Inquiry into Missing and Murdered First Nations Women and Children

Submission by the First Nations Women's Legal Services Queensland Inc. (formerly the "Aboriginal and Torres Strait Islander Women's Legal Services NQ")

1.0 Introduction

1.1 First Nations Women's Legal Services Queensland, Inc.

First Nations Women's Legal Services Queensland, Inc. ("FNWLSQ") welcomes the opportunity to make a submission to this Inquiry.

FNWLSQ is the only gendered community legal service for First Nations women in Queensland. Based in Townsville (occupied lands of the Wulgurukaba and Bindal nations) with a dedicated outreach office on Palm Island, FNWLSQ also has outreach services that extend to Ingham, Ayr and Charters Towers, and the service has also represented and advised First Nations women remotely in regional and remote areas of the State including for example, Far North Queensland communities, Emerald, Moranbah and Mount Isa to the west, and Sarina and Rockhampton to the south. FNWLSQ also provides a domestic violence duty lawyer and casework service on Palm Island. FNWLSQ primarily assists clients in areas of law in high demand including domestic violence, child protection and family law matters and assists and represents women in human rights, anti-discrimination and administrative matters. FNWLSQ does not provide a criminal law service but provides a legal service to First Nations women at the Townsville Correctional Centre.

FNWLSQ has not usually had direct involvement in matters regarding missing or murdered First Nations women and children, but has extensive experience with women affected by violence, including family or interpersonal violence and institutional and systemic violence.[1] This submission primarily addresses First Nations women's vulnerabilities to violence, both institutional and interpersonal.

1.2 North Queensland Context

First Nations people constitute 13.2 per cent of North Queenslanders compared with 4.6 per cent of all the Queensland population generally.[2] Many First Nations women live in regional and remote communities. Despite many communities having a high ratio of police officers to residents,[3] this does not correspond to diminished violence against women and children in these communities.[4]

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[1] Up to 90 per cent of First Nations women in custody are estimated to have experienced abuse over the course of their lives. See ANROWS, 'Research Synthesis: Women's Imprisonment and Domestic, Family and Sexual Violence' (Research Paper, March 2020) 5.

[2] 'North Queensland' for the purposes of these figures refers to the Level 3 Local Government regions of Cairns – North, Cairns – South, Charters Towers – Ayr – Ingham, Far North, Innisfail – Cassowary Coast, Outback – North, Port Douglas – Daintree, Tablelands (East) – Kuranda and Townsville. Queensland Government Statistician's Office, *Queensland Regional Profiles* (August 2022). Profile created from datasets available at <https://statistics.qgso.qld.gov.au/qld-regional-profiles>.

[3] Crime and Misconduct Commission, Parliament of Queensland, *Restoring Order: Crime Prevention, Policing and Local Justice in Queensland's Indigenous Communities* (Report, November 2009).

[4] First Nations Queenslanders are 3.3 times more likely to have been sexually assaulted than non-Indigenous Queenslanders. Productivity Commission, Parliament of Australia, *Overcoming Indigenous Disadvantage: Key Indicators 2016* (Report, November 2016) 4.101.

1.3 Previous Inquiries into Missing and Murdered First Nations Women and Children

FNWLSQ acknowledges the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls ("MIWG Inquiry"),[5] which released its final report in June 2019.[6] The MMIWG Inquiry released a series of recommendations organised into 19 overarching themes, many of which are also pertinent to the Australian context. These include but are not limited to the need for an action plan to address violence against Indigenous women and girls; the need for greater community education and public awareness of violence against Indigenous women and girls; and the need for greater resource allocation for initiatives addressing root causes of this violence.[7]

1.4 Royal Commission into Aboriginal Deaths in Custody (RCIADIC)

The Final Report of the Royal Commission into Aboriginal Deaths in Custody ("RCIADIC") made recommendations in relation to incarcerated First Nations people and relationships between First Nations communities and police.[8] While these recommendations were not targeted towards women specifically, many of them are relevant to this Inquiry's terms of reference, particularly terms (c), (d) and (f). This submission will make reference to the RCIADIC recommendations where appropriate.

2.0 Responses to Inquiry Terms of Reference

2.1 The institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children[9]

2.1.1 Closing the Gap Targets

One of the targets of the 2020 National Agreement on Closing the Gap is a reduction in the rate of family violence against Aboriginal and Torres Strait Islander women and children by at least 50 per cent by 2031.[10] The most recent annual reports of the Joint Council on Closing the Gap do not indicate whether or not this target is being met, but violence against First Nations women and children remains high. The *Closing the Gap Annual Data Compilation Report* of July 2022 reports that 8.4 per cent of Aboriginal and Torres Strait Islander women and girls over the age of 15 reported experiencing domestic physical or threatened physical harm.[11]

In Queensland, the State government has committed to an implementation plan that includes, amongst other initiatives, support for the Community Justice Group Domestic and Family Violence

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[5] The MMIWG Inquiry uses the term 'Indigenous' to refer to the various First Nations people of Canada. For that reason, when speaking specifically about that inquiry and its findings, this submission echoes that terminology. Elsewhere, this submission uses the terms 'First Nations' or 'Aboriginal and Torres Strait Islander' to refer to Australia's Indigenous population. Other jurisdictions, such as the United States and Aotearoa New Zealand, use different terms again; see, eg, Jack Forbes, 'The Use of Racial and Ethnic Terms in America: Management by Manipulation' (1995) 11(2) *Wicazo Sa Review* 53.

[6] National Inquiry into Missing and Murdered Indigenous Women and Girls, Parliament of Canada, *Reclaiming Power and Place: the Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls* (Report, June 2019).

[7] National Inquiry into Missing and Murdered Indigenous Women and Girls, Parliament of Canada, *Master List of Report Recommendations* (Supplementary Material, June 2019).

[8] Royal Commission into Aboriginal Deaths in Custody, Parliament of Australia, *Final Report* (15 April 1991) vol 5 ('RCIADIC').

[9] Terms of Reference (c)

[10] Joint Council on Closing the Gap, Parliament of Australia, *National Agreement on Closing the Gap* (Report, July 2020) 37.

[11] Joint Council on Closing the Gap, Parliament of Australia, *Closing the Gap Annual Data Compilation Report* (Report, July 2022) 34.

Enhancement Program,[12] which supports the specialist domestic and family violence courts in both Townsville and Palm Island. The Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence ("the Commission of Inquiry") heard evidence that this program has contributed to making specialist courts more culturally safe for victims, but that there is scope for the program to provide a wider range of supports for First Nations people experiencing domestic violence to access the court.[13]

2.1.2 National Plan to Reduce Violence against Women and their Children 2010-2022

The 2010-22 National Plan to Reduce Violence against Women and their Children ('the National Plan 2010") was endorsed by the Council of Australian Governments (COAG) and released in February 2011. It comprised a series of four Action Plans with specific targets for each three year period over the 12 years covered by the National Plan 2010. While the aims of the National Plan 2010 were limited to reducing, rather than eliminating, violence, the plan did expressly recognise gendered violence, with a focus on domestic and family violence and sexual assault. The National Plan 2010 recognised that First Nations women are 35 times more likely to be hospitalised for family violence-related assaults.[14] It also attempted to place an estimated monetary value on gendered violence: $13.6 billion Australian dollars per year.[15]

The National Plan 2010 aimed to address six outcomes associated with gendered violence prevention, namely:

1) Communities are safe and free from violence;
2) Relationships are respectful;
3) Indigenous communities are strengthened;
4) Services meet the needs of women and their children experiencing violence;
5) Justice responses are effective; and
6) Perpetrators stop their violence and are held to account.

Several of these outcomes overlap with strategies, policies and other avenues of reform discussed in this submission. Outcomes (4) and (5) are of special concern to Community Legal Centres, and outcome (6) has been repeatedly raised both in anecdotal reports from women who are clients of FNWLSQ and in evidence given to the Commission of Inquiry[16] the Women's Safety and Justice Taskforce, and the Special Taskforce on Domestic and Family Violence in Queensland.[17]

The 2022-32 National Plan to End Violence against Women and Children 2022-2032 ("the National Plan 2022") is now in the process of being implemented, although at the time of writing a stand alone Action Plan for First Nations Women and Children is still in the process of being developed.

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[12] Parliament of Queensland, *Closing the Gap Implementation Plan* (2021) 37.
[13] Evidence to Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Parliament of Queensland, Townsville, 22 July 2022, 907 (Andrea Kyle-Sailor).
[14] Council of Australian Governments, Parliament of Australia, *National Plan to Reduce Violence against Women and their Children 2010-2022* (February 2011) 20.
[15] Ibid 1.
[16] see 2.4.2 of this submission
[17] See 2.1.4 of this submission

2.1.3 National Plan to End Violence against Women and Children 2022-2032

Under the National Plan 2022, the Commonwealth government aims to end violence against women and children within a generation.[18] Acknowledging the particular vulnerability of First Nations women, the Aboriginal and Torres Strait Islander Advisory Council is developing a dedicated Action Plan to address violence against First Nations women and children, which will be implemented in conjunction with the National Plan 2022.

2.1.4 Special Taskforce on Domestic and Family Violence in Queensland

In 2015, the Special Taskforce on Domestic and Family Violence in Queensland published the *Not Now, Not Ever* report. Chapter 5 of the report deals with domestic and family violence in vulnerable communities, including First Nations communities. Recommendation 9 of the report provides:

> *The Taskforce recommends that the Queensland Government, in collaboration with local communities, develops a place-based, culturally appropriate integrated response to domestic and family violence in discrete Indigenous communities which includes:*
>
> *a. A trial of integrated service provision in one discrete Indigenous community ... utilising a locally-based shelter as a hub for the provision of wraparound support services for women and children affected by domestic and family violence*
>
> *b. Considering an expanded role of Community Justice Groups in design and implementation of the co-located service response, ensuring that they are properly resourced and supported to undertake this role*
>
> *c. Increasing the funding for, and availability of community-driven and holistic responses to Indigenous male perpetrators.*[19]

Although the recommendations of the report address violence against First Nations women by First Nations men, in the experience of FNWLSQ, First Nations women are frequently the target of violence by non-indigenous men, often fuelled and supported by racist attitudes personally held by the men and encouraged by their non-indigenous families. This issue is not addressed in the recommendations.

Notwithstanding the largely undocumented prevalence of violence towards First Nations women by non-indigenous men, there are valuable recommendations for discrete communities in the *Not Now, Not Ever Report*. Under its Closing the Gap Implementation Plan, the Queensland Government has committed to greater support for Community Justice Groups as part of the domestic violence response, consistent with the *Not Now, Not Ever* recommendations.[20]

Funding for and availability of programmes for male perpetrators remains lacking. FNWLSQ has assisted and represented women who have been victims of domestic and family violence whose partners expressed a willingness to participate in men's behaviour change programmes, but who were unable to do so due to limited availability or the lack of programme spaces for incarcerated men, or a lack of culturally-appropriate programmes. In evidence to the Commission of Inquiry, the importance of providing culturally-competent behaviour change programmes for First Nations perpetrators of domestic violence was raised and the lack of those services in Townsville and surrounding areas, particularly for incarcerated First Nations men.[21] Service gaps were identified as a key impediment to

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[18] Department of Social Services, Parliament of Australia, *National Plan to End Violence against Women and Children 2022-2032* (Report, 17 October 2022) 14.

[19] Special Taskforce on Domestic and Family Violence in Queensland, Parliament of Queensland, *Not Now, Not Ever: Putting an End to Domestic and Family Violence in Queensland* (Report, 28 February 2015) 127.

[20] See also 2.1.1 of this submission.

[21] Commission of Inquiry (n 13) 823-4 (Karl McKenzie) and 868-9 (Cathy Pereira).

First Nations women's efforts to exercise autonomy and agency in the terms of their engagement with partners who have committed domestic violence.[22]

2.1.5 Incarceration and institutional violence against First Nations women

First Nations people are seven times more likely to be charged with a crime and 12.5 times more likely to be incarcerated than other Australians.[23] The statistical disparity for First Nations women is even higher, being 21.2 times more likely to be incarcerated than other Australian women.[24] The Australian Law Reform Commission links this over-incarceration of First Nations people to arrests for "lower order offences for which diversion and rehabilitation may be a more appropriate response"[25] as well as the higher rate of custodial penalties imposed on First Nations defendants by comparison with other Australians for equivalent crimes.[26]

At the time of writing, Queensland is the only Australian jurisdiction where public intoxication has not been decriminalised.[27] Although decriminalisation of public intoxication has not always led to a decrease in arrests or detention of First Nations people for public order offences,[28] it was one of the RCIADIC recommendations.[29]

Contact with the criminal justice system, from arrest to incarceration, demonstrably places First Nations women at risk of systemic violence as well as compounding trauma suffered for women who have experienced violence in their communities.[30]

2.1.6 RCIADIC

Many of the recommendations of the RCIADIC report are relevant to the issue of systemic and institutional violence against First Nations women. The significant overrepresentation of First Nations women within the prison system demonstrates an urgent need for reform targeted at reducing First Nations incarceration rates and reducing the systemic and institutional abuse that often occurs as a

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[22] First Nations Women's Legal Service (as Aboriginal and Torres Strait Islander Women's Legal Services NQ, Inc), Submission to Parliament of Queensland, *Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (08 July 2022) 8-9.

[23] Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (Report No 133, December 2017) 41, 90.

[24] Ibid.

[25] ALRC (no. 23) 41. First Nations people are more likely to be charged with 'public order' offences than other Australians; public order offences make up 8 per cent of charges before the court for non-Indigenous people but 17 per cent of charges before the court for First Nations people: at 101.

[26] Even though rates of conviction are not significantly different, 31 per cent of First Nations people convicted of a crime received a custodial sentence, as opposed to 18 per cent of other Australians: ALRC (n 23) 106-7.

[27] Victoria recently passed legislation decriminalising public intoxication, but those laws are not yet in force. Thus, public intoxication is still functionally criminalised in Victoria, though this is set to change in November 2023. Government of Victoria, *Public Intoxication Reform* (4 August 2022), Department of Health <https://www.health.vic.gov.au/alcohol-and-drugs/public-intoxication-reform-0>.

[28] See, eg, Jillian Brewer, 'Public Drunkenness – Australian Law and Practice' in David Biles and David McDonald (eds), *Deaths in Custody Australia, 1980-1989: The Research Papers of the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody* (Australian Institute of Criminology, 1992) 23, 27-9; Commonwealth and Law Enforcement Ombudsman, *Australian Federal Police Use of Powers Under the* Intoxicated People (Care and Protection) Act 1994 (Report no 11, October 2008); Luke McNamara and Julia Quilter, 'Public Intoxication in NSW: The Contours of Criminalisation' (2015) 37(1) *Sydney Law Review* 1; Alison Young and James Petty, 'On Visible Homelessness and the Micro-Aesthetics of Public Space' (2019) 52(4) *Australian and New Zealand Journal of Criminology* 444.

[29] See 2.1.6 of this submission

[30] See also 2.2.2 of this submission.

result of incarceration, including, for example, homelessness on leaving prison, rendering women more vulnerable to violence.

RCIADIC makes specific recommendations (60-61) for police to reduce the use of violence in First Nations communities, including a recommendation that police services *take all possible steps to eliminate:*

a. *Violent or rough treatment or verbal abuse of Aboriginal persons including women and young people, by police officers. When such conduct is found to have occurred, it should be treated as a serious breach of discipline.*[31]

Other recommendations, although not specifically addressing First Nations women remain relevant to the issue of reducing systemic and institutional violence against First Nations women and children, such as recommending that governments adopt strategies to reduce the rate of young First Nations people becoming involved in either the welfare or criminal justice systems or being separated from their families.[32] Recommendations 79-91 aim to achieve diversion of First Nations people from police custody and at 92-121 recommend custodial sentences as a last resort.[33]

Many root causes and factors contributing to violence against First Nations women and children are socioeconomic in nature, such as housing instability, reduced access to education and employment opportunities, and higher rates of poverty and disenfranchisement.[34] Many of the RCIADIC recommendations address socioeconomic reforms to improve the general health, wellbeing and safety of First Nations people.

2.1.7 Independent Interim Report on CEDAW

In its Independent Interim Report to the Committee on the Elimination of All Forms of Discrimination against Women ("CEDAW"), the Australian Human Rights Commission ("AHRC") noted that homicide rates for First Nations women are between nine and 23 times higher than for non-Indigenous women.[35] The AHRC recognised that there were insufficient culturally-appropriate services, including legal services, for First Nations women, and recommended that:

> [T]he Australian Government increase access to culturally specific services, including specialist legal services, for Aboriginal and Torres Strait Islander women who experience domestic or family violence.[36]

In 2020-21, the Commonwealth government allocated additional funding to help women access domestic violence services. In Queensland, the State government passed this funding on to specialist women's legal services, including the Aboriginal and Torres Strait Islander Women's Legal Services NQ, being a specialist service for First Nations women.[37] Other State and Territory governments made distributions to non-specialist, non-gendered and non-indigenous legal services.

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[31] Royal Commission into Aboriginal Deaths in Custody, recommendation 60 a

[32] Ibid recommendation 62

[33] Royal Commission into Aboriginal Deaths in Custody, Parliament of Australia, *Final Report* (15 April 1991) vol 5.

[34] See also 2.4.3 of this submission.

[35] Australian Human Rights Commission, *Report to the Committee on the Elimination of All Forms of Discrimination against Women* (Interim Report, 31 August 2012) 13.

[36] Ibid 14 [59].

[37] FNWLSQ acknowledges that it was one of the beneficiaries of this Commonwealth funding.

2.2 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

2.2.1 Historical and Social Context

Australia's history of violent invasion from first European contact and State sanctioned murder and violence against First Nations peoples and its history of genocidal removal of First Nations children from their families and communities sets the historical and social context for continuing institutional violence. Between 1788 and 1930 there were no less than 423 massacres involving First Nations people, many of whom were women and children.[38] Colonisation has been described as:

> '... an ongoing experience for Indigenous women who face subjugation, oppression and surveillance ... [b]ringing up their children, walking the streets, travelling in cars or on public transport, drinking alcohol, applying for a job – all these things are regarded as 'everybody's business'.[39]

The ongoing removal of children from their families and the consequential and recurring themes of youth detention of First Nations children remain part of the legacy of colonisation, fuelled by ongoing State legislated separation of children from their families, contrary to the RCIADIC recommendations made more than thirty years ago.[40] The current criminalisation of children in the criminal justice system, remains not only an indictment of State sanctioned separation of children from their families but part of the legacy of intergenerational trauma.[41] Years before children have the capacity to vote, they can be subject to systemic and institutional violence from arrest and police detention to legal processes that are often beyond their understanding, to youth custodial detention including violent restraint.[42] It should not come as a surprise if this violent history and the violence inherent in the social context manifests in interpersonal violence.

First Nations women are up to 53 times more likely to be hospitalised as a result of family violence;[43] First Nations mothers are 3.5 times more likely to die of suicide, 6.5 times more likely to die as a result of an accident, and 17.5 times more likely to be victims of homicide than non-Indigenous mothers,[44] and 21.2 times more likely to be incarcerated than other Australian women.[45] First Nations women are the fastest-growing prison population in Australia, and between 75-90 per cent of incarcerated First Nations women report previous experiences of sexual, emotional or physical abuse.[46] First

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[38] Lyndall Ryan et al, *Colonial Frontier Massacres in Australia 1788-1930* (University of Newcastle, 2022).

[39] Henry Blagg and Thalia Anthony, *Decolonising Criminology: Imagining Justice in a Postcolonial World* (Palgrave Macmillan, 2019) 204.

[40] Royal Commission into Aboriginal Deaths in Custody, specifically recommendation 60 a

[41] 'The violence of colonisation *has long-term compounding impacts* ... Aboriginal experiences of violence have been integral to the colonising processes in this country.' Judy Atkinson, *Trauma Trails, Recreating Song Lines: the Transgenerational Effects of Trauma in Indigenous Australia* (Spinifex, 2002) 72 (emphasis added)

[42] The age of criminal responsibility in Queensland is still 10 years old. Queensland is proposing to raise this to 12 years old.

[43] Henry Blagg and Thalia Anthony, O. This figure varies depending on factors such as rurality/remoteness and other vulnerabilities.

[44] Jenny Fairthorne et al, 'Early Mortality from External Causes in Aboriginal Mothers: a Retrospective Cohort Study' (2016) 16 *BMC Public Health* 461, 465.

[45] See also 2.1.5 of this submission

[46] ANROWS (n 1).

Nations women who experience violence are unlikely to report it to authorities, making accurate data collection difficult, with up to 90 per cent of violence against First Nations women going unreported.[47]

2.2.2 Systemic and Institutional Racism

Acts of institutional and systemic racism intersect with First Nations women's experiences of misogyny to compound the resulting harm suffered. Institutional and systemic racism is entrenched by the racism of individuals administering systems of justice and administration. The systemic impact is an over over-incarceration and victimisation of First Nations women, together with the lived experiences of First Nations women. One example of individual racism / misogyny in the administration of justice was given in a submission to the Commission of Inquiry by FNWLSQ.[48]

> A First Nations woman was arrested after calling police for assistance in relation to domestic violence by her non-Indigenous partner. The partner had choked her to the point of unconsciousness and slammed her against a wall and she had escaped from him to call police. Police interviewed the non-Indigenous partner and, based on his statement, arrested the First Nations woman and applied for a Protection Order naming the First Nations woman as the respondent. They did not take a statement from the First Nations woman before arresting her, even though she was the one who called police. The non-Indigenous partner had a documented history of violence against his partner and against several other women, including a stranger. Police apparently did not check QPRIME before accepting the non-indigenous person's story or before making an arrest of the First Nations woman.

Although QPS eventually withdrew their application against the First Nations woman (and she was successful in her own private application for a Protection Order against the non-indigenous perpetrator, with the assistance of FNWLSQ), the failure of police to fully assess the situation after interviewing the non-Indigenous partner is evidence of bias, conscious or otherwise, against the First Nations woman in favour of a non-Indigenous man. As 78.2 per cent of First Nations people in relationships have non-Indigenous partners,[49] there is a high potential for police bias to significantly harm, incarcerate and enmesh in the legal system as respondents, First Nations women who are victims of domestic and family violence.

Systemic and institutional racism have a range of consequences for First Nations women, up to and including death. The coronial inquest into the 2014 death in custody of Ms Dhu, a First Nations woman in Western Australia, found that police who were responsible for Ms Dhu's welfare treated her in a way that was 'unprofessional and inhumane' and 'affected by preconceptions they had formed about her.'[50] Coroner Fogliani did not make a determination that Western Australian Police acted with conscious racism towards Ms Dhu, but did note that "it would be naïve to deny the existence of societal patterns that led to assumptions being formed in relation to Aboriginal persons."[51]

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[47] Queensland Indigenous Family Violence Legal Service, Submission No 88 to House of Representatives Standing Committee on Social Policy and Legal Affairs, Parliament of Australia, *Inquiry into Family, Domestic and Sexual Violence* (March 2021) 179.

[48] Submission to Parliament of Queensland, *Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence* (08 July 2022), p 3

[49] Australian Bureau of Statistics, *Census of Population and Housing: Understanding the Increase in Aboriginal and Torres Strait Islander Counts, 2016* (Catalogue No 2077.0, 17 October 2018).

[50] *Inquest into the death of [name redacted] Dhu* (Western Australia Coroner's Court, Coroner Fogliani, 28 September 2016) [880]. (Note that the inquest findings use Ms Dhu's full name, which has been redacted here at her family's request.)

[51] Ibid [860]. The coroner's unwillingness to make a determination that institutional racism contributed to Ms Dhu's mistreatment and death was heavily criticised by Ms Dhu's family and various commentators. See, eg,

Similarly, in the 2018 inquest into the death of Kwementyaye Green, Cavanagh J stopped short of making a determination that the Northern Territory Police were guilty of institutional racism, but he did note that an inquest into institutional racism within "all levels of the police force"[52] would be useful. In both of these cases, counsel for the families of the victims made submissions to the effect that institutional racism was at least partially responsible for inappropriate, unprofessional and inhumane behaviour on the part of police.

Abhorrent as racism within the police force and criminal justice system is, as observed by Coroner Fogliani, it reflects "societal patterns", community attitudes, which pose a risk of violence, neglect and survival to First Nations women. The experience of First Nations woman, Delmae Barton, on suffering a stroke in 2005, demonstrates a depth of indifference and conscious or unconscious bias in the general public towards the wellbeing of First Nations women. Ms Barton, First Nations singer, was Elder in Residence at Griffith University in 2005, when she suffered a stroke and collapsed at a bus stop. She lay for around six hours while passers-by ignored her until two Japanese students stopped to check on her.[53]

It is unsurprising in the face of the evidence of mistreatment and marginalisation of First Nations people by police, that First Nations women do not place a great deal of trust and confidence in police to protect them from violence, or in child protection services to safeguard their children's best interests. The historical context of First Nations interactions with the State continues to inform relationships between public entities and First Nations communities:

> *In Aboriginal and Torres Strait Islander communities and family networks, perceptions of historical injustices, especially the forced removal of Aboriginal and Torres Strait Islander children from their families, have shaped a generational lack of trust towards police services and the criminal justice and social service systems and, in the light of the Stolen Generations, a lack of trust in child protection services. These are primary factors in a reluctance to report violence and to access the services available for all Australians.*[54]

In the 31 years since the release of the RCIADIC report in 1991, there has been an average of 1.36 First Nations deaths in custody per month.[55] First Nations women are often reluctant to report intracommunity violence to police for fear that an arrest might lead to another death:

> *The lack of safety creates a big barrier for women. If I report violence and he gets carted off, there'll be justice under Australian law, and women associate that with deaths in custody, or what we see on the news with abuse within juvenile justice detention centres. So we would like to report our men if we knew our men were going to go away, get well and come back. But there's a risk that they don't ever come back, because they're black. That's the father of their children, that's another community member, so there are feelings of betrayal about*

Pauline Klippmark and Karen Crawley, 'Justice for Ms Dhu: Accounting for Indigenous Deaths in Custody in Australia' (2018) 27(6) *Social and Legal Studies* 695.

[52] *Inquest into the death of [Kwementyaye] Green* [2018] NTLC 016 [137] (Cavanagh J). (Note that the inquest findings use Kwementyaye's full name, which has been redacted here at her family's request.)

[53] https://www.abc.net.au/worldtoday/content/2006/s1585925.htm

[54] Marcia Langton, quoted in Women's Safety and Justice Taskforce, Parliament of Queensland, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report No 1, 2021) 176.

[55] Australian Institute of Criminology, 'New Deaths in Custody Report Released' (Media Release, 02 December 2021).

> *putting their men into the very system that has torn their families, communities and culture apart, and they don't trust that their men will be safe.*[56]

Underreporting of violence against First Nations women is a serious concern, which contributes to the risk to their safety and wellbeing.[57] However, as long as State actors represent more of an existential threat than a source of assistance to First Nations women, this is unlikely to change.

2.2.3 Economic Pressures

First Nations people in Australia are significantly economically disadvantaged. Although representing 2.8 per cent of the population, First Nations people account for 22 per cent of the national homeless population,[58] and are 7.22 times more likely to be homeless.[59] The First Nations employment rate in 2019 was only 49 per cent, compared with 76 per cent amongst non-Indigenous Australians.[60] First Nations people are 2.5 times more likely to rank in the bottom 20 per cent of household incomes, three times less likely to rank in the top 20 per cent, and twice as likely to be on an income support payment.[61] First Nations children are 11 times more likely to be in the child protection system.[62] In North Queensland, First Nations unemployment is 3.53 times higher than the Australian average. Housing overcrowding is 6.76 times higher. First Nations people are 1.7 times more likely to be earning under $300/week and 2.55 times less likely to be earning over $1250 per week than average.[63]

The compounding nature of intersecting racism and sexism must be considered when evaluating these economic pressures as they affect First Nations women. Economic disadvantage is a key factor in many women's decisions to stay with abusive and violent partners. Housing insecurity, unemployment and fear of exposing children to poverty are all reasons why women may be unable or unwilling to leave a violent relationship.[64]

In 2007, the *Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* report found that addressing poverty, inadequate healthcare and housing insecurity were all necessary steps towards addressing sexual and family violence affecting First Nations communities in the Northern Territory.[65] The Federal Government's response to the report not only failed to heed or implement the report's recommendations, the Northern Territory Emergency Response ('the NT intervention'), was a blatantly racist reaction, requiring the suspension of the *Racial Discrimination Act 1975* (Cth) in order to impose discriminatory controls over First Nations communities. In the wake of the NT intervention

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[56] Marlene Lauw, quoted in Our Watch, *Changing the Picture: Understanding Violence against Aboriginal and Torres Strait Islander Women* (Background Paper, 2018) 40 (emphasis added).

[57] QIFVLS (n 47).

[58] Australian Institute of Health and Welfare, 'Snapshot: Indigenous Housing' (Media Release, 16 September 2021) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-housing>.

[59] Australian Bureau of Statistics, 'Census of Population and Housing: Estimating Homelessness' (Factsheet, 14 March 2018) <https://www.abs.gov.au/statistics/people/housing/census-population-and-housing-estimating-homelessness/latest-release>.

[60] Australian Institute of Health and Welfare, 'Snapshot: Indigenous Employment' (Media Release, 16 September 2021) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-employment>.

[61] Australian Institute of Health and Welfare, 'Snapshot: Indigenous Income and Finance' (Media Release, 16 September 2021) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-income-and-finance>.

[62] Productivity Commission, Parliament of Australia, 'Socioeconomic Outcome Area 12: Aboriginal and Torres Strait Islander Children are not Overrepresented in the Child Protection System' (Factsheet) <https://www.pc.gov.au/closing-the-gap-data/dashboard/socioeconomic/outcome-area12>.

[63] <https://statistics.qgso.qld.gov.au/qld-regional-profiles> (n 2).

[64] World Health Organisation, 'Understanding and Addressing Violence against Women' (Factsheet, 2012) 3.

[65] Rex Wild and Patricia Anderson, Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, Northern Territory Government, *Ampe Akelyernemane Meke Mekarle: Little Children are Sacred* (Report, 30 April 2007).

there was no observable increase in rates of prosecution for domestic and family violence, but there was a 250 per cent increase in charges for vehicle-related offences. The incarceration rate for First Nations women in the Northern Territory more than doubled over the next five years, indicating an escalation of State criminal sanctions against First Nations women and raising the risk of institutional and systemic violence.[66]

2.3 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

At a policy level, the National Plan to End Violence against Women and Children 2022-2032 ("the National Plan 2022") is both commendable and a necessary step. A stand-alone Action plan for First Nations women and children will also contribute to raised awareness and strategic steps to end violence against First Nations women and children.

Systematic responses to violence against First Nations women and children at the local and grassroots level should be included as vital to the success of the National Plan 2022. Local community and grassroots responses have the advantage of specificity, adaptability and higher levels of community trust and engagement.

2.3.1 Community Justice Groups

The Commission of Inquiry heard evidence from First Nations stakeholders and community organisations that Community Justice Groups (CJGs) have a role to play in making court processes more culturally safe for First Nations people. CJGs, as community-led and community-controlled organisations, are aware of specific family and community dynamics that may have led to or contributed to conflict between parties. CJG involvement in court matters in a liaison or advocacy role, requires the informed consent of all parties. This consent-based model builds trust and ensures high levels of engagement, as parties are more likely to engage with a support service or advocate when they are empowered to consent to service involvement rather than having it imposed upon them.[67]

In evidence to the Commission of Inquiry was the potential role of CJGs to assist in negotiations with police on behalf of persons named as an aggrieved in police Protection Order applications, in order to achieve more appropriate domestic violence Protection Orders.[68] FNWLSQ gave evidence as to how CJG involvement with the specialised Domestic and Family Violence Court on Palm Island has improved outcomes for parties involved in domestic violence proceedings. CJG's help generate cultural reports about the parties, to assist courts and court officers to understand community dynamics that may affect the Order sought. The CJG and legal services also play a vital role in helping parties to understand court processes and to navigate the court processes.[69]

Culturally competent support, advocacy, court liaison and referral for First Nations people involved in domestic violence proceedings, serves an indirect violence-prevention role, in so far as it better informs parties involved and provides advocacy and support for First Nations women, which is likely to enhance the likelihood of violence being reported. Advocacy to achieve an appropriate Order, is

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[66] Harry Blagg, Nicole Bluett-Boyd and Emma Williams, 'Innovative Models in Addressing Violence against Indigenous Women' (Landscapes: State of Knowledge: Issue 08/2015, ANROWS, August 2015) 2, citing Thalia Anthony and Harry Blagg, *Addressing the 'Crime Problem' of the Northern Territory Intervention: Alternate Paths to Regulating Minor Driving Offences in Remote Indigenous Communities* (Report, June 2012); Australian Bureau of Statistics, *Indigenous Prisoners* (Catalogue No 4517.0, 08 December 2016).

[67] Commission of Inquiry (n 13) 836-7 (Karl McKenzie).

[68] Ibid 878-9 (Cathy Pereira).

[69] Ibid 883-5 (Andrea Kyle-Sailor).

more likely to encourage First Nations women to seek out and remain engaged with the judicial process, knowing that they will be heard and the Protection Orders are more likely to be appropriate to their protection needs, and therefore more likely to be effective as a protective mechanism for First Nations women.

2.3.2 Trauma-Informed Services

A review of services targeted at incarcerated First Nations women found that "a high percentage of [First Nations] women incarcerated for violent crime would have a possible diagnosis of complex trauma. This is relevant in understanding the failure of service systems to respond to their critical needs."[70] In Australia and elsewhere, a trauma-informed approach to service provision is vital to ensuring a high level of engagement and a low level of attrition.[71]

Trauma-informed providers "recognise the prevalence and pervasive impact of trauma on the lives of the people they serve and develop trauma-sensitive or trauma-responsive services."[72] In the context of violence-prevention, service provision generally and legal service provision specifically, this underscores the importance of creating spaces that are culturally safe and welcoming to First Nations women both physically and culturally. Culturally safe service provision includes First Nations staff members, gender-appropriate staff to assist with sensitive matters, service provision available in languages other than English where appropriate. Culturally safe service provision also means centring the needs and desires of victims over paternalistic intervention, however well-meaning.

The National Aboriginal Community Controlled Health Organisation (NACCHO) recommends the adoption of a "holistic response [to violence against First Nations women] with a health focus on healing and empowerment."[73] This recognises trauma, both personal and intergenerational, as a root cause of and compounding factor in violence against First Nations women and children. Without addressing this trauma and responding to violence in a trauma-informed and culturally safe way, any initiative or service seeking to address the problem will be superficial at best and is likely to be ineffective.

2.4 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

2.4.1 Implementation of RCIADIC Recommendations

More than thirty years after the release of the RCIADIC final report, many of its recommendations still have not been implemented. Many of the recommendations speak directly to issues that would address systemic causes of violence against First Nations women, such as high rates of incarceration and mistreatment by police and custodial officers.[74]

Recent efforts have been made to implement some of the recommendations. The death in custody of Tanya Day in Victoria was the catalyst for the repeal of the public intoxication offence in that State. Queensland's inquiry into the repeal of public intoxication and other public offences represents a

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[70] Miriam Bevis et al, ANROWS, *Kungas' Trauma Experiences and Effects on Behaviour in Central Australia* (Report, February 2020) 5.

[71] See, eg, Catherine Fuentes, 'Nobody's Child: the Role of Trauma and Interpersonal Violence in Women's Pathways to Incarceration and Resultant Service Needs' (2013) 28(1) *Medical Anthropology Quarterly* 85; ALRC (n 23) 349 [11.11]; Productivity Commission (n 4) 4.111-2.

[72] Centre for Substance Abuse Treatment, *Trauma-Informed Care in Behavioural Health Services* (Treatment Improvement Protocol No 57, 2014).

[73] Cited in Blagg (n 66) 19.

[74] 2.1.6 of this submission

progressive step. Simply repealing these offences, however, is not enough. RCIADIC recommendations 81-85 include:

> 81. That legislation decriminalising drunkenness should place a statutory duty upon police to *consider and utilise alternatives to the detention of intoxicated persons in police cells.* Alternatives should include the options of taking the intoxicated person home or to a facility established for the care of intoxicated persons.
>
> 82. That governments should *closely monitor the effects of dry area declarations and other regulations or laws restricting the consumption of alcohol so as to determine their effect on the rates of custody* in particular areas and other consequences.
>
> ...
>
> 85. That:
>
> a. Police Services *should monitor the effect of legislation which decriminalises drunkenness with a view to ensuring that people detained by police officers are not being detained in police cells* when they should more appropriately have been taken to alternative places of care;
>
> b. *The effect of such legislation should be monitored to ensure that persons who would otherwise have been apprehended for drunkenness are not, instead, being arrested and charged with other minor offences.* Such monitoring should also assess differences in police practices between urban and rural areas; and
>
> c. The results of such monitoring of the implementation of the decriminalisation of drunkenness should be made public.[75] (emphasis added)

Public intoxication laws are not the only mechanism police use to control the movements of First Nations people, particularly women and young people. The Inquiry into Decriminalisation heard evidence about the ways in which the Alcohol Management Plan on Palm Island has been weaponised against First Nations residents of the island:

> *They are going to search [First Nations] people for restricted alcohol. ... In Townsville you can drink whatever you like, so if they come off the ferry drunk after a Cowboys game or after whatever weekend the police automatically make a beeline for them, because if you are drunk you are bringing something with you as well. When that occurs, it has a domino effect; all the other offences come into play. I have personally taken a DV client to the police station and they told me that they were too busy. I then went to the ferry at 1.30 and, of course, the two police cars were there. The police do not use their powers appropriately. Everything is centralised on alcohol.*[76]
>
> *When it comes to searching at the ferry, only [B]lack people are searched—no-one else. The alcohol ban applies to everybody living on Palm Island. We have European people living over there—doctors, nurses, schoolteachers and contractors. They are never searched. People's cars are being searched for alcohol, coming from the pub, but no-one else—not contractors, European or white people. Their cars are never searched and they can walk out of the pub at closing time, jump in their car and drive home. They are never stopped.*[77]

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[75] RCIADIC (n 8).

[76] Evidence given at the Parliamentary Inquiry into Decriminalisation of Certain Public offences in Townsville, 2022, p 10 (Andrea Kyle-Sailor).

[77] Ibid 11 (Alfred Clay).

Decriminalisation of public intoxication alone is not sufficient to prevent abuses of police powers against First Nations people. Arrest and detention in police custody should always be a last resort, not a first-line intervention. Decriminalisation, if it is to reduce the numbers of First Nations people in police custody and in the criminal justice system, will require investment in diversionary and support services as noted and recommended in the RCIADIC report:

> *abolition of the offence of drunkenness should be accompanied by adequately funded programs to establish and maintain non-custodial facilities for the care and treatment of intoxicated persons.*[78]

Among the interventions that have been trialled successfully in both First Nations communities and urban centres, are the sobering-up centres, Alcohol Intoxication Management Services (AIMS), community-controlled rehabilitation centres and non-law-enforcement night patrols that provide conflict de-escalation and resolution.[79] Many of these diversions are already available in some form, either formally or informally, on Palm Island, but are not utilised by police.[80]

First Nations women have been incarcerated at a rate that has outstripped any other population group and are also over-represented on remand.[81] First Nations women in prison are overwhelmingly more likely to be imprisoned for low-level or procedural offences, which are the kinds of offences recommended for diversion away from custody in RCIADIC.

Recommendation 92 "[t]hat governments which have not already done so should legislate to enforce the principle that imprisonment should be utilised only as a sanction of last resort" has been ignored with respect to First Nations women, who are being imprisoned for motor vehicle offences, unpaid fines and other minor offences. After the death of Ms Dhu in Western Australia, that WA State government committed to ending imprisonment over unpaid fine debts. While it passed laws to this effect in 2020,[82] magistrates can still sentence fine defaulters to serve custodial sentences in Western Australia, as they can in Queensland.[83] While imprisonment for fine default remains an option, enforcement of minor offences with fine penalties will continue to disproportionately affect the most marginalised, including First Nations women, who are least likely to be able to pay fines and most likely to be forced into custodial sentences as a result.

2.4.2 Qld Police Responses to Domestic Violence

Submissions to the Commission of Inquiry raised concerns at police responses to domestic and family violence matters.[84] Former police commissioner Taylor gave evidence of the difficulties of policing and responding in rural and remote First Nations communities, particularly Palm Island, and the challenges of policing domestic violence there.[85] Shortly after this, however, Mr Taylor resigned after his own

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[78] RCIADIC (n8) recommendation 80

[79] First Nations Women's Legal Service (as Aboriginal and Torres Strait Islander Women's Legal Services NQ, Inc), Submission No 31 to Parliament of Queensland, *Inquiry into Decriminalisation of Certain Public Offences, and Health and Welfare Responses* (22 August 2022) 12-13.

[80] Evidence at the Senate Inquiry into the Decriminalisation of certain Public Offences (n 76) (Vaughn Charles). p 11.

[81] ALRC (n 23) 348.

[82] Aaron Fernandes, 'WA Parliament Passes Bill to End Controversial Imprisonment of People for Unpaid Fines', *SBS News* (online, 17 June 2020) <https://www.sbs.com.au/news/article/wa-parliament-passes-bill-to-end-controversial-imprisonment-of-people-for-unpaid-fines/073ls3rlz>.

[83] *State Penalties Enforcement Act 1999* (Qld) s 52(2).

[84] FNWLSQ (n 22) 9-10.

[85] See Evidence to Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Parliament of Queensland, Townsville, 21 July 2022 (Paul Taylor).

misogynist comments came to light.[86] It is difficult to believe that such behaviour in a very senior member of the police service is not reflected in the rank and file, and indeed, further submissions from QPS members and the public have substantiated the allegation that there is a pervasive culture of sexism and misogyny within QPS that almost certainly influences the seriousness with which police treat domestic violence complaints.[87]

Cultural change is difficult to effect, and there is evidence that even the most well-intentioned programs directed at recruits have more of a mitigating effect than an improving one.[88] QPS has since committed to more comprehensive domestic violence training for its employees, including training in coercive control. It remains to be seen whether such training will address deep-seated cultural issues.

The Commission of Inquiry also heard evidence of widespread racism, particularly against First Nations people.[89] At the intersection of police sexism and police racism, First Nations women are once again doubly marginalised and vulnerable.[90] First Nations women who are victims of domestic and family violence cannot expect a safe and sensitive police response when they seek help:

> "Aboriginal women have no faith in the criminal justice system. The core of the problem is summed up by Cape York women:
>
> *If a white woman gets bashed or raped, the police do something. When it's us, they laugh. The fellow keeps walking around, everybody knows but nothing is done.*
>
> Urban women said, 'How can we call the police in? They come with their guns drawn and an innocent person gets killed.' Aboriginal women are ashamed to report rapes and be subjected to the sneering interrogation of young male policemen with their racially prejudiced and sexist questions".[91]

FNWLSQ endorses recommendations 31-37 of the Women's Safety and Justice Taskforce *Hear Her Voice* report, which focus on transforming QPS responses to domestic and family violence.[92] These recommendations include building a specialist response that is culturally-appropriate for First Nations communities. This must occur both as a response to the longstanding systemic failures of police responses to domestic violence due to entrenched misogyny and the cultural issues shaping responses to domestic and family violence, as it has affected First Nations women. Issues of cultural safety must also be informed by the communities affected.

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[86] Tobias Jurss-Lewis, 'Taylor Resigns after Evidence Heard at Inquiry into Domestic Violence and Police Responses', *ABC News* (online, 10 August 2022) <https://www.abc.net.au/news/2022-08-19/qld-deputy-commissioner-paul-taylor-resigns-police-inquiry/101352508>.

[87] Evidence to Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Parliament of Queensland, Brisbane, 05 October 2022, 2179 (Katarina Carroll).

[88] Joel Miller et al, 'Can Police Training Reduce Ethnic/Racial Disparities in Stop and Search? Evidence from a Multisite UK Trial' (2020) 10 *Criminology and Public Policy* 1259.

[89] Evidence to Commission of Inquiry into Queensland Police Service Responses to Domestic and Family Violence, Parliament of Queensland, Brisbane, 06 October 2022, 2229 (Katarina Carroll).

[90] In view of the myriad examples of police racism against First Nations people and people of colour that have come to light during the Commission of Inquiry, Commissioner Carroll's 2020 remark that '[the QPS is] in no way racist' is inconsistent with the evidence. The Commissioner later clarified: 'I would say there's definitely racism in the QPS.' (n 89) 2250.

[91] Judy Atkinson, 'Violence against Aboriginal Women: Reconstitution of Community Law – the Way Forward' (2001) 5(11) *Indigenous Law Bulletin* 19 (emphasis in original, citations removed).

[92] Women's Safety and Justice Taskforce, Parliament of Queensland, *Hear Her Voice: Addressing Coercive Control and Domestic and Family Violence in Queensland* (Report No 1, 2021) lix-lxii.

2.4.3 Housing and socio-economic assistance

In 2020-2021, 24.7 per cent of state-owned and managed Indigenous housing and 14.8 per cent of Indigenous community housing was overcrowded.[93] In the same period, First Nations people represented 28.1 per cent of all people accessing homelessness services, although constituting only 3.4 per cent of the total population.[94] Housing insecurity is a significant factor in First Nations women's vulnerability to domestic and family violence. Apart from undue pressures due to the need to support homeless family members, it limits opportunities for First Nations women to escape abusive relationships.[95] This is tragically demonstrated in the death of Andrea, a First Nations woman in Western Australia who was fleeing a violent partner who had made repeated threats against her. The lack of safe and appropriate accommodation for Andrea and her children was one of the factors contributing to her murder.[96] Anecdotally, women's crisis services in North Queensland report housing clients in caravan parks or on camping grounds as a last resort when other emergency accommodation cannot be found.

To address the immediate housing crisis facing First Nations people specifically, Change the Record has called for the creation of 8,500 new homes for First Nations people over the next four years.[97] This would alleviate some of the pressures on First Nations women who remain in abusive domestic relationships due to housing insecurity. In the long-term, however, a significantly greater investment is needed, particularly as climate change continues to devastate communities along the coast and in the Torres Strait, leading to destruction of existing housing infrastructure and exacerbation of the housing crisis in rural and remote First Nations communities.[98]

Economic assistance for First Nations women and children must also address other welfare concerns. Access to healthcare, including reproductive healthcare, is often inadequate in rural and remote communities. Systemic failure of the health system due to inadequate services and racism in the remote North West Queensland community of Doomadgee have been reported as causal factors resulting in the deaths of three young Aboriginal women.[99] The absence and inadequacy of reproductive health services in rural and remote communities can also reinforce patterns of domestic violence through coercive pregnancies when the nearest abortion provider is in a capital city

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[93] Productivity Commission, Parliament of Australia, *Report on Government Services: Housing and Homelessness* (07 June 2022).

[94] Ibid.

[95] WHO (n 64).

[96] *Inquest into the death of Andrea [name redacted]* (Western Australia Coroner's Court, Coroner Hope, 28 June 2012) 42-7. (Note that the inquest findings use Andrea's full name, which has been redacted here at her family's request.)

[97] Change the Record, *First Nations Housing: Election Priorities* (Report, 2022) 4.

[98] See, eg, Sean Kidd et al, 'The Climate Change-Homelessness Nexus' (2021) 397 *The Lancet* 1693; Oxfam Australia, Supplementary Submission No 40 to Senate Standing Committee on Foreign Affairs, Defence and Trade, *Inquiry into Implications of Climate Change for Australia's National Security* (November 2017) 28; Torres Strait Regional Authority, Submission No 79 to House of Representatives Standing Committee on Climate Change, Water, Environment and the Arts, *Inquiry into Climate Change and Environmental Impacts on Coastal Communities* (September 2008) 18.

[99] Giovanni Torre, *Coronial Inquest into the deaths of three young Indigenous women after alleged hospital failures begins* 19 July 2022, National Indigenous Times, https://nit.com.au/19-07-2022/3476/coronial-inquest-into-deaths-of-three-young-indigenous-women-after-alleged-hospital-failures-begins; Giovanni Torre, *Deaths of three Indigenous women reveals 'system in crisis' Queensland Inquiry hears,* National Indigenous Times online file,22/08/2022:///L:/LAW%20REFORM%20AND%20SUBMISSIONS/2022-23%20projects/2022.09%20Missing%20and%20Murdered%20First%20Nations%20Women%20and%20Children/Research/Deaths%20of%20three%20Indigenous%20women%20reveals%20'system%20in...%20_%20NIT.html.

accessible only by plane, making pregnancy termination prohibitively expensive to access.[100] Making reproductive healthcare easily accessible and affordable would address one of the ways in which that violence is perpetuated.[101]

Other economic assistance in the form of financial assistance, subsidised childcare, as well as adequate welfare payments particularly in relation to low income single parent families would alleviate many of the pressures that keep First Nations women in violent relationships or drive them to commit the minor offences that lead to their disproportionate contact with the criminal justice system.

Income inequality disproportionately affects First Nations women. Currently, people receiving income support payments are overwhelmingly living below the poverty line.[102] Currently 53 per cent of First Nations people aged 16 and over receive such a payment, compared to 27 per cent of non-Indigenous Australians.[103] Only 16 per cent of First Nations women reported a gross personal income of more than $1,000/week in 2018-19, compared to 31 per cent of First Nations men and 42 per cent of all non-Indigenous Australians.[104] Targeted income assistance in the form of financial aid would be an appropriate and effective intervention to address financial insecurity as a cause of and contributing factor to violence.

Community education, and particularly community legal education (CLE), has a role to play in violence prevention both at the rehabilitative stage (behaviour change programs) and the primary prevention stage (intervention programmes for young people and legal rights education). These initiatives should be community-led, preferably by First Nations women (or men, where targeted at First Nations men, to ensure cultural safety and appropriateness), with a focus on cultural appropriateness. Feedback from stakeholders indicates that a majority of First Nations people will not engage with programmes that they do not consider to be culturally safe, more particularly when those services are intended to provide support around sensitive or taboo topics such as men's/women's business.[105]

The lack and inadequacy of Domestic Violence education and behavioural change services available to prisoners, particularly prisoners on remand, presents a barrier to access for perpetrators and other incarcerated people. Many behavioural change programmes require an admission of guilt as a pre-requisite to entry into perpetrator programmes, which automatically disqualifies people on remand. As remand detention times can stretch to months depending on court backlogs, the delays for perpetrators to develop the understanding and strategies to change behaviours prior to their release, poses an ongoing threat to First Nations women. There is an urgent need to expand and fund domestic violence intervention services if addressing domestic violence is to remain a priority on the national

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[100] Maryanne Cleetus et al, 'Termination of Pregnancy in Queensland Post-Decriminalisation: a Content Analysis of Client Records from an All-Options Pregnancy Counselling Organisation (2022) *Sexual Health*.

[101] It should be noted that historically, birth control and termination have been leveraged and weaponised against First Nations women, as a form of population control in service of the racist and colonialist agenda. Any discussion of reproductive healthcare and reproductive justice for First Nations people is incomplete without an acknowledgement of this historical and ongoing harm. The right to choose includes the right to continue a pregnancy as well as the right to terminate one. See Cassandra Byrnes, 'Reproduction Regulation, Abortion and Indigenous Women since the 1970s', *Australian Women's History Network* (Blog Post, 25 February 2018) <http://www.auswhn.org.au/blog/abortion-indigenous-women/>.

[102] Ben Phillips, 'There Are Lots of Poverty Lines, and JobSeeker Isn't Above Any of Them', *The Conversation* (Blog Post, 30 March 2021) <https://theconversation.com/there-are-lots-of-poverty-lines-and-jobseeker-isnt-above-any-of-them-158068>.

[103] Australian Institute of Health and Welfare, *Indigenous Income and Finance* (Snapshot, 16 September 2021) <https://www.aihw.gov.au/reports/australias-welfare/indigenous-income-and-finance>.

[104] Ibid.

[105] Commission of Inquiry (n 13) 903 (Andrea Kyle-Sailor).

agenda. Intervention services for First Nations perpetrators need to be trauma-informed, culturally-appropriate and community-led to ensure maximum engagement and benefit to participants. Having regard to the fact that many of the perpetrators against First Nations women are non-indigenous men, however, there is a need to urgently increase domestic violence intervention services to all men and all prisoners; not only First Nations people.

2.4.4 Legal Assistance and Access to Justice

The Australian Human Rights Commission Independent Interim Report on CEDAW identified not only a lack of specialist legal services for First Nations women,[106] but also a lack of identified First Nations positions within generalist domestic and family violence legal services, as barriers to First Nations women accessing justice.[107]

To contextualise this, FNWLSQ is the only specialist First Nations women's legal service in Queensland. With a staff of five solicitors and eight support staff (including cultural advisers and a client support officer), based in Townsville, the service provides advice, assistance, referrals and legal representation to First Nations women, predominantly in North Queensland, including an office and DV duty lawyer service on Palm Island, and outreach services to regional towns, and remote advice / representation to North / western towns and communities including Mount Isa (904 km away) and others in regional and remote towns. This may include remote court attendance where leave is granted by the court. While there are domestic and family violence legal services or First Nations legal services in some of these towns and cities, the close-knit nature of many communities means that First Nations women are often conflicted out of accessing such services. Some legal services with offices in smaller regional, rural and remote communities do not have solicitors staffing these offices, leaving First Nations women with no legal assistance or representation except by remote services located hundreds of kilometres away.

Further, while generalist domestic and family violence legal services are increasingly seeking to employ First Nations staff, and representation within generalist services was identified as a means of increasing access to justice in the AHRC Report, this strategy has not always resulted in a culturally safe environment for First Nations people. 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[108] 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.[109]

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.[110] This makes it difficult for both generalist and First Nations specialist domestic and family violence legal services to recruit and retain First

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[106] See 2.1.7 of this submission

[107] AHRC (n 35) 14 [57].

[108] Microaggressions are 'derogatory slights or insults directed at a target person or persons who are members of an oppressed group.' Gina Torino et al (eds), *Microaggression Theory: Influence and Implications* (John Wiley & Sons, 2018) 3. Because microaggressions are often subtle or covert, it is difficult for targets to easily name and identify the behaviours. When targets do speak up, they may be dismissed or their concerns minimised.

[109] Ibid 170.

[110] URBIS, *2020 National Profile of Solicitors* (Report, 1 July 2021) 11.

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.

2.5 The ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated

FNWLSQ's consultation with community resulted in a range of options from family who have lost loved ones.

A key theme that emerged in discussions with community members was the need for a dedicated time of mourning for missing and murdered First Nations women and children, similar to (but not conflated with) nationally-recognised awareness months for domestic violence or sexual assault.

A dedicated awareness period or time of mourning for First Nations women and children victims would promote greater awareness of violence against First Nations women and children and present opportunities to advocate for specific and targeted reforms. Some of the proposed formats for mourning ceremonies included, for example, an annual candlelight vigil followed by a community supper attended by families of victims and support networks.

The need for trauma counselling for families and loved ones of victims for the ongoing grief and loss seems obvious. Some community members have called for a rewriting of the rules of engagement in media reporting and community discussions of victims; and for the creation of protocols and procedures for the investigation of missing First Nations women, in order to prevent miscarriages of justice.[111]

The importance of community-led and community–controlled organisations as support networks, was a recurring theme in consultations. Community members raised concerns that family and loved ones of missing and murdered First Nations women and children may be unaware of the range of support services available to them. A publicly funded campaign could play a role in raising awareness of available community-led services and ensure that such services are adequately funded.

Another role for government and particularly for police and courts is in providing closure to families. A community member who had lost a family member in unexplained circumstances identified the lack of answers as a significant barrier to healing. Where remains are not recovered and sorry business is conducted in the absence of a body, this may also have cultural implications for taboo periods. In these circumstances, the coronial system can be of assistance in resolving open questions or prompting new avenues of investigation.

One interviewee stressed the need for dedicated protocols and procedures for police to follow when investigating First Nations missing persons, together with a high level of cultural competence and sensitivity. This was in response to incidents such as the disappearances of three siblings in Bowraville over 30 years ago, which local police initially dismissed as the first child having "gone walkabout."[112]

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[111] Conversation with S (Aaminah Khan, FNWLSQ, Townsville, 14 July 2022); Conversation with O and B (Aaminah Khan, FNWLSQ, Townsville, 12 July 2022). Participants anonymised.

[112] Tess Allas et al, 'Indigenous Femicide and the Killing State', *Deathscapes* (2018) <https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state>.

2.6 Any other related matters

2.6.1 Human Rights Concerns

The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)[113] and the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP),[114] enumerate some of First Nations women's rights, including cultural and family rights, some of which are also reflected in domestic legislation. Queensland's *Human Rights Act 2019* protects some cultural and political rights, including requiring public entities to act in a way that considers the Human Rights identified in the legislation, many of which are derived from the International Covenant on Civil and Political Rights (ICCPR).[115]

Although CEDAW does not refer specifically to First Nations women, many of the social and economic inequalities it addresses – such as discrimination in employment,[116] restricted healthcare access,[117] issues of access to legal representation,[118] unequal access to education[119] and housing discrimination,[120] have been identified as contributing factors to high rates of violence against First Nations women.[121] While these inequalities affect all women, racism, colonialism and its legacy of entrenched inequalities and racist practices such as removal of First Nations children[122] compound the negative effects experienced by First Nations women.[123] It is not enough to consider these issues solely through a women's rights lens, as acknowledged by the parties to CEDAW:

> *Emphasising that the eradication of apartheid, of all forms of racism, racial discrimination, colonialism, neo-colonialism, aggression, foreign occupation and domination and interference in the internal affairs of States is essential to the full enjoyment of the rights of men and women ...*[124]

UNDRIP explicitly addresses violence against First Nations women and children as a particular concern:

> *1. Particular attention shall be paid to the rights and special needs of [I]ndigenous elders, women, youth, children and persons with disabilities in the implementation of this Declaration.*

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[113] Opened for signature 18 December 1979, 1249 UNTS 13 (entered into force 3 September 1981).

[114] UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples*, 61st sess, 107th plen mtg, Agenda Item 68, UN Doc A/RES/61/295 (13 September 2007). Australia was one of four UN member states that originally voted against the resolution, a position it has since reversed. At the time of the original vote, Australia's representative to the UN General Assembly expressed a fear that self-determination for First Nations people would 'impair ... the territorial and political integrity of a State with a system of democratic representative Government.' See UN GAOR, 61st sess, 107th plen mtg, UN Doc A/61/PV.107 (13 September 2007) 11.

[115] Opened for signature 16 December 1966, 999 UNTS 171 (entered into force 23 March 1976).

[116] CEDAW (n 113) art 11.

[117] Ibid art 12, art 14 (2)(b).

[118] Ibid art 15.

[119] Ibid art 14 (2)(d).

[120] Ibid art 13 (a), art 14 (2)(h).

[121] Many of these have been addressed in this submission

[122] Branco, Jorge, "Queensland Child Safety Department ditches 'racially biased' screening tool" 1 December 2022 9 News online https://www.9news.com.au/national/queensland-child-safety-department-ditches-racially-biased-screening-tool/8f198f10-49f2-427e-8fc1-361f7356027?app=applenews&fbclid=IwAR1PueJg2xyirX8Cb2edMYbTIU6-aSshzhgfC7rVq6y42A3KXa-iHhzfkkI

[123] Op cit. Blagg (n 39).

[124] CEDAW (n 113) preamble (emphasis in original).

> *2. States shall take measures, in conjunction with [I]ndigenous peoples, to ensure that [I]ndigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination.*[125]

UNDRIP does not expound upon the root causes of this violence and discrimination in the same way that CEDAW does, and because it is a non-binding resolution and not a treaty, it does not have legal force. It should be noted that Australia only belatedly signed UNDRIP years after the resolution was originally adopted by the majority of UN member states.[126] That hesitancy may be seen as also reflected in Australia's lacklustre performance against the Closing the Gap benchmarks[127] and the resistance of sections of the public to progress a referendum on the Voice to Parliament since the release of the Uluru Statement from the Heart in 2017.

3.0 Summary

In providing a response to the Inquiry Terms of Reference (c) – (h), FNWLSQ has presented a North Queensland-centric perspective on systemic causes of, and grassroots responses to, violence against First Nations women and children.

The Women's Safety and Justice Taskforce reports[128], which built on the work of the Special Taskforce on Domestic and Family Violence in Queensland, present a Statewide perspective on systemic causes of domestic and family violence, including family violence against First Nations women. The Taskforce follows a substantial body of pre-existing research, information and reports which have been publicly available but inadequately implemented, in the case of RCIADIC for 30 years, but also "Closing the Gap" and successive National Plans to End Violence against Women and Children.

At a National level the proposal for a stand-alone Action Plan to end violence against First Nations Women and Children presents an opportunity to strategize actions that address the root causes of violence, as well as implementing community-controlled, local and grass roots solutions consistent with principles of self-determination. Addressing the entrenched culture of systemic and institutional violence presents a significant challenge, but requires urgent attention. The removal of children from their families and their institutionalisation, criminalisation and detention must be recognised as key contributing factors to the risk of violence against First Nations women and children and such practices must cease, as recommended over thirty years ago in the RCIADIC report.

In creating this submission, FNWLSQ relied on service-acquired knowledge, client case studies, firsthand accounts of stakeholders and personal conversations with members of the community in addition to State and National reports and national and international academic research.

FIRST NATIONS WOMEN'S LEGAL SERVICES QLD Inc.

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[125] UNDRIP (n 114) art 22.
[126] See commentary at (n 114).
[127] See 2.1.1 of this submission
[128] *Hear Her Voice reports 1* and 2 online at https://www.womenstaskforce.qld.gov.au/publications