority group comprising just 3.8% of the Australian population⁵⁹, makes unity among First Nations men and women significant in ways that are irrelevant to non-First Nations Australians.⁶⁰ The desire to maintain relationships and preserve unity in their communities is reflected in First Nations women's preference for restoring relationships between victims and offenders and for

⁵⁵ Ibid.

⁵⁶ Services Australia, 'Family and Domestic Violence Strategy 2020-23' (Media Release, 26 September 2022) <<https://www.servicesaustralia.gov.au/family-and-domestic-violence-strategy-2020-23?context=1>>.

⁵⁷ 'Australian Domestic and Family Violence Death Review Network Data Report: Intimate partner violence homicides 2010–2018' (n 49).

⁵⁸ *Royal Commission into Family Violence: Report and Recommendations* (Report, March 2016) vol 3, 1–2.

⁵⁹ Australian Bureau of Statistics, Aboriginal and Torres Strait Islander Peoples (Report, 21 September 2022).

⁶⁰ 'Australian Domestic and Family Violence Death Review Network Data Report: Intimate partner violence homicides 2010–2018' (n 49) 94.

holding men accountable in ways other than criminal punishment.⁶¹ First Nations women and their communities find that approaches which prioritise prevention, healing, and diversion from the criminal justice system have longer lasting and positive impacts on women's experiences of violence.⁶² These priorities are wholly unaccommodated for in the criminal justice system and its current approach to VAW. Additionally, Indigenous peoples' disconnect with, and lack of influence in the criminal justice system, means that current approaches to violence fail to align with self-determination aspirations.

There are a variety of systemic causes of violence against First Nations women and children. Given the undeniable correlation between family violence and the incidence of murder and disappearances amongst First Nations women, this submission regards violence against women as a systemic factor that needs the most urgent and comprehensive addressing.

Recommendation 2: The systems aimed at mitigating the incidence of family violence against First Nations women, must involve both First Nations men and women in creating new decolonised systems which centre First Nations' self-determination aspirations, and principles of reconciliation and rehabilitation at the core of response to VAW.

Recommendation 3: Housing and violence crisis services must work in tandem to reduce the incidence of women who stay with partners and families who use violence as a result of inadequate community housing.

⁶¹ Ibid 96.

⁶² 'Aboriginal and Torres Strait Islander people: a focus report on housing and homelessness' (n 41).

3. Term of Reference (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-determined strategies and initiatives

In this section, we have identified a number of comparative international and domestic strategies tackling core factors which increase First Nations women and children's vulnerability to violence. There are important lessons that should be drawn from these examples, and adapted to the unique context and experience of colonisation and disadvantage of First Nations women and children in Australia.

3.1 US Violence Against Women Act 1994

3.1.1 About the strategy

The *Violence Against Women Act* 1994 ('VAWA') was passed by the US Congress in 1994 and designated funding for programs which were aimed at reducing gendered violence.⁶³ Running initially until 2002, grants were provided to states, Native American Tribal governments, and local governments for program development and implementation across four pillars - 'victim services, law enforcement, prosecution, and miscellaneous mechanisms', which often included Tribal Court development.⁶⁴ Four per cent of available funds under the scheme were reserved for Native American Tribal government programs, and over 160 communities received funding and promulgated programs through the grants provided.⁶⁵ Many of the programs are led by Indigenous women. Programs include providing community-led shelters and housing, strengthening traditional court systems and punishment against violent offenders, and increasing legal support for victim-survivors of violence.⁶⁶ VAWA concluded in 2002, but was re-authorised in 2013, with additional rights granted to tribes, including jurisdiction over domestic violence cases committed against Native Americans on Tribal lands. A further reauthorisation attempt took place in 2019, which would have expanded jurisdiction over domestic violence cases to include intimate partner violence committed by an unmarried partner or former partner (the 'boyfriend loophole'). The reauthorisation failed due to Republican and National Rifle Association opposition to provisions which would restrict abusive and stalking partners or former partners from purchasing firearms.

⁶³ Eileen Luna, 'Indigenous Women, Domestic Violence and Self Determination' (1999) 4(25) *Indigenous Law Bulletin*.

⁶⁴ Ibid.

⁶⁵ Ibid.

⁶⁶ Ibid.

Recently, in March 2022 the VAWA was re-authorised.⁶⁷ All grant programs were re-instated and expanded to 2027, and Tribal jurisdiction over sexual assault, child abuse, stalking, sex trafficking, and assaults on tribal law enforcement officers on tribal lands committed by non-Native perpetrators was re-established.⁶⁸

3.1.2 Factors affecting violence reduction

- Strengthening self-determined strategies to combat and punish violence;
- Equipping Indigenous women as community leaders;
- Strengthening court systems and traditional law.

3.1.3 Outcomes

Due to confidentiality requirements contained within the VAWA, evaluations of programs specifically relating to violence against Native American women and children have not been made public. Following the passage of the VAWA, the rate of intimate partner violence against women declined 53% between 1993 and 2008 across the general population.⁶⁹ The number of intimate partner homicides against women declined 26% between 1993 and 2007, and a University of Kentucky study recorded a 51% increase in reporting of intimate partner violence after the mandatory arrest provisions of the VAWA came into effect, as well as a 63% decrease in non-fatal violence, and 24% decrease in fatal violence.⁷⁰

The VAWA was widely criticised for failing to recognise the specific vulnerability of Indigenous women to violence and the particular prevalence of violence against Indigenous women and children. Indigenous women were not mentioned in the VAWA explicitly until its 2005 authorisation.⁷¹ Complex 'jurisdictional mazes' which existed prior to Native courts being granted jurisdiction over all offenders on Tribal lands effectively barred access to reporting and legal retribution for Indigenous women who were victimised on Tribal lands.

⁶⁷ The White House, 'Fact Sheet: Reauthorization of the Violence Against Women Act (VAWA)', *The White House* (16 March 2022)

<<https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/16/fact-sheet-reauthorization-of-the-violence-against-women-act-vaawa/>>.

⁶⁸ Ibid.

⁶⁹ Monica N Modi, Sheallah Palmer and Alicia Armstrong, 'The Role of Violence Against Women Act in Addressing Intimate Partner Violence: A Public Health Issue' (2014) 23(3) *Journal of Women's Health* 253 ('The Role of Violence Against Women Act in Addressing Intimate Partner Violence').

⁷⁰ Ibid.

⁷¹ Emily Wright, Sheena L Gilbert and Tara N Richards, 'Federal Policy Has Failed to Protect Indigenous Women', *The Conversation* <<http://theconversation.com/federal-policy-has-failed-to-protect-indigenous-women-159679>>.

Access to the justice system does not necessarily secure a verdict in favour of the victim-survivor. While US attorneys prosecute an average of 80% of all criminal matters referred for prosecution, that rate fell to 60% for crimes committed on Native lands.⁷²

Barriers to the prosecution of crimes through Tribal courts also exist. To qualify for the Special Domestic Violence Criminal Jurisdictions ('SDVCJ'), established in the VAWA's 2013 authorisation, tribes had to meet extensive requirements set out by the federal government, including providing defence counsel for poor defendants and ensuring adequate facilities for the housing of defendants. Establishing these processes required significant time and financial investment on the part of the tribes. By May of 2022, just over 5% of federally recognised tribes (31 of 574 tribes) exercised jurisdiction under the SDVCJ.⁷³

3.1.4 Key strategies for consideration in the Australian context

- Strategies enabling jurisdiction of traditional legal systems over violent crimes committed against Indigenous women and children on determined lands:
 - Strategies must be implemented in a manner which ensures that they do not impose barriers to the exercise of this jurisdiction by communities, including procedural (time/cost) barriers, and limitations on the scope of violent crimes which can be adjudicated; and
 - Strategies must be accompanied by wrap-around services which support the process of a victim-survivor reporting, adequate responses to reporting, and trauma-informed responses to supporting a victim-survivor through the process of prosecution in traditional legal systems.
- Untied grants supporting the development and execution of self-determined community-led projects focussed on violence reduction led by Indigenous women.

3.2 Cross-Borders Indigenous Family Violence Program

3.2.1 About the strategy

The program was a joint initiative of the Northern Territory, Western Australian, and South Australian governments, establishing a 54 hour group program over four weeks.⁷⁴ Aimed primarily at adult First Nations offenders, the program aimed to address the causes of and reduce incidence of family and intimate partner violence in the cross-border region of remote central Australia, bringing together people from 13 communities over the Ngaatjatjarra, Pitjanjatjarra, Yanykuntjarra and Pintupi-Luritja

⁷² 'Currently implementing tribes', *National Congress of American Indians* (web database, May 2022) <<https://www.ncai.org/tribal-awa/get-started/currently-implementing-tribes>>.

⁷³ Ibid.

⁷⁴ Australian Institute of Health and Welfare, *Family violence prevention programs in Indigenous communities*, (resource sheet no. 37, December 2016).

language groups. The program aims to reduce rates of recidivism and violent offending in regards to family violence.

The program encountered some difficulties in messaging as a result of the prevalence of ‘payback’ in some communities.⁷⁵ ‘Payback’ in this context refers to a community-driven punitive form of violence, often inflicted using traditional weapons as a mechanism of decentralised law enforcement. The program identified that one form of violence (‘payback’), however, is often transformed into another category - intimate partner and family violence, which is driven by individuals motivated by vengeance against an intimate partner, without the condonement of senior members of the community. Evaluations of the program articulated the need for consistent messaging surrounding non-tolerance of violence, including by distinguishing between community-led ‘payback’ and individual vengeance driven ‘payback’ in the form of intimate partner violence. Program evaluations noted that making this distinction and attempting to promote a culture of non-violence formed a challenge due to the differences between First Nations law and colonial law.⁷⁶

A second challenge or shortcoming identified by program evaluators related to a greater need for the initiative to be led by female community leaders and promulgate a female-centric approach to reducing family violence.

3.2.2 Factors affecting violence reduction

- Reducing family and intimate partner violence;
- Working with men;
- Reducing recidivism; and
- Increasing community education on unacceptability of violence.

3.2.3 Outcomes

Significant rates of recidivism with regards to violent crimes were recorded, in up to 70% of participants in the Northern Territory following the program. However promisingly, individual participants recorded that the program assisted them in behavioural regulation and change, indicating that despite high levels of recidivism, the program may be effective in reducing violent offending through incremental improvements. The Australian Institute of Criminology noted that:

Men participating in the program often have substantial histories of violent offending, including family violence, and are in relationships that involve violent arguments. ...it is arguable whether any individual program could reasonably be expected to produce lasting behavioural change. Nonetheless, evidence for positive behavioural outcomes—while limited—does provide

⁷⁵ Ibid.

⁷⁶ Ibid.

indications that the Program is effective to contributing to behavioural change resulting in reduced levels of family violence among participants.⁷⁷

Assessors also noted that while the delivery of the program was expensive, taking place in very remote Australia, the cost of the program paled in comparison to the cost of imprisonment, healthcare, rehabilitation, housing, and other social support provided to victims of domestic violence.

ANROWS published a 2018 report into innovative models in addressing violence against First Nations women, which noted the particular importance of working with men in domestic violence reduction.⁷⁸ One senior Kimberly woman told researchers, 'we need to find a way to honour our men', and recognise that persistent criminalisation and incarceration further alienates and problematises First Nations men, marginalising them from the process of attitudinal and social change.⁷⁹ This program is significant for its contribution to bringing men into conversations around behavioural change and acceptable community standards in regards to family violence, and similar initiatives may ensure a holistic approach to violence reduction that brings men along too.

3.2.4 Key strategies for consideration

- Behavioural change strategies should, wherever possible, be led by senior female leaders from within communities;
- Significant investment is needed to reduce rates of family violence recidivism without contributing to over-incarceration of First Nations peoples;
- Programs for men and former offenders require investment in order to include male offenders in the process of attitudinal and behavioural change, rather than alienating them further from community standards around violence reduction through criminalisation and over-incarceration; and
- Programs must ensure a high degree of cultural competency, understanding of the core differences between First Nations' and colonial legal systems and practices, and how these affect attitudes towards violence.

⁷⁷ AIC unpublished 2014.

⁷⁸ Australia's National Research Organisation for Women's Safety, *Innovative models in addressing violence against Indigenous women*, (final report, January 2018).

⁷⁹ Ibid.

4. Conclusion

The LRSJ Research Hub wishes to highlight the estimated figure of 315 First Nations women who have been murdered, gone missing, or died under suspicious circumstances. Every one of these deaths is a tragedy and a systemic failure. We implore the Committee to adopt the recommendations outlined in this submission and others in response to this pressing and pertinent issue.

We would welcome the opportunity to provide further submissions or resources, or answer any questions the committee might have.
