



23 December 2022

Committee Secretary

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

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

Dear Committee Secretary,

I write to you on behalf of the Aboriginal Legal Service (NSW/ACT) Limited ('ALS') and thank you for the opportunity to provide a submission to the Inquiry into Missing and Murdered First Nations Women and Children.

The ALS is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. We currently undertake legal work in criminal law, care and protection law, and family law, and discrete areas of civil law. We also undertake broader work in law reform and wrap-around programs for community wellbeing. The ALS welcomes the opportunity to provide a submission to the Senate Inquiry on Missing and Murdered First Nation Women and Children ('the Inquiry').

The high rates of missing and murdered Aboriginal women and children is deeply troubling. It is the result of complex and intersecting factors, stemming from Australia's historic and ongoing role as a settler coloniser state. When considering the violence against Aboriginal women and children, the Inquiry should view the evidence and submissions before it through the lens of settler colonialism.

Systemic and Historical Causes of Violence affecting Aboriginal Women and Children (TOR D)¹

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.

The high rates of missing and murdered Aboriginal women and children is not unique to Australia: it is evident in settler colonial states around the world. A 2016 study in the United States found that

¹ Term of Reference (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.

84.3% of Native American women have experienced violence in their lifetime.² In Canada, a National Inquiry found that settler colonialist structures amounted to race-based genocide. The Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls noted that this kind of genocide is systemic, describing it as “the sum of the social practices³

The same settler colonial structures exist in Australia today.

Australia’s role as a settler colonial State has resulted in a system where Aboriginal people face structural disadvantage at all levels. Similarly, settler colonial structures have enabled Aboriginal women and children to be exposed to all forms of violence at disproportionate levels and have resulted in high rates of missing and murdered Aboriginal women and children.

Aboriginal women are murdered at eight times the rate of non-Indigenous women.⁴ A national study of missing youth found that 18% of missing children and young people in Australia are Aboriginal.⁵ These statistics are reflective of Australia’s past and current policies, omissions and actions towards Aboriginal and Torres Strait Islander people.

Accordingly, we submit that the Inquiry should examine the evidence and submissions before it through the lens of settler colonialism and Australia’s historic and ongoing role as a settler coloniser state.

Policies and Practices for Reducing Violence within Aboriginal Communities (TOR E)⁶

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. We submit that when considering the Aboriginal family and domestic violence *within* Aboriginal communities, the Government should support and empower local solutions.

In many Aboriginal communities, women and children who experience family and domestic violence have a lack of meaningful choice in asking for help in times of crisis. To put it simply, Aboriginal women and children are less likely to receive effective support from police—even during times of crisis.⁷

² ‘Missing and Murdered Indigenous People Crisis’, *US Department of the Interior, Indian Affairs* (Web page) <<https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis>>.

³ *Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Final Report: Volume 1a, Canada, 2019) 54 <https://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf>.

⁴ Australian Associated Press, ‘Murder rate of First Nations women eight times higher than for non-Indigenous counterparts’, *The Guardian* (online, 5 October 2022) <<https://www.theguardian.com/australia-news/2022/oct/05/rate-of-first-nations-women-eight-times-higher-than-for-non-indigenous-counterparts>>.

⁵ Dr Kath McFarlane, *Children and Youth Reported Missing from Out-of-home-care in Australia: A review of the literature and analysis of Australian police data* (A report prepared for the Australian Federal Police Missing Persons Coordination Centre, 2021) 62 – 63 <https://www.missingpersons.gov.au/sites/default/files/Children__Youth_Missing_From_OOHC%20%28002%29.pdf>.

⁶ 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.

⁷ Emma Buxton-Namisnyk, ‘Domestic Violence Policing of First Nations Women in Australia: ‘Settler’ Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination’ (2022) 62(6)

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.⁸ Furthermore, in instances where police did respond the impacts were often found to be harmful by the victims.⁹

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.

Current Practices in Responding to Violence (TOR B)¹⁰

Police Responses to Violence (TOR D)¹¹

Aboriginal women and children who do call police should receive the same services that non-Aboriginal callers would receive. For decades, reports regarding Aboriginal women and children have been met with scepticism and apathy by the NSW Police Force. Their response to the missing and murdered Aboriginal children in Bowraville, NSW provides a tragic case study. When four-year-old Evelyn Greenup was reported missing, for example, police suggested she had gone 'walkabout' and were slow to file a missing person's report.¹² Police failures in responding to and investigating the Bowraville murders was acknowledged by the NSW Commissioner of Police Andrew Scipione in 2016, when he apologised to the families of the victims.¹³ However, a culture of apathy to violence against Aboriginal women and children persists within the NSW Police.

One example was explored in research published in the *British Journal of Criminology* this year. It described a case in NSW where police responded to a call from an Aboriginal woman who had been punched and kicked by her partner. The woman called a paramedic, but police intercepted the ambulance to ask her about the assault. The woman gave police her partner's name, and her injuries were observed by police and paramedics. Despite this, police said she 'would not make a complaint' and took no further action.¹⁴

Police responses to violence experienced by Aboriginal women and children require structural and cultural reform. Aboriginal women and children are strong and resilient but are amongst the most

The British Journal of Criminology 1323, 1326

<<https://academic.oup.com/bjc/article/62/6/1323/6430028>>.

⁸ Ibid 1336.

⁹ Ibid 1337.

¹⁰ Term of Reference (b): The current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children.

¹¹ Term of Reference (d): Systemic causes of all forms of violence against First Nations women and children, including underlying cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children.

¹² David Hamer, 'How the law failed three children and their families in the Bowraville murder case', *The Conversation* (Online article, 27 September 2018) <<https://theconversation.com/how-the-law-failed-three-children-and-their-families-in-the-bowraville-murder-case-103330>>.

¹³ 'Bowraville murders: NSW police chief says victims' families were letdown', *ABC News* (Online article, 11 August 2016) <<https://www.abc.net.au/news/2016-08-11/andrew-scipione-apologises-to-families-of-bowraville-children/7721492>>.

¹⁴ Buxton-Namisnyk (n 7) 1330.

vulnerable members of society. They deserve to be believed, respected and supported by Australia's police forces and there must be accountability when this does not occur.

*Government Responses to Violence (TOR G)*¹⁵

There must be a fundamental shift in the way Government works with Aboriginal communities in line with its new approach to Closing the Gap. The strength and resilience of Aboriginal people must be recognised and Aboriginal voices prioritised in the design and delivery of policies and programs.

We further submit that in prioritising these voices it is fundamental that the inquiry is designed to inspire confidence in its integrity and impartiality and to ensure it is not re-traumatising for those that seek to be heard.

The Inquiry provides an opportunity to recognise, honour and mourn the Aboriginal women and children who have been taken from their communities. However, it is vital that the Government's response to the Inquiry demonstrates it has both heard — and values — these voices. This can only occur if the Government engages with, and resources the Inquiry's recommendations, honouring the missing and murdered Aboriginal women and children, and their communities left behind.

The ALS welcomes the opportunity to discuss this letter further. If you have any questions, please contact the ALS Policy team via email on policy@alsnswact.org.au

Sincerely,



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¹⁵ Term of Reference (g): The ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated.

Summary of ALS Recommendations

The ALS makes the following recommendations to the Inquiry:

1. That the Inquiry examine the high rates of missing and murdered Aboriginal women and children through the lens of settler colonialism.
2. That Government invest in Aboriginal led, designed and implemented solutions as a primary response to family violence.
3. That Aboriginal communities are supported to collect, analyse and use domestic, family and sexual violence data to develop their own solutions.
4. That the Inquiry examine police responses to reports of violence against Aboriginal women and children with a view to identifying Government-led solutions in implementing structural and cultural change within the Police Force.
5. That Government take immediate action and work with families and Aboriginal organisations to implement relevant recommendations from key inquiries and reports.