Jumbunna Institute for Indigenous
Education and Research

Submission to MMFNWC Inquiry

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

Dear Senate Standing Committee on Legal and Constitutional Affairs, Secretariat

Submission to the Senate Inquiry into Missing and Murdered First Nations Women and Children

Violence against First Nations women and children, and the apathy of Australian institutions to it, is an urgent issue and this Inquiry could not be more timely. We commend the Committee for its attention. You must translate it into action.

The Jumbunna Institute for Indigenous Education and Research is honoured to offer this submission. It was authored by a team of Indigenous and non-Indigenous staff at Jumbunna, including Associate Professor Paul Gray, Craig Longman, Distinguished Professor Larissa Behrendt, Associate Professor Pauline Clague, Dr Anthea Compton, Latoya Aroha Rule, Dr Tracy Barber, Maia Brauner, Alison Whittaker, Sinead McCormick and Imogen Leary.

While we can't speak to each of the terms of reference, we have answered where they are within our range of expertise.

Please consider attached to this submission:

- The documentary (directed by Professor Larissa Behrendt) *Innocence Betrayed*
- The documentary (directed by Allan Clarke) *The Bowraville Murders* (included at request of families in Bowraville)
- Documents relevant to the NSW *Inquiry into the Family Response to the Murders in Bowraville* and the NSW *Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019 (NSW)*
- Other supplementary materials outlined at pp 28-30.

Yours sincerely,

Professor Lindon Coombes

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Who we are

The Jumbunna Inst tute for Ind genous Educat on and Research s un que n Austra a.

Our Ind genous- ed Research team operates throughout the cont nent, w th staff work ng n commun t es n V ctor a, South Austra a, Northern Terr tory, Queens and and New South Wa es, and co aborators n a states and terr tor es.

Our best work s focused around stor es, campa gns, projects, and cases that conso date our many d fferent sets of sk s and expert se towards a shared goa . We run by one key gu d ng pr nc p e — our work shou d be dr ven by Abor g na and Torres Stra t Is ander peop es and nat ons n Austra a, and contr bute — whether d rect y or nd rect y — to the r strength, susta nab ty and we be ng. We be eve that our nat ons, peop es and peop e can use research as a too to produce change and bu d capac ty. We are comm tted to exce ence and ag ty as pract t oners and scho ars because th s shapes our capac ty to understand sh ft ng andscapes and effect change w th n them.

We focus on work that comb nes our strengths to make strateg c mpact n the Austra an cont nent and around the wor d — w th our commun t es n contro . A of our work supports outputs n the fo ow ng areas —

Transformative Research

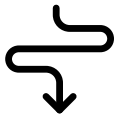
We produce wor d-c ass research on ega and po cy ssues that supports Ind genous sovere gnty and we be ng, and that ho ds the Co on ser to account. Research outputs nc ude art c es, case stud es, books, ega ana ys s, po cy subm ss ons, contr but ons to Ind genous methodo og es and cr t ca ega theory, engagement w th nternat ona scho ars, and contr but on to new med a.

Transformative Practice

The prov s on of a soph st cated, eth ca and expert nat ona strateg c profess ona serv ces apparatus for Ind genous nat ons operat ng n the ndustr es of aw, governance, po cy and new med a. In add t on to the prov s on of profess ona serv ces, we seek to nf uence the deve opment of new profess ona s to a gn w th our m ss on.

Transformative Teaching and Education

Recogn s ng the debt we owe to those who taught us, and the mportance of foster ng future co aborators and a es, we acknow edge the mportance of teach ng and of the use educat on. We w use subjects, short courses, profess ona courses, and PhD deve opment to transm t our



Transformative Story

We recogn se the centra ro e of Story and the power of narrat ves. We are consc ous of how we te our story, and the stor es of others, and pr or t se commun ty vo ces and stor es of Ind genous sovere gnty, strength and v ta ty.

research and bu d the next generat on of change-makers.

Background

Violence against First Nations women and children is a cornerstone of Australian colonialism. While it remains a problem in our current time and may now look different to the frontier, it has endured since the arrival of European settlers.[1]

This violence cannot be addressed on an individual level. It is not a simple question of interpersonal perpetration. The violence occurs in a context of racism and sexism against First Nations women and children, a context that sees colonial structures create the circumstances of violence, offers opportunity for that violence, and is then complicit in that violence as communities seek justice.

Our submission below addresses just some of these structures and systems.

We have enclosed the Jumbunna Institute's submissions to previous related inquiries and other related documents, which are particularised from pp 28-30.

Separately, some families in Bowraville have made their own submissions to this inquiry. We draw the Committee's attention to them here:

- Michelle Jarrett
- Dephine Charles
- Jasmin Speedy
- Penny Stadhams
- Alison Walker
- Thomas Duroux
- Marbuck Duroux
- Elijah Duroux
- Leonie Duroux.

[1] We acknow edge that adu ts outs de of the gender b nary may a so be mpacted by these systems. Because of the prescr pt ons of the Comm ttee and ts terms of reference, we refer on y to adu t F rst Nat ons women and ch dren of a genders. We urge the Comm ttee to a so seek subm ss ons and nput from F rst Nat ons peop e outs de the gender b nary.

1. The number of First Nations women and children who are missing and murdered

We note that the Committee has received data[2] on the rate of murders of First Nations women and children in recent times. We note, as others have,[3] the limitations of this data in capturing just how many First Nations women and children are:

- Killed in homicides other than murder
- Killed in circumstances that don't lead to conviction
- Killed in circumstances that the law doesn't understand to be homicides (e.g., long term biases in medical treatment, legally-authorised restraint)
- Missing and disappeared
- Killed by states or institutions (e.g., deaths in custody or deaths in care).

While not legally understood as murders, many in our community (including us as researchers) understand them colloquially as murders. We urge the Committee to take up this broader understanding of murder in its consideration of the data. It more accurately captures the breadth and variation of violence perpetrated against First Nations women and children.

We also urge the Committee to seek multiple sources of data to inform itself of the numbers of First Nations women and children who are missing and murdered.

[2] Commonwea th of Austra a, Senate, "Lega and Const tut ona Affa rs References Comm ttee," *Inquiry into Missing and Murdered First Nations Women and Children*, October 5, 2022, accessed December 8, 2022, https://par nfo.aph.gov.au/par Info/down oad/comm ttees/commsen/26009/toc_pdf/Lega %20and%20Const tut ona %20Affa rs%20R eferences%20Comm ttee_2022_10_05.pdf;f eType=app cat on%2Fpdf#search=%22comm ttees/commsen/26009/0000%22.
[3] See, for examp e, Ky e Cr pps, "Cou d the Senate nqu ry nto m ss ng and murdered Ind genous women and ch dren prevent future deaths?" *The* Conversat on, October 14, 2022, accessed October 14, 2022, https://theconversat on.com/cou d the senate nqu ry nto m ss ng and murdered nd genous women and ch dren prevent future deaths 192020.

2. 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

In this submission, we talk about two kinds of investigations. One is the investigation of the broader issue of violence against First Nations women and children. The other is the investigation of specific instances of that violence — which we discuss through the lens of the Bowraville murders.

Barriers to investigating broadly

The lack of meaningful data about the prevalence of missing and murdered First Nations women and children described above is not new. Since invasion, there have been few settler investigations or admissions of the extreme violence perpetrated against Aboriginal and Torres Strait Islander people, including women and children. Recent academic initiatives to track massacres of Aboriginal people until 1930 are very significant[4]. Further interrogation of the historical murders perpetrated outside of the definition of massacres (for e.g., within colonial educational institutions) is critical to understanding current violence against First Nations women and children as a continued spectrum since invasion (see TOR 3.).[5]

[4] Lynda Ryan et a ., *Colonial Frontier Massacres in Australia 1788 1930*, The Un vers ty of Newcast e, accessed December 1, 2022, https://c21ch.newcast e.edu.au/co on a massacres/ ntroduct on.php.
[5] F rst Nat ons are we aware of the m tat ons of sett ers' recent pub c "acknow edgements" of h stor ca v o ence, as w despread nvest gat on and broader pub c awareness rema n m ted, and v o ence aga nst F rst Nat ons cont nues. See, for examp e, *Lateline*, Apr 15, 2016, accessed November 7, 2022, https://search nform t org.ezproxy. b.uts.edu.au/do /10.3316/TVNEWS.TSM201604150182.

The absence of complete data[6] about current violence perpetrated against First Nations women and children and, as articulated by Bronwyn Carlson, the lack of public outrage,[7] suggests that (intentional) settler blindness to this violence continues. At the same time, as Amy McQuire has argued, ongoing colonial fantasies about gendered violence within First Nations have an independent efficacy in the public domain.[8] In a continuation of colonial narratives, much of the political and media discourse positions Aboriginal societies as inherently or 'culturally' violent.[9] In turn, settlers thus primarily conceptualise instances of violence as extricated or removed from settler-colonialism, and First Nations' voices and solutions as irrelevant.

This foundational refusal to *see* settler-colonialism and settler-colonial violence has had profound impacts on the ways in which Australian governments and institutions have investigated the deaths and missing persons reports of First Nations women and children, both historically and into the present. This violence doesn't happen in isolation. The failure to connect interpersonal violence to settler colonial policy, and a failure to understand how colonisation and gender are linked, gives us an incomplete picture and makes violence against First Nations women look smaller and more isolated than it is. This has meant, at times, the erasure of First Nations women and children from investigations into violence, including investigations into deaths in custody.[10]

The Jumbunna Institute, along with Dr Lou Bennett and Dr Romaine Moreton and in partnership with Boomalli, has in the past sought to draw attention to this silencing through *Sorry For Your Loss*, a creative project that sought to re-voice the stories of First Nations women who have died in custody.[11] Amanda Porter writes of that exhibition:

> [T]he issue of Indigenous women's over-representation in detention remains to a large extent unchanged [after the Royal Commission into Aboriginal Deaths in Custody]. Nearly all of the recent deaths in detention involving Indigenous women – for example the recent deaths in detention of Tanya Day, Ms Maher, Ms Dhu, Ms Mandijarra and many others – bear resemblance to the circumstances of those women whose deaths were investigated as part of the original RCIADIC. Sorry for Your Loss was conceived in recognition of the difficulties in telling the story of Indigenous women's and girls' deaths

[6] See Mar ene Longbottom, "Four Corners' How many more?' revea s the nat on's cr s s of Ind genous women m ss ng and murdered," *The Conversation*, October 26, 2022, https://theconversat on.com/four corners how many more revea s the nat ons cr s s of nd genous women m ss ng and murdered 193216.
[7] Bronwyn Car son, "No pub c outrage, no v g s: Austra a's s ence at v o ence aga nst Ind genous women," *The Conversation*, Apr 16, 2021, accessed November 7, 2022, https://theconversat on.com/no pub c outrage no v g s austra as s ence at v o ence aga nst nd genous women 158875.
[8] See Amy McQu re, "B ack and Wh te W tness," *Meanjin* W nter (2019), accessed October 10, 2022, https://meanj n.com.au/essays/b ack and wh te w tness/.
[9] See a so Sh no Kon sh , "'Wanton w th P enty': Quest on ng Ethno H stor ca Construct ons of Sexua Savagery n Abor g na Soc et es," *Australian Historical Society* 39:3 (2008): 356 372; A ssa Macoun, "Abor g na ty and the Northern Terr tory Intervent on," *Australian Journal of Political Science* 46:3 (2011): 519 534; and E zabeth Pov ne , *The Cunning of Recognition: Indigenous Alterities and the Making of Australian Multiculturalism* (London: Duke Un vers ty Press, 2002).
[10] See, e.g., Megan Dav s, "A ref ect on on the Roya Comm ss on nto Abor g na Deaths n custody and ts cons derat on of Abor g na women's ssues," *Australian Indigenous Law Review* 15:1 (2011): 25 33; E ena Marchett , "Cr t ca Ref ect ons upon Austra a's Roya Comm ss on nto Abor g na Deaths n Custody," *Macquarie Law Journal* 5 (2005): 103 125.
[11] See Jumbunna Inst tute, "Sorry for your oss project," *Jumbunna News*, May 3, 2018, accessed October 20, 2022, https://www.uts.edu.au/research and teach ng/our research/jumbunna nst tute nd genous educat on and research/jumbunna news and events/news/sorry your oss project. See a so Lar ssa Behrendt, "Sorry For Your Loss," *Speaking Out*, Austra an Broadcast ng Corporat on, Ju y 22, 2018, accessed October 20, 2022, https://www.abc.net.au/rad o/programs/speak ngout/speak ng out/9996496.

> in detention via conventional channels. As Clague has commented elsewhere, statistics often mask certain realities in the criminal justice and health systems. These figures do not capture the many 'near misses', that is, when an inmate almost dies because of assault, illness or injury while in custody.[12]

We can provide access to some of the exhibits from *Sorry For Your Loss* on request.

Investigations of specific matters

Included within this submission as a case study is the case of the 'Bowraville Murders'.

The case study is substantial, relating to a matter that has been ongoing for over thirty years and in which Jumbunna has worked for ten years. Whilst elements of that case study relate to multiple terms of reference, we want to draw special attention to it under this term of reference due to the central focus of the NSW Police investigation in the families' long push for justice.

THE CASE STUDY IS SUBMITTED ON THE BASIS THAT PARTS OF IT ARE PRIVILEGED AND CONFIDENTIAL.

[12] Amanda Porter, "Abor g na Sovere gnty, Cr me and Cr m no ogy," *Current Issues in Criminal Justice* 31(1) (2019): 134.

3. The institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children

Aboriginal and Torres Strait Islander nations have always had their own strategies and policies for responding to violence around or within communities, including gendered violence. The first systematic practices implemented in response to violence were First Nations' own.

We are broadly concerned about the 'tough on crime' responses made by states, territories and the Commonwealth when confronted by violence against First Nations women and children. Many of them, in our opinion, are opportunistic expansions of the power of police and other systems against First Nations communities. We consider the Northern Territory Intervention to be a prime example of this opportunism.

We also (see TOR 4) have concerns about the policies and practices of the child protection system and how they respond to violence.

For an example of institutional change and responses to violence against First Nations women and children, please see our case study below on the Bowraville Murders.

4. 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

The root of much of the violence experienced by First Nations women and children is colonisation itself. In line with our own expertise, we speak below to the impact of the child protection system as an example of how settler systems can create and perpetuate violence against women and children.

The child protection system

In addition to the above-mentioned relationship between violence and trauma inflicted upon First Nations women and children and incarceration, experiences of violence against First Nations women and children are also central to the ongoing disproportionate imposition of child protection interventions by statutory child protection systems into their lives. In the context of intergenerational policies of intervention and harm through the control and forced separation of First Nations children and families,[13] these interventions represent ongoing systemic violence perpetrated against First Nations families.

[13] Terry L besman et a ., “Co on a Law and ts Contro of Abor g na and Torres Stra t Is ander Fam es,” n *The Cambridge Legal History of Australia*, ed. Peter Cane et a . (Cambr dge: Cambr dge Un vers ty Press, 2022), 433 455. do :10.1017/9781108633949.018.

Experiences of domestic and family violence are prevalent in the reasons given for child protection intervention.[14] However, the response of statutory child protection systems continue to be inadequate in creating safety for First Nations women and children, and safeguarding their rights. A discussion of many of these challenges can be found in a recent research report led by the Queensland Aboriginal and Torres Strait Islander Child Protection Peak (QATSICPP) for Australia's National Research Organisation for Women's Safety.[15]

In the absence of adequate supports and services to respond effectively to domestic and family violence and achieve safety for First Nations women and children, the response of statutory child protection agencies continues to dismember First Nations families, often on the grounds that those experiencing family violence cannot assure the safety of their children. Of course, this ignores that such systems expect more from victims of violence than they themselves offer to those same victims, expecting them to create safety for their children when government domestic and family violence support systems cannot create safety for them. Put simply, this holds those experiencing violence responsible for that violence, rather than considering the actions of perpetrators, or the inability (and underinvestment) of our systems to keep them safe.

In doing so, the intervention of child protection agencies compound and punish rather than alleviate experiences of violence for many First Nations women. Many of these interventions are experienced as systemic violence. They functionally resemble the dynamics that characterise family violence – strict surveillance, isolation from family and other supports, and coercion and control over their daily lives. This is done often in the context of a series of arbitrary, ever-changing and sometimes impossible demands, with the ever-present threat of statutory intervention to remove children from their care, or foreclosure on the possibility of restoration of access through (often supervised) contact visits. Given this dynamic, it could be argued that the child protection system reinforces the experiences of domestic and family violence to which they are responding, imposing further violence, toxic stress and harm on First Nations women and children backed by the force of the state.

That the response of child protection systems often target women and children through their statutory intervention further reinforces the dilemma regarding help-seeking for First Nations women. Reaching out to services for assistance and support regarding experiences of domestic and family violence can lead to further experiences of violence, either at home or from the imposition of statutory interventions by police or child protection systems.

The removal of First Nations children from their families has devastating long-term impacts for children and their families, leading to recent calls for the recognition of the inherent harm of removal for First Nations children.[16] One recent review[17] noted that those who grow up in out-of-home care disproportionately face state child protection intervention as parents – being 10 times

[14] See Comm ss on for Ch dren and Young Peop e, *'Always was always will be Koori children': Systemic inquiry into services provided to Aboriginal children and young people in out of home care in Victoria* (Me bourne: Comm ss on for Ch dren and Young Peop e, 2016); Megan Dav s, *Family is Culture Review Report: Independent Review of Aboriginal Children and Young People in OOHC* (Sydney: Fam y Is Cu ture, 2019); and Garth Morgan et a ., *New Way for our Families: Designing an Aboriginal and Torres Strait Islander cultural practice framework and system responses to address the impacts of domestic and family violence on children and young people* Research Report Issue 6 (Sydney: Austra a's Nat ona Research Organ sat on for Women's Safety, 2022).
[15] Morgan et a ., *New Way for Our Families*
[16] Dav s, *Family is Culture Review Report*.
[17] Dav d Tune, *Independent Review of Out of Home Care in New South Wales: Final Report*, accessed November 1, 2022, https://www.acwa.asn.au/wp content/up oads/2018/06/TUNE REPORT ndepth rev ew out of home care n nsw.pdf.

more likely to have a child removed compared to the general population. Additionally, the report noted poor health, education and wellbeing outcomes, particularly for First Nations children, including significant likelihood of involvement in the criminal justice system, either as offenders or victims. The review found that 20% of women and 12% of men in out-of-home care will have a child removed into out-of-home care at some point in the 20 years following their exit from care, suggesting that these systemic intergenerational impacts may themselves be gendered.

A similar related concern is the relationship between child protection systems and criminal justice systems, through the disproportionate burden of criminal justice system involvement for children in out-of-home care. Research into this process of 'care-criminalisation' emphasises the way that experiences within OOHC contribute to increased involvement with criminal justice systems both as juveniles and adults.[18] The OOHC context has been found to uniquely contribute to increased risk of contact with criminal justice systems, as well as different and more negative experiencing relative to other young people (McFarlane, 2018). This includes earlier engagement with the criminal justice system, the criminalisation of behaviours that would not result in a criminal justice system response in a family setting, increased likelihood of remand, and reduced use of diversionary or other supports, creating circumstances where involvement in OOHC uniquely contributes to criminal justice system involvement, and involvement in both systems come to exacerbate each other (McFarlane, 2018). Other research has similarly identified system-centric decision making, and the absence of holistic and therapeutic responses and models of care as compounding these intersections, particularly for First Nations young people, those with disability, and those from regional and remote areas.[19] Of particular concern, these intersections demonstrate that statutory interventions invoked on a rationale of protecting children from harm in effect create harmful circumstances related to offending,[20] establishing a negative cycle of intergenerational harm.[21]

Put simply, this broader context outlines a deeply problematic cycle of responding to experiences of violence that reinforces harm, rather than promoting healing. Experiences of domestic and family violence lead to a statutory response from child protection authorities that dismember families, causing harm for parent-survivors as well as imposing harmful environments for their children, which in turn increases the future risk of statutory intervention in their children's lives, including both child protection and criminal justice system responses. In this way, system responses to interpersonal violence contribute to increased intergenerational experiences of systemic violence, disproportionately experienced by First Nations people.

This further reinforces the need for child protection systems (in addition to criminal justice systems) to be fundamentally transformed in order to better safeguard First Nations women and children and uphold their rights. This includes reimagining child protection systems from a therapeutic perspective, focused on responding effectively to families experiencing crisis and

[18] Dav s, *Family is Culture Review Report*, and Kath McFar ane, "Care cr m na sat on: The nvo vement of ch dren n out of home care n the New South Wa es cr m na just ce system," *Australian and New Zealand Journal of Criminology* 51(3) (2017): 412 433.
[19] Guard an for Ch dren and Young Peop e, *A Perfect Storm? Dual status children and young people in South Australia's child protection and youth justice systems Report 1* (Ade a de: Guard an for Ch dren and Young Peop e), accessed October 1, 2022, www.gcyp.sa.gov.au/wp content/up oads/2019/12/Dua Status CYP n SA A Perfect Storm.pdf.
[20] McFar ane, "Care Cr m na sat on."
[21] Dav s, *Family is Culture Review Report*.

assisting them with their child-rearing role wherever possible, rather than the policing of such families and responses that perpetuate harm.

First Nations communities have been calling for such change for a significant period of time, grounded in the principle of self-determination.[22] Self-determination is a critical cornerstone of systemic responses to the needs of First Nations communities, ensuring those services and the exercise of authority are seen as legitimate by the communities they serve – a necessary precondition for effectiveness.[23] This is part of addressing the political determinants of wellbeing.[24] Further, therapeutic responses to promote wellbeing for First Nations children and families should be grounded in existing evidence, recognising the important role that culture plays in promoting wellbeing and resilience, and the need to foster positive outcomes through supportive, responsive relationships, addressing external sources of stress (including social determinants of wellbeing), and providing appropriate supports and services focused on building core skills in executive function and emotion regulation.[25] These service responses should be designed and administered by First Nations communities themselves, promoting cultural alignment and safety, as well as making more direct the mechanisms for accountability of such services and supports. These foundations for reform have been described elsewhere.[26] Developing approaches grounded in self-determination, and holistic, community-based therapeutic models of care reflect the known evidence for addressing challenges facing both criminal justice and child protection systems, and are likely to reduce recidivism and intergenerational risk associated with child protection system involvement.[27]

5. The policies, practices and support services that have been

[22] Human R ghts and Equa Opportun ty Comm ss on, *Bringing them home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families* (Canberra: Commonwea th of Austra a, 1997), accessed December 1, 2022, https://humanr ghts.gov.au/s tes/defau t/f es/content/pdf/soc a _just ce/br ng ng_them_home_report.pdf; and Dav s, *Family is Culture Review Report*.

[23] See Len Cook, "Ev dence, accountab ty and eg t macy: The overs ght of ch d we fare serv ces," *Statistical Journal of the IAOS* 36(2) (2020): 365 373, https://do .org/10.3233/SJI 190583; Pau Gray, "F rst Nat ons re mag n ng of ch d we fare key to address ng ongo ng d spar t es," *Australian Bar Review* 50:3 (2021): 466 475; Terr L besman and Pau Gray, "Se f determ nat on, pub c accountab ty, and r tua s of reform n F rst Peop es ch d we fare," *First Peoples Child and Family Review*, forthcom ng; and Just ce Tankebe, "V ew ng th ngs d fferent y: The d mens ons of pub c percept ons of po ce eg t macy," *Criminology* 51(1) (2013): 103 135, https://do .org/10.1111/j.1745 9125.2012.00291.

[24] Dary e R gney et a ., *Indigenous Nation Building and the Political Determinants of Health and Wellbeing* (Me bourne: Low tja Inst tute, 2022), accessed November 1, 2022, https://www. ow tja.org.au/page/serv ces/resources/hea th po cy and systems/governance/ nd genous nat on bu d ng and the po t ca determ nants of hea th and we be ng d scuss on paper.

[25] Center on the Deve op ng Ch d at Harvard Un vers ty. *Three Principles to Improve Outcomes for Children and Families: 2021 Update* (Cambr dge: Harvard Un vers ty, 2021), accessed November 5, 2022, https://deve op ngch d.harvard.edu/resources/three ear y ch dhood deve opment pr nc p es mprove ch d fam y outcomes/.

[26] Dav s, *Family is Culture Review Report*; Gray, "F rst Nat ons re mag n ng of ch d we fare,"; and SNAICC Nat ona Vo ce for our Ch dren, *The Family Matters Roadmap* (Me bourne: SNAICC, 2017).

[27] Vanessa Edw ge and Pau Gray, *Significance of Culture to Wellbeing Healing and Rehabilitation* (NSW Pub c Defenders Bugmy Bar Book, 2021), accessed December 8, 2022, https://www.pub cdefenders.nsw.gov.au/Documents/s gn f cance of cu ture 2021.pdf.

effective in reducing violence and increasing safety of First Nations women and children, including self-determined strategies and initiatives

As we submitted above, **the root cause of violence against First Nations women and children is settler-colonialism**. As settler-colonialism causes systemic, interconnected and ongoing harms to Aboriginal and Torres Strait Islander peoples, in turn, for solutions to be effective, they must be structural and holistic. International and Australian evidence suggests that the effects of settler-colonialism can be mitigated through Indigenous nation building (INB).[28]

INB – or Indigenous nation *re*-building – describes the process by which an Indigenous nation strengthens its own institutional capacity for effective self-government and self-determined community development.[29] INB evidence has found that **the most significant factors to thriving, healthy Aboriginal and Torres Strait Islander communities include stable political governance, apparent in decision-making control over a collective's affairs; effective and culturally appropriate self-government mechanisms** (whether these bodies are recently established or revitalised); a long-term strategic vision, and community-motivated leadership.[30]

Unlike the United States and Canada, where INB research originally emerged, Australia has never acknowledged – either by treaty or through its Constitution, legislation or case law – the status of Indigenous peoples as 'peoples' as understood in international law. Namely, it has not acknowledged Indigenous peoples as having status as political collectives with inherent rights to self-government and self-determination.[31]

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[28] See R gney et a ., *Indigenous Nation Building;* and A son and M chae Ha oran, "Dynam cs of the po cy env ronment and trauma n re at ons between Abor g na and Torres Stra t Is ander peop es and the sett er co on a state," *Critical Social Policy*, https://do .org/10.1177%2F02610183211065701.

[29] M r am Jorgensen, "Ed tor's Introduct on," *Rebuilding Native Nations: Strategies for Governance and Development*, ed. M r am Jorgensen (Tucson: Un vers ty of Ar zona Press, 2007), x x v.

[30] Stephen Corne and Joe Ka t, "Two Approaches to the Deve opment of Nat ve Nat ons: One Works, the Other Doesn't", n *Rebuilding Native Nations: Strategies for Governance and Development* ed. M r am Jorgensen (Tucson: Un vers ty of Ar zona Press, 2007), 3 33.

[31] See Stephen Corne , "Processes of Nat ve Nat onhood: The Ind genous Po t cs of Se f Government," *The International Indigenous Policy Journal* 6:4 (2015); art c e 4; Noe Pearson, "Noe Pearson Boyer Lecture ser es: Recogn t on", *Australian Broadcasting Company*, October 27, 2022, transcr pt, accessed November 2, 2022, https://about.abc.net.au/speeches/noe pearson boyer ecture ser es who we were and who we can be/; and A son V v an et a ., "Ind genous se f government n the Austra an Federat on," *Australian Indigenous Law Review* 20 (2018): 215 242.

This lack of recognition has not prevented Australian Aboriginal and Torres Strait Islander peoples from claiming their right to – and continuing to – govern and operate according to their own Law/Lore and to interact with the settler state as distinct collectives. Many Indigenous nations in Australia are working to rebuild their governing foundations and strengthen their governance systems. By doing so, they have been advancing nation-wide goals around Country, economic development and health and wellbeing.[32] This phenomenon is observable across many Aboriginal and Torres Strait Islander nations, and has also been academically established in several research projects since 2011. Of course, due to the nature of Australian settler-colonialism, there are considerable challenges in organising, identifying and acting as Indigenous political collectives that ensures such work is intergenerational in nature.

Importantly, INB "significantly changes the way things are usually done in settler-colonial societies".[33] When communities are supported to take control of their own affairs and have jurisdiction over the issues that matter to them (as decided by them), this can "create the conditions under which their rights can materialise in practice".[34]

The implications of this evidence for the safety of First Nations women and children are clear. The **wellbeing of Indigenous women and children, as citizens of specific Aboriginal and Torres Strait Islander nations, is a direct concern of those nations**. First Nations are working to materialise their concern for their citizens' wellbeing in their own policy developments, through a range of means.[35] Despite the complexity of factors that contribute to the violence enacted on First Nations women and children, if supported to undertake INB, First Nations can materialise their concern for these citizens in effective ways that ultimately contribute to the (re)building of their nations. Evidence from the United States around these issues is particularly instructive.

The Violence Against Women Act (VAWA)

Some similarities exist in the prevalence of, and structural issues associated with, missing and murdered Indigenous women and children in North America. These include: perpetrators often commit related violent crimes, such as DFV or sexual assault, with some level of impunity; ineffective, insufficient and/or indifferent or racist law enforcement in communities; a lack of or limited First Nations jurisdiction over such crimes; a lack of appropriate data; and the potential that perpetrators are specifically targeting Indigenous women.[36] Similarly, violence against

[32] See M r am Jorgensen et a ., "Yes, the T me s Now: Ind genous Nat on Po cy Mak ng for Se f Determ ned Futures" n *Public Policy and Indigenous Futures*, ed. N kk Mood e & Sarah Madd son (Me bourne: Spr nger, forthcom ng).
[33] R gney et a ., *Indigenous Nation Building*, 2.
[34] R gney et a ., *Indigenous Nation Building*, 2.
[35] See, for examp e, Steve Hemm ng et a ., "Ngarr ndjer Nat on Bu d ng: Secur ng a Future as Ngarr ndjer Ruwe/Ruwar (Lands, Waters and A L v ng Th ngs)," n *Reclaiming Indigenous Governance: Reflections and Insights from Australia Canada New Zealand and the United States*, ed. W am N ko ak s et a . (Tucson: The Un vers ty of Ar zona Press, 2019), 71 104.
[36] For an overv ew of some of these factors, see Sarah Deer, Wr tten Test mony of Professor Sarah Deer," *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to end the Cycle of Violence*, U.S. House of Representat ves Comm ttee on Natura Resources, Subcomm ttee for Ind genous Peop es of the Un ted States, accessed November 1, 2022, https://www.congress.gov/116/meet ng/house/109101/w tnesses/HHRG 116 II24 Wstate DeerS 20190314.pdf.

Indigenous women in North America is "not the result of single separate acts" but a "continuum of violence" since Invasion.[37]

A number of strategies are being pursued by Native Nations[38] in the United States to protect their citizens, with some support by settler governments that is relevant to this Inquiry. In response to Native Nations' advocacy, recent United States Federal Government efforts have included:

- 2010 Tribal Law and Order Act, which granted more powers towards Tribal Nation law enforcement, including increased sentencing limits for some Tribal Nations
- 2013 reauthorisation of the Violence Against Women Act of 1994 (VAWA);[39] (*discussed below)*
- 2019 Executive Order Operation Lady Justice, which established the Task Force on Missing and Murdered American Indians and Alaska Natives
- 2020 Savanna's Act, aimed at improving the collection of data and the coordination of information across jurisdictions around missing and murdered Indigenous women
- 2020 Not Invisible Act, introduced by US congressional members enrolled in recognised Tribal Nations, which creates an advisory committee of Native Nation citizens, leaders, family members and survivors to make non-binding recommendations to the Federal Government[40]
- 2021 Bureau of Indian Affairs Office of Justice Services established the Missing and Murdered Unit, which investigates unsolved cases and provides technical assistance in some Native Nation law enforcement issues
- 2022 reauthorisation of VAWA (*discussed below*).

Of most relevance to this Inquiry are the 2013 and 2022 reauthorisations of VAWA,[41] as they recognise the relationship between the removal of Native Nations' jurisdiction to prosecute certain crimes to the prevalence of missing and murdered Indigenous women on Indian Country.[42] Amendments were made to restore (some) jurisdictional power to Native Nations. These amendments recognise that Native Nations are best placed to tackle issues in their communities, and that a root cause of ongoing violence against women is a lack of jurisdictional

[37] Kathryn Nag e, "Wr tten Test mony of Mary Kathryn Nag e, Nat ona Ind genous Women's Resource Centre," *Unmasking the Hidden Crisis of Murdered and Missing Indigenous Women: Exploring Solutions to end the Cycle of Violence*, U.S. House of Representat ves Comm ttee on Natura Resources, Subcomm ttee for Ind genous Peop es of the Un ted States, 2019, accessed November 1, 2022, https://www.hsd .org/?v ew&d d=825675. See a so Joseph Mantegan , "S ouch ng Towards Autonomy: Re env s on ng Tr ba Jur sd ct on, Nat ve Amer can Autonomy, and V o ence Aga nst Women n Ind an Country," *The Journal of Law & Criminology* 111:1 (2021): 318 348.

[38] We prefer the term Nat ve Nat ons or Tr ba Nat ons to descr be F rst Nat ons n North Amer ca, as th s connotes the r sovere gn status. The US Federa Government a so refers to these nat ons as 'tr bes' or 'federa y recogn sed tr bes'.

[39] Pr or to th s, VAWA was reauthor sed n 2000 and 2005.

[40] Efforts such as these have ass sted some Nat ve Nat ons to create the r own Tr ba Commun ty Response P ans, such as the Sa sh and Kootena Tr bes of the F athead Ind an Reservat on.

[41] As descr bed by Sarah Deer, Nat ve Amer can eaders have "fought hard" to re nstate the r jur sd ct on over past century; and s nce the Obama Adm n strat on have had some successes. The most s gn f cant of these are around VAWA. See Sarah Deer, "Nat ve Peop e and V o ent Cr me: Gendered V o ence and Tr ba Jur sd ct on," *Du Bois Review* 15:1 (2018): 96.

[42] Power had been ost n *Oliphant v Squamish Indian Tribe*, 435 US 191 (1978), wh ch had he d that Tr ba courts d d not have cr m na jur sd ct on over non Nat ve Amer can c t zens. Pr or to th s, Nat ve Nat ons had "regu ar y" tr ed non Ind genous peop e (see Ka t yn Schaeffer, "Answer ng Const tut ona Cha enges to the Tr ba VAWA Prov s ons," *New York Journal of Legislation and Public Policy* 21:4 (2019): 993 1031.

authority.[43] In this way, the changes enabled by the VAWA re-authorisations closely relate to the INB evidence described above around the need for First Nations self-government and decision-making power.

Prior to 2013, Native American women who were the victims of non-Native American offenders on Indian Country had no legal recourse or protection,[44] despite the fact that the extremely high rates of partner and domestic violence were "overwhelmingly" committed by non-Native American offenders.[45] Due to significant jurisdictional complexities across Indian Country, including criminal jurisdiction divided across federal, Native Nation and state governments, effective and timely law enforcement is highly constrained. As put by Congress: "Criminals tend to see Indian reservations and Alaska Native villages as places they have free reign, where they can hide behind the current ineffectiveness of the judicial system."[46]

Amendments to VAWA in 2013 ensured Native Nations could enact a "Special Domestic Violence Criminal Jurisdiction" (SDVCJ) for certain offences committed by non-Native American people, including domestic violence, dating violence, and the violation of certain Tribal Protection Orders (largely equivalent to Australian AVOs/ADVOs). SDVCJ was applicable to perpetrators who have "ties to the Indian Tribe", meaning either residing on Country, employed on Country, or was a current or former spouse of the victim. Special measures around the rights of defendants were also included,[47] alongside a sentencing limit of 3 years.

A 2018 evaluation of the 2013 reauthorisation found 18 Native Nations exercising SDVCJ, including 143 arrests of 128 non-Native American offenders, with 74 convictions and 24 cases pending (90% of the offenders were men while 90% of the victims were women). Many of the people charged had prior problematic relationships with communities, alongside criminal records in other jurisdictions, suggesting that significantly, SDVCJ "can end impunity".[48]

Regardless, the shortcomings in these amendments quickly became apparent. From 2013, Native Nations emphasised the "significant gaps" in SDVCJ, mainly around the inability to prosecute co-occurring crimes, including sexual assault and stalking, violence against children, and drug and alcohol offences.[49] Issues enforcing Protection Orders also 'remain[ed] pervasive'.[50] Further, Native Nations have emphasised the need to prosecute violence against women and children from strangers. Despite the fact that Native American women are also

[43] Mantegan , "S ouch ng Towards Autonomy," 318 248; and Joseph B den, "A Proc amat on on M ss ng and Murdered Ind genous Persons Awareness Day, 2021", *Presidential Actions*, May 4, 2022, The Wh te House, accessed 1 November 2022, .
[44] S nce the 1990s, many Nat ve Nat ons have had the r own Tr ba Codes around DFV and sexua assau t to a ow for the prosecut on of nat on c t zens and other Nat ve Amer can perpetrators. However, Nat ons were unab e to prosecute non Nat ve Amer can peop e, who comm tted 88% of domest c v o ence offences (see Brenna R ey, "Protect ng A Women: Tr ba Protect on Orders and Requ red Enforcement under VAWA," *Roger Williams University Law Review* 24:1 (2019): 209 232.
[45] Nat ona Congress of Amer can Ind ans (NCAI), *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year Report (*NCAI: 2018), 3.
46 Senate Comm ttee on Ind an Affa rs, quoted n NCAI, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year Report*, 4.
[47] Name y, around the defendant's US const tut ona r ghts (see NCAI, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year Report*, 40).
[48] NCAI, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year Report*, 14.
[49] Em y Hanson, Em y & L sa Sacco, *The Violence Against Women Act (VAWA) Reauthorization: Issues for Congress*, (Congress ona Research Serv ce: 2021).
[50] See R ey, "Protect ng A Women," 209.

more likely to be victims of violence from strangers the 2013 amendments were geared largely towards intimate partner violence.[51]

The 2022 reauthorisation of VAWA attempted to respond to some of these issues. In further – and explicit – recognition of the link between the prevalence of missing and murdered Indigenous women and the restoration of Native Nations' criminal jurisdiction, the special jurisdiction granted to Native Nations has been expanded to include non-Indigenous strangers, or people without specific links to Indian Country. The list of crimes under this jurisdiction now also includes sexual assault, sex trafficking, stalking, violence against children and assaults of tribal justice personnel.

It is difficult yet to judge the effects of these measures on reducing the prevalence of missing and murdered Native American women and children. It has not been a 'quick fix' and likely will not be.[52] Exercising this special jurisdiction is voluntary, and as of November 2022, 31 Native Nations are implementing it across the United States.[53] This is a relatively small number compared to the 574 federally recognised Native Nations, and is considered to be connected to issues associated with the 'prohibitive' cost of implementation, and the need for Native Nations to amend or rewrite their tribal codes to meet the special jurisdiction requirements.[54] However, the Native Nations who have exercised the jurisdiction are diverse in land bases, population, and political systems, and have "risen to the occasion" to implement the complex changes.[55]

Outside of their advocacy leading to settler-government change, Native Nations have pursued other means to ensure their citizens' wellbeing and combat the issues leading to the prevalence of missing and murdered Indigenous women. Prior to the 2022 amendments, many nations were already addressing sexual violence perpetrated by non-Native American offenders through strategies such as **cross-deputisation** (where law enforcement agencies were able to exercise jurisdiction where they would not otherwise be able to); **imposing civil infractions; "peace-making" efforts that align with some Nation's ongoing ancestral practices; and diversion programs, where re-offending is discouraged**.[56] There are also multiple examples of **inter-Native Nation action**, such as the work of the Nation Indigenous Women's Resource Centre, which engages in significant public awareness campaigns, research activities and policy development to safeguard Native American women and children and 'reclai[m] the sovereignty of Tribal Nations'.[57] Established in 2015, the Sovereign Bodies Institute (SBI), a Native American owned and operated non-profit research centre, similarly holds the largest database on missing and murdered Indigenous women and children from 1900-present.[58] The database

[51] Mantegan , "S ouch ng Towards Autonomy."
[52] As expressed by Deer, "Nat ve Peop e and V o ence Cr me," 100.
[53] NCAI, "Current y Imp ement ng Tr bes", *SDVCJ Today*, accessed November 1, 2022, https://www.nca .org/tr ba vawa/get started/current y mp ement ng tr bes.
[54] NCAI's 2018 rev ew found that some Tr ba Codes and/or const tut ons had to be s gn f cant y amended (see NCAI *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year* Report, 5, 29. A so, not a Nat ve Nat ons w sh to engage n the SDVCJ system, due to quest ons around us ng or re y ng a sett er ega system (see Deer, "Nat ve Peop e and V o ent Cr me..").
[55] NCAI, *VAWA 2013's Special Domestic Violence Criminal Jurisdiction Five Year Report*, 37.
[56] See Jess ca A son, "Beyond VAWA: Protect ng Nat ve Women from Sexua V o ence W th n Ex st ng Tr ba Jur sd ct ona Structures," *University of Colorado Law Review* 90:1 (2019): 225 266.
[57] Nag e, "Wr tten Test mony of Mary Kathryn Nag e."
[58] Sovere gn Bod es Inst tute, *About SBI*, accessed November 1, 2022, https://www.sovere gn bod es.org/about.

was “largely built by hand”, and has enabled a much greater understanding of the prevalence of, and demographics involved, in cases of missing and murdered Indigenous women.[59]

[59] Deer, ”Wr tten Test mony of Professor Sarah Deer.”

6. 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

Along with suggestions from other submissions, we submit that any preventative effort must centre the right of First Nations and communities to **exercise sovereignty and self-determination**.

Evidence from the United States 2013 and 2022 reauthorisations of the *Violence Against Women Act* demonstrates the significance of First Nations having jurisdiction over violent crimes perpetrated against Indigenous women and children. Despite clear differences in the political, social and historical contexts between the United States and Australia, VAWA's creation of a special jurisdiction demonstrates that **Aboriginal and Torres Strait Islander jurisdiction over such violence is not only entirely conceivable and reasonable, but is backed by a sound evidentiary basis.** It also reaffirms what Aboriginal and Torres Strait Islander people have been telling Australian governments for many years.

Of course, a key difference between Australia and the United States is Australia's continued refusal to formally recognise First Nations' sovereignty. Despite this, First Nations have continued to assert their rights to self-government and self-determination, and have worked to exercise these rights in highly constrained and contested environments.

Australian governments **must support the Indigenous Nation Building (INB) efforts of First Nations**. INB offers a framework for Aboriginal and Torres Strait Islander collectives to pursue their own, self-determined goals, and to take control of the issues that matter to them. It is likely that for many First Nations, this will include some form of jurisdiction over the violent crimes committed against First Nations women and children.

This is not a 'quick fix'. We do not support the constant recycling of policy systems by Australian governments that inevitably fail, and create significant strain on the First Nations communities and organisations involved. Instead, Australian governments need to take a longer-term view, and work to **support preventative reforms that address the root causes of violence against First Nations women and children.**

Although INB processes are fundamentally First Nations controlled, there is a clear role for Australian governments. Firstly, Australian governments must provide **appropriate resourcing**. Long-term funding for First Nations' INB activities and capacity development and for INB research must be prioritised. The use of that funding must be self-determined by First Nations – not Australian governments.

Secondly, and most significantly, Australian governments must enable the conditions that support INB, such as the VAWA reauthorisations in the United States attempt to do. The Australian legal system will require amending so it is able to **recognise and support legal pluralism and the kinds of expanded jurisdiction** that would allow First Nations to address violence against women and children. This will necessarily involve forms of high-level, systemic negotiated reforms, such as negotiated treaties between First Nations and the Australian state. In the Australian Federation, where jurisdiction is already shared and re-negotiated, Indigenous jurisdiction and self-government is achievable.[60] These shifts must also involve a change in relations between Indigenous peoples and the Australian state. Indigenous peoples must no longer be conceptualised solely as citizen-stakeholders, but as other **sovereign polities with their *own* priorities for their *own* citizens — including women and children**.

[60] V v an et a ., "Ind genous Se f Government n the Austra an Federat on."

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

While it is outside of the scope of this submission to provide significant detail, we note the related need to **repatriate the remains of up to 3,000 Aboriginal and Torres Strait Islander Old People – including women and children who were stolen as an act of violence – that continue to be held in foreign institutions.** The consequences of these practices are profound, and intimately connected to the ongoing wellbeing and healing of First Nations.[61] Australian governments must commit to assisting First Nations to return their Old People to Country and community.

There is a distinct lack of **mental health and social and emotional wellbeing support** made available to grieving and justice-seeking families after the death of their loved one. Surviving families, often left without answers, are expected to go away and deal with the legacy of violence and often its continuation. Community controlled services are under-resourced for the scale of emotional, social and mental injury from this. They must be further resourced to actively care for mob who have been traumatised, not only from the act of violence, but from their painful experiences of the settler legal and policy systems that entered to address it.

In our work responding to the deaths of some First Nations people in the community and in custody, **one clear desire their families had in commemorating them was change**. We respectfully suggest that systemic change and governments making good on the recommendations of inquiries like these and others is one of the most crucial memorialisations within a settler government's control.

[61] For an overv ew see Cress da Fforde et a . (eds), *The Routledge Companion to Indigenous Repatriation: Return Reconcile Renew* (New York: Rout edge).

8. Other related matters

None of our submissions above should be read to expand the powers of settler police or carceral systems. Many First Nations communities have been resisting state power and subsequent systemic forms of violence since the presence of the British.

It is because of this resistance that self-determined First Nations programs against violence have been established and expanded. Any improvements to First Nations women and children's safety and wellbeing are only because of our own communities' work.

Police and carceral systems, including their internal reforms, have had little bearing on improving First Nations women's lives or the lives of First Nations children.

To suggest otherwise overlooks the labour of First Nations women as change-makers and the impacts of this work on their physical, social, emotional and spiritual wellbeing. As Amy McQuire reiterates, '[t]he voices of Aboriginal women are hoarse from screaming into the abyss of Australian apathy.'[62]

In returning power to First Nations communities — and indeed in First Nations women's continual reclaiming of their own bodies, voices and futures — we hope that inquiries like this one will see that the answer sits with communities themselves.

[62] Amy McQu re, "If you th nk Abor g na women are s ent about domest c v o ence, you're not sten ng," *The Guardian*, October 5, 2016, accessed December 7, 2022, https://www.theguard an.com/comment sfree/2016/oct/05/ f you th nk abor g na women are s ent about domest c v o ence youre not sten ng.

Recommendations

Based on the above and enclosed submissions, we make the following recommendations.

- That the Commonwealth provide resources to community-controlled research, databases and data gathering on violence against First Nations women and children.

- That the Commonwealth provide greater funding and resourcing to community-controlled health and legal services, so they can support First Nations women and children experiencing or responding to violence.

- We refer the Committee to the recommendations at page xiii of the report of the NSW Legislative Council Standing Committee on Law and Justice, *Inquiry into the Family Response to the Murders in Bowraville*, and in particular, recommendations 1 and 2.

  In our submission those recommendations should be endorsed by this Committee in relation to all police forces. The Commonwealth should make recommendations consistent with those recommendations in relation to federal police services (including those police operating in the Australian Territories):
  - require any state-based police forces who regularly work with federal police in joint operations or investigations to comply with such recommendations.

- We refer the Committee to the recommendations at page xiii of the report of the NSW Legislative Council Standing Committee on Law and Justice, *Inquiry into the Family Response to the Murders in Bowraville*, and in particular, recommendations 4 and 5. In our submission those recommendations should be endorsed by this Committee in relation to all government employed lawyers in Australia. The Commonwealth should:
  - make recommendations consistent with those recommendations in relation to Commonwealth lawyers who prosecute state offences in state courts.

Case Study – the Bowraville Murders

1. Between September 1990 and February 1991, three Aboriginal children – Colleen Walker-Craig (**Colleen**), Evelyn Greenup (**Evelyn**) and Clinton Speedy-Duroux (**Clinton**) (together the **Bowraville Children**) were murdered by a serial killer in the New South Wales (**NSW**) town of Bowraville (the **Bowraville Murders**). For over thirty years, their families have been fighting for justice for their three murdered children.

2. Jumbunna Research is an Indigenous led team of academics and lawyers. Our researchers have worked with the victims' families and the Bowraville community for more than ten years after being invited by them to do so. We have seen firsthand the pain and trauma felt by the families and communities in relation to the way in which these murders have been investigated. Through our training as lawyers, we have also developed an appreciation of the way in which systemic influences, including racism in police, political and legal structures have caused and continue to deepen that pain and trauma.

3. The evidence provided to this Inquiry confirms the experiences of the Bowraville families at the time of their children's disappearance: that racist stereotypes held by investigating police officers in the initial investigation (**Original Investigation**) (including Aboriginal people as inherently criminal, as deficient parents, as, in short, inferior to non-Indigenous people) poisoned the efficacy of the Original Investigation in 1990 and 1991. As the evidence and submissions before this Inquiry make clear, the racism and associated deficiencies of the Original Investigation have plagued every subsequent attempt by police and the families to achieve justice in this case.

4. The evidence and submissions before this Inquiry also demonstrate the resistance of these prejudicial stereotypes of Aboriginality to reform. The report (the **Bowraville Report**) of the NSW Legislative Council Standing Committee on Law and Justice, *Inquiry into the Family Response to the Murders in Bowraville* (the **Bowraville Inquiry**) represented an extraordinary moment in contemporary Australian history, laying bare the concrete way in which racism and its 'quiet assumption(s) that scarcely recognises itself',[63] cause concrete harm and injustice for Aboriginal people. Often discrimination reveals itself in the systemic discrepancy in treatment by institutions of Aboriginal and non-Aboriginal people, however it can be difficult to identify its effect in an individual case.[64] The Bowraville Report however demonstrates exactly how implicit bias within a state institution can destroy prospects of justice and continue to traumatise generations. In

[63] *Attachment 1*, 48.
[64] See for examp e the F nd ngs n the *Inquest into the death of Naomi Williams* (Ju y 29, 2019) 44 [224] to 47 [234].

this case, the direct consequence of the racism at the heart of the Original Investigation has been that the sole suspect (the **suspect**),[65] whom police believe committed the murders, has never been criminally tried for all three crimes before a jury presented with the evidence that was available at the time of the murders. A senior criminal barrister has stated that there is a reasonable prospect that a properly instructed jury would convict the suspect on that body of evidence.[66] This has led to a community perception that a serial-killer of three children has walked free.

Supporting Material

5. The Bowraville Murders have been the subject of multiple judicial proceedings: coronial inquiries into the deaths of Colleen and Evelyn;[67] two criminal trials (for the murder of Clinton in 1993 and for the murder of Evelyn in 2005-2006); an application for the retrial of the suspect in 2017-2018[68] and a failed application for special leave to appeal to the High Court in 2019.[69] The matters have also been either the focus of, or central to, two separate NSW Parliamentary Inquiries: the Bowraville Inquiry and the NSW Legislative *Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019 (NSW)* conducted in 2019 (the **Double Jeopardy Inquiry**). They have also been the subject of significant scrutiny and review, both through significant media (including through documentary films,[70] podcasts,[71] multiple television productions, radio and print interviews). At the request of the families, and for the Committee's assistance, we enclose:

Documents related to the Bowraville Inquiry

5.1. A paginated **Attachment 1**, being compiled submissions and evidence from Jumbunna to the Bowraville Inquiry which contains:

5.1.1. A submission from Jumbunna Research to the Bowraville Inquiry dated 9 April 2014 (including attachments) and contained at pages 1 to 145;

5.1.2. Evidence provided by Jumbunna Research to the Bowraville Inquiry on 12 May 2014 contained at pages 146 to 156;

5.1.3. Supplementary submissions and Questions on Notice from Jumbunna Research to the Bowraville Inquiry dated 6 June 2014 and contained at pages 157 to 161.

[65] Leg s at ons proh b ts the suspect from be ng named: *Crimes (Appeal and Review) Act 2001* (NSW), s111.
[66] *Attachment 5*, 12 [2.32].
[67] *Attachment 5*, 8 1010.
[68] *Attorney General for New South Wales v XX* [2018] NSWCCA 198 [225].
[69] Transcr pt of Proceed ngs, *Attorney General for New South Wales v XX* [2019] HCATrans 52 (March 22, 2019).
[70] *Innocence Betrayed* (Lar ssa Behrendt, 2013); *The Bowraville Murders* (Jump ng Dog Product ons, M nt P ctures, 2021).
[71] "Bowrav e," *The Australian*, 2016, accessed December 1, 2022, https://www.theaustra an.com.au/nat on/bowrav e/podcast/b6aba1a73e48f6293db7708764d7a162.

5.2. Transcript of evidence taken at Bowraville on Friday 2 May 2014 (**Attachment 3**).[72]

5.3. The following submissions made by family and community members in 2014 to the Bowraville Inquiry, which the Authors have requested we submit on their behalf to this Inquiry (many of which are submitted confidentially):

5.3.2. Submission from Troy Duroux to the Bowraville Inquiry dated 22 February 2014 (pages 4 to 5) (**Partially Confidential**);

5.3.3. Submission from Rebecca Stadhams to the Bowraville Inquiry dated 20 February 2014 (page 6) (**Confidential**);

5.3.4. Submission from Muriel Craig to the Bowraville Inquiry dated 20 February 2014 (pages 7 to 8) (**Confidential**);

5.4. The Bowraville Report (**Attachment 5**).

5.5. A copy of the Government Response to the Recommendations of the Inquiry (**Attachment 6**).

The following documents relevant to the Double Jeopardy Inquiry

5.6. A submission from Jumbunna Research to the Double Jeopardy Inquiry dated 22 July 2019 (**Attachment 7**).

5.7. A supplementary submission from Jumbunna Research to the Double Jeopardy Inquiry dated 5 August 2019 (**Attachment 8**).

5.8. Answers to Questions on Notice dated 5 August 2019 (**Attachment 9**).

5.9. Transcript of evidence taken on Wednesday 24 July 2019 (**Attachment 10**).

[72] Please note there is no Attachment 2 to our Submission.

In addition, the Families have asked that we forward copies of two documentaries; *Innocence Betrayed* and *The Bowraville Murders* which we will do under cover of a separate letter.

Updated Annotated Chronology

6. We refer the Committee to Attachment 1 at page 8 to 28 which contains an Annotated Chronology current at the time of the Bowraville Inquiry. We outline below events since that time.

7. **6 November 2014: The Bowraville Inquiry reports**

The Bowraville Report is tabled in the Legislative Council and contains a number of recommendations in relation to police investigations, and the role of the investigations in the denial of justice to the families. The implementation of those recommendations is addressed below. Multiple members of the Parliament spoke on the occasion of the Report's tabling:

7.1. Pledging to do 'all in our power to help',[73] and promising that the Bowraville Report 'will not gather dust' and will 'become a sentinel of change';[74]

7.2. Acknowledging that a 'killer whose crimes constitute evil at its very darkest and most depraved is still free' and declaring that 'justice demands that the killer of these three children, whose lives were brutally cut short before they had even really begun, should be brought to account';[75]

7.3. Recognition that the previous amendments to the law of double jeopardy occurred 'in this Parliament with specific reference to the Bowraville cases, yet the desired outcome has not been reached. The term "adduced" needs to be more clearly defined';[76]

7.4. Arguing that if 'there is a roadblock to having these three murders tried together because of some abstruse definition of the meaning of "adduced" in the double jeopardy laws, let us get rid of it. Let us tidy up the legislation to allow these three murders to be tried at once and to allow evidence that was not admissible in the first trial to be admissible in a later trial'.[77]

[73] New South Wales, *Parliamentary Debates*, Legislative Council (November 6, 2014), 2218 (Catherine Cusack).
[74] New South Wales, *Parliamentary Debates*, Legislative Council (November 6, 2014), 2223 (John Kaye).
[75] New South Wales, *Parliamentary Debates*, Legislative Council (November 6, 2014), 2208 (David Clarke).
[76] New South Wales, *Parliamentary Debates*, Legislative Council (November 6, 2014), 2215 (Sarah Mitchell).
[77] New South Wales, *Parliamentary Debates*, Legislative Council (November 6, 2014), 2211 (David Shoebridge).

8. **4 June 2015: David Shoebridge introduces the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015***

David Shoebridge, a long-time supporter of the Bowraville families, introduces the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2015* (NSW) (the **2015 Bill**) into the Legislative Council. The 2015 Bill seeks to clarify the meaning of the definition of 'fresh' evidence to allow for an application to the Court of Criminal Appeal (**CCA**) to be brought seeking to set aside the acquittal of the suspect on the basis that tendency and coincidence evidence inadmissible at the time of Clinton and Evelyn's trials would be available for the purposes of the application.

Notwithstanding the comments of members of the Legislative Council during the tabling of the Bowraville Report, the 2015 Bill is defeated a year later on 5 May 2016, with 8 ayes and 25 noes.[78]

9. **May 2016: (then) Attorney-General Gabrielle Upton announces application to the Court of Criminal Appeal for orders for the retrial of the suspect**

In May 2016, (then) Attorney-General Gabrielle Upton indicates to the Bowraville families, and then publicly, that she intends to make the long-sought for application to the CCA under the *Crimes (Appeal and Review) Act 2001* (NSW) (**CARA**) seeking orders to set aside the acquittals of the suspect and commit him for retrial (**the Application**). The families' experiences during the hearing, and their judgment of the consequent proceedings, are addressed below.

10. **During 2016 – 2017: Jumbunna work with Detective Inspector Gary Jubelin to produce a training film for the NSW Police Force to refresh its education resources for working with Indigenous communities**

That film was used for some time. It is not known whether it is still used as a training tool.

11. **November 2017 – December 2017: The Court of Criminal Appeal hears the Application**

The Application for the retrial of the suspect is heard by the CCA.

12. **13 September 2018: The Court of Criminal Appeal denies the Application,[79] choosing to hand down its judgment on the anniversary of Colleen's disappearance.**

[78] New South Wales, *Parliamentary Debates*, Legislative Council (May 6, 2016), 27.
[79] *Attorney General for New South Wales v XX* [2018] NSWCCA 198.

The CCA hands down its judgment on the twenty-eight-year anniversary of the disappearance of Colleen. This decision was a 'kick in the guts' to the families.[80] After fighting for twenty-eight years to achieve justice for these three children, they were once again made to feel like they were 'nothing' in the eyes of the legal system,[81] and that the decision was yet another devastating setback in this case.[82]

13. **20th September 2018: NSW Attorney-General Mark Speakman announces the State will seek special leave to appeal to the Australian High Court**

14. **22 May 2019: The High Court refuses special leave to appeal, effectively terminating any chance under the current law for a retrial of the suspect**

Jumbunna staff attended the hearing of the special leave application in the High Court registry in Sydney. During that hearing, again there was a noticeable lack of sensitivity amongst the lawyers for the experiences of the families. During the submissions from the barrister for the Attorney-General a fire alarm sounded throughout the courtroom. Counsel for the Attorney-General chose to continue. Later, family members reporting feeling the decision to do so felt disrespectful. The impression given by the proceedings was one of a rushed hearing with little consideration for the family members present (many of whom were left to stand around the walls of the courtroom due to inadequate seating).

15. **26 May 2019: NSW Detective Inspector Gary Jubelin resigns from the NSW Police Force**

The evidence provided to this Committee by the family members includes their view that when (then) Det. Insp. Jubelin (**Mr Jubelin**) resigned from the NSW Police Force, he was not given an opportunity to conduct a proper handover of the case, and in multiple submissions to this Inquiry, the families have expressed the sentiment that substantial knowledge of the investigation was lost as a result, and that the relationship with the NSW Police Force since Mr Jubelin resigned has significantly deteriorated.

16. **30 May 2019: David Shoebridge introduces the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (NSW) which is referred to the Legislative Council for inquiry and report**

The committee received 29 submissions and 2 supplementary submissions, and held one public hearing at Parliament House in Sydney. It also held a private meeting with the families of Colleen, Evelyn and Clinton in Bowraville. Jumbunna also provided written submissions and oral evidence to this inquiry.[83]

[80] *The Bowraville Murders*, 1:08:57.
[81] *The Bowraville Murders*, 1:16:05.
[82] *The Bowraville Murders*, 1:16:45.
[83] *Attachments 7 10*.

17. **30 August 2019: Report on the Inquiry into the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (NSW) is handed down**

The Committee recommends against the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (NSW) but recommends that the NSW Government consider the model of law reform proposed by Jumbunna and the families.

18. **February 5, 2020: The NSW Police Force issues a public call for information about a series of sexual assaults in the Wollongong area between 1991 and 1997**

Detective Chief Inspector Brad Ainsworth said in a statement 'we believe there may be people living in the Bowraville area who may have information that could prove vital to this investigation'.[84] These allegations were released to the public without prior consultation with the families of the victims of the Bowraville Murders. Specifically, the families were not told whether the allegations were linked to the Bowraville Murders. In a statement, Michelle Jarrett and Leonie Duroux said 'our community and our families are already traumatised by the deaths of our children and the previous police conduct...we thought that police had finally learned to do better'.[85]

19. **26 February 2020: The NSW Government table their response to the Report on the Inquiry into the *Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (NSW) stating it has considered, and does not propose to pursue, the Jumbunna proposal**

In the same press release in which Attorney-General Mark Speakman SC announces that the Government will not adopt the Jumbunna Model, the Government does not propose any other model for amendment of the legislative provision, or any avenue forward for Evelyn and Clinton's matters.

Attorney-General Speakman also announces that the NSW Police Force have increased the reward for information on the Bowraville Murders from $250,000 to $1 million.[86]

After speaking with representatives for Police and the Government, families and community members were left with the impression that the discovery of 'fresh and compelling' evidence in the cases of Clinton and/or Evelyn could still lead to a retrial of the suspect for their murders under the current law.

[84] Lorena A am, "Bowrav e fam es d stressed after po ce re ease h stor c sexua assau t a egat ons," *The Guardian*, February 6, 2020, accessed October 1, 2022, https://www.theguard an.com/austra a news/2020/feb/06/bowrav e fam es d stressed after po ce re ease h stor c sexua assau t a egat ons.
[85] A am, "Bowrav e fam es d stressed."
[86] Mark Speakman, "The Bowrav e Murders" (Statement, February 26, 2020), 2.

Relatedly, when speaking about the reward, NSW Police have stated that the investigation is 'ongoing and we'll never give up on [it]'[87], and that the 'increased reward forms part of our commitment to providing justice- firstly to the victims and their families- but also to the entire Bowraville community'.[88] NSW Police have urged anyone with information to come forward, stating that 'any single piece of information in relation to this case could help homicide detectives solve it'.[89]

It is not at all clear what is meant by the Government and Police when they talk in this way about the reward. As both NSW Police and the NSW Government are aware, section 105(1) of CARA prevents the suspect being retried for the murders of Clinton and Evelyn. There is no capacity to bring a second application seeking to retry the accused. Even if the suspect admitted publicly to killing Clinton and Evelyn, they could not be re-prosecuted. Whilst it is not clear what is meant by Police 'solving' the crimes, unless they are of the view that the suspect is not responsible (something they have never spoken to the families about to our knowledge), if 'solve' means successfully prosecute, under the current law they will never have to pay out a reward (other than in relation to Colleen's matter potentially).

20. **February, 2020: The NSW Unsolved Homicide Unit launched a review of the Bowraville Murders**

The NSW Police Force stated:

> 'The children's families have since been advised that the investigation will undergo a formal review by the Unsolved Homicide Unit, but fresh information will be required to complement the exhaustive inquiries previously conducted by Strike Force Ancud'.[90]

Again, no explanation was provided to the families as to why 'fresh evidence' would improve in any way the prospects of the suspect being retried in circumstances where the statute prohibits another application being brought against the suspect in relation to Colleen and Evelyn's matters.[91]

21. **September 2, 2021: *The Bowraville Murders* documentary released**

[87] Jam e McK nne and C aud a Jambor, "$1 M on Reward Offered for Informat on about Three Abor g na Ch dren Murdered n Bowrav e," *ABC*, February 26, 2020, accessed September, 10, 2022, https://www.abc.net.au/news/2020 02 26/$1m on reward n hunt for bowrav e k er/12003268.
[88] NSW Po ce Force, "Reward Increased to $1 M on for Informat on over Bowrav e Murder of C nton Speedy Duroux," *NSW Police Force*, accessed November 1, 2022, https://www.po ce.nsw.gov.au/can you he p us/rewards/1000000 reward/reward ncreased to $1 m on for nformat on over bowrav e murder of c nton speedy duroux#:~:text=Reward%20 ncreased%20to%20%241%20m on.Duroux%20%2D%20NSW%20Po ce%20Pub c%20S te .
[89] McK nne and Jambor, "$1 M on Reward Offered."
[90] NSW Po ce Force, "Reward Increased to $1 M on."
[91] CARA s 105(1).

The film, directed by Allan Clarke, details the Bowraville investigation and criminal trials, and the families' fight for justice.[92] In the documentary family members described their frustration and disappointment with the court processes.

At the request of the families, we **request** that the Committee accept as part of this submission the contents of *The Bowraville Murders* (2020) which contains evidence from family members cited elsewhere in this submission.

22. **February 11, 2022: The NSW Police Force increase the reward for information on the Bowraville murders to $3 million**

Following consultation with the victims' families, the NSW Police Force created separate rewards of $1 million for information on each murder, rather than a single sum covering all three murders. Det. Supt. Doherty stated that the NSW Police Force were 'desperate for additional information' to resolve these murders, and that they 'know there are people out there who have not approached police and have information about who is responsible'. The NSW Police Force hoped that this increased financial incentive would demonstrate that the murders have not been forgotten by the local community, or the police.[93]

Again, the NSW Police Force did not explain why new evidence could lead to a new trial or 'solving' the crimes. One inferences that is available is that the rewards are a distraction designed to create the impression of action, where what was actually required was amendment to the law.

Submissions

23. The families have told their stories many times over the last three decades. Through documentary films,[94] podcasts,[95] in multiple television, radio and print interviews and in two separate NSW Parliamentary Inquiries.[96] Below we address common themes that have been expressed by the families, and which remain current today.

The Original Investigation

'If they had done their job and investigated properly at the time, we would not have to keep fighting for justice. We see other kids go missing and their

[92] J m Poe, "Not Forgotten: The Ongo ng F ght to So ve the Bowrav e Murders," *SBS*, August 26, 2022, accessed August 26, 2022, https://www.sbs.com.au/gu de/art c e/2021/09/23/not forgotten ongo ng f ght so ve bowrav e murders.
[93] NSW Po ce, "Reward Increased to $1 M on."
[94] *Innocence Betrayed*; *The Bowraville Murders*.
[95] "Bowrav e."
[96] The Bowrav e Inqu ry; Leg s at ve Counc Stand ng Comm ttee on Law and Just ce, Par ament of New South Wa es, *Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (Report, August 30, 2019).

disappearances are taken seriously. The fact the police thought our kids had gone walkabout shows the prejudice that they had about our case'.[97]

24. As has been repeatedly demonstrated by the families' public statements, submissions and evidence (including their contemporaneous submissions to this Inquiry), the flaws in the Original Investigation continue to frustrate their efforts for justice. This has resulted in continuing trauma to the families, a trauma compounded by the actions and words of some police, politicians and judges who have consistently minimised and dismissed the families' pain and, refused to recognise the families' expertise in what justice **in fact** is for Aboriginal people in Australia.

25. The inadequacies of the Original Investigation are considered at length in our Bowraville Submission and the Bowraville Report, and we do not intend to revisit the detail of them. However, we wish to highlight one central point; had police treated the disappearance of Colleen on 13 September 1990 seriously, police would have, at a minimum, spoken to people known to be with her on the night of her disappearance. This would have included the suspect, who was not actually interviewed by police until after February 1991 (after all of the murders had been committed). A compelling inference is that, had police spoken to the suspect in September 1990, he would not have felt emboldened to murder Evelyn or Clinton. The failure of police to listen to the community led, in our submission, to the deaths of Evelyn and Clinton. We are not aware of any occasion on which police have acknowledged this reality. However, on 11 August 2016, at the Bowraville Mission, (then) Police Commissioner Scipione made the following apology:

> 'The NSW Police force could have done more, we could have done more for you and for your families. When these crimes first occurred, we should have done more. I know that this has added to your pain. It certainly has been part of why you have been grieving as a community. Can I say to you that I am sorry'.[98]
>
> …
>
> 'Can I say to you that I'm sorry. I'm sorry that you've had to endure that. No one should have to endure that…It's important that you understand that I'm looking you right in the eye and saying I'm sorry'.[99]

26. The failure to treat the disappearances as potential homicides meant that the police investigator with carriage of the matter: 'didn't have enough resources or enough experience' to effectively investigate and that he believed he was given the case 'because

[97] Attachment 5, 20, [3.23].
[98] "NSW po ce comm ss oner Andrew Sc p one has spent the day w th the fam es of the Bowrav e v ct ms nthe state's north," *SBS News*, August 11, 2016, 00.00.19 00.00.40, accessed August 10, 2022 https://www.sbs.com.au/news/andrew sc p one p edges to f nd just ce for fam es of murdered bowrav e ch dren.
[99] "NSW po ce comm ss oner,"; Max Margan, "'I'm ook ng you n the eye and say ng I'm sorry': Top cop apo og ses to the fam es of Bowrav e murder v ct ms whose k ngs rema n a mystery 26 years on," *Daily Mail* August 12, 2016, accessed August 1, 2022, https://www.da yma .co.uk/news/art c e 3734926/Bowrav e murder v ct ms fam es rece ve apo ogy Po ce Comm ss oner Andrew Sc p one.htm .

[he] was [in Bowraville]' and 'it didn't mean any cost per se for [him] to do the inquiries'.[100] That officer rated his chances of success in solving the investigation as 'nil'.[101]

27. Finally, in our submission, on the basis of the evidence before it from the NSW Police Force and the families, the Committee would have no difficulty in concluding that the Original Investigation was flawed as a result of racism. There is evidence before this Committee of explicit examples of racism in the form of stereotyping of the families and victims due to their aboriginality.

28. Particularly devastating for the families and the broader Aboriginal community of Bowraville was that the only action the police did take prior to Clinton's disappearance[102] was based on a racist suspicion of family and Aboriginal community members as suspects without any evidential foundations.

29. As June Speedy, Clinton's mother said to the Bowraville Inquiry;

> 'The police didn't do their job investigating. Clinton's case would have been strengthened if more effort had been put into finding evidence and we believe it wouldn't have taken this long if these were three white children. We see when young white children go missing and there is deep community concern and official attention and we notice that the same effort wasn't made for our children. If the murderer had have been black and the children white, he would be behind bars now'.[103]

30. This failure of the NSW Police Force to properly resource and conduct a homicide investigation into the murders has left the families in the traumatic position of engaging in over thirty years of advocacy seeking justice for their murdered children. Families and the community of Bowraville have had to consistently fight for action from state actors, including suffering through substantial delays and insults from senior government officials. Whilst the failings of the Original Investigation were sought to be corrected by a subsequent NSW Police Homicide investigation led by Mr Jubelin, the consequences of those failures remain live until today.

Impact on the Families

31. In the words of the Hon. David Shoebridge: 'none of the families has got over the murder of their children. No family ever would, if they lost a child, a sister, a brother, an auntie, a

[100] ABC, "Bowrav e: Unf n shed Bus ness," *Four Corners*, Apr 4, 2011 (Detect ve A an W ams); and *Attachment 5*, 22 [3.31] onwards.
[101] *Attachment 1*, 36.
[102] As noted n the above Annotated Chrono ogy, C nton was the th rd of the ch dren to d sappear.
[103] *Attachment 5*, 20 [3.23].

nephew, a cousin, an uncle'.[104]

32. For the past thirty-two years family members have experienced feelings of pain, anger, sadness, frustration, disappointment, betrayal and injustice.[105] These feelings have been exacerbated by the persistent failings of police, government and judicial institutions[106] (as outlined in our Bowraville Submission and Double Jeopardy Submission). Such failings have served to repeatedly 're-traumatise' the families and community.[107] A common theme expressed in the families' submissions to the 2014 Bowraville Inquiry concerns a feeling of 'out of sight and out of mind'.[108] Numerous invitations were made to decision-makers to come to Bowraville and were repeatedly declined.[109] There was a palpable disinterest regarding the Bowraville Murders from the police, government and the media, which left the families and community feeling forgotten and 'worthless', particularly in comparison to the response and attention typically garnered when a white child goes missing.[110] At each and every point the families and community would get their hopes up, with the trials, inquests, applications to Attorney-Generals and the CCA case, only to have those hopes repeatedly dashed.[111] As reflected in Troy Duroux's submission to the 2014 Bowraville Inquiry: 'our families are strong but how much can we take?'.[112]

33. Such emotions continue to remain raw today,[113] even after all of this time. It only takes one child to go missing or one poor interaction with police for it all to resurface again.[114] Whilst the suspect continues to remain free, the community are now extremely fearful and over-protective of their children.[115] When a child goes missing there is now widespread panic amongst the community.[116] Similarly, as relationships with the police have begun to disintegrate again, old feelings of anger and frustration are resurfacing. Michelle Jarrett's[117] submission to this Inquiry recounts a very recent interaction with police in which she felt disregarded and disrespected by the police officer, exactly as she had felt when she had first reported Evelyn as missing.[118] All of the memories, the pain, and the feelings of anger and frustration were again brought to the fore, and this is an unfortunately common experience of the families and community, who continue to be emotionally worn down.[119]

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[104] New South Wa es, *Parliamentary Debates*, Leg s at ve Counc (May 30, 2019), 66 (Dav d Shoebr dge).
[105] *Attachment 5*, 93.
[106] Dan e Ryan, "Subm ss on No 15 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Family Response to the Murders in Bowraville* (February 28, 2014), 1.
[107] *Attachment 5*, 112 [7.75].
[108] *Attachment 5*, 112 [7.77].
[109] Leon e Duroux, "Subm ss on No 7 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, Inqu ry nto the Fam y Response to the Murders n Bowrav e (February 24, 2014) 9.
[110] *Attachment 3* 9 (He en Duroux).*3* (He en Duroux).
[111] New South Wa es, *Parliamentary Debates*, Leg s at ve Counc , November 6, 2014, 2208 (Dav d C arke).
[112] *Attachment 4*, 5 (Troy Duroux).).
[113] *Attachment 3*, Karen Ke y.
[114] Barry Toohey, "Subm ss on No 27 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Crimes (Appeal and Review) Amendment (Double Jeopardy) Bill 2019* (Ju y 19, 2019), 1.
[115] Barry Toohey, "Subm ss on No 3 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Family Response to the Murders in Bowraville* (February 20, 2014), 3 4.
[116] Toohey, "Subm ss on No 27," 1.
[117] Eve yn's Aunt.
[118] M che e Jarrett, "Subm ss on to Senate Lega and Const tut ona Affa rs References Comm ttee," Commonwea th Par ament, *Inquiry into Missing and Murdered First Nations Women and Children* dated 2 December 2022, 4.
[119] Toohey, "Subm ss on No 27," 1.

34. This trauma has been felt intergenerationally, and is continuing to be passed on to the next generation.[120] Tracey Westerman of Indigenous Psychological Services has made a unique diagnosis of 'chronic collective trauma' which encapsulates the community's vulnerability to future trauma as a consequence of the Bowraville Murders and their subsequent management by police and government.[121] Without justice, the pain, grief, anger and frustration felt by the victims' families is being carried on to the next generation, many of whom never even met the victims and yet feel a duty to carry on the fight for justice.[122] Many participants in the 2014 Bowraville Inquiry have expressed the fear that if the suspect is not finally brought to justice before a court of law, the 'legacy of sadness' will continue to persist indefinitely, becoming entrenched.[123]

35. Such trauma has been compounded by the lack of available services and support, particularly for the families' and the community's mental health. The 2014 Inquiry heard evidence that none of the victims' families have managed to escape psychological harm, including major depression, anxiety, PTSD, agoraphobia, alcohol and drug abuse, poor academic performance, anger issues, self-blame, guilt, petty crime, and increased distrust of authority figures.[124] The families were not provided with any support by mental health services, apart from a weekend workshop in 1998, until some 15 years after Colleen's disappearance.[125] A central theme in the submissions of the families to the 2014 Bowraville Inquiry concerned their feelings of powerlessness and abandonment, and a sense of shame and failure at having to try and deal with the complexities of their trauma without support.[126] As noted in the 2014 Bowraville Report, when people continually reach out for help and are routinely ignored, eventually they stop asking and instead internalise their trauma, exacerbating the harm caused.[127]

[120] *Attachment 4*, 5 (Troy Duroux), 10 (Mur e Cra g Jr); Marbuck Duroux, "Subm ss on No 5 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Family Response to the Murders in Bowraville* (February 24, 2014) 1.
[121] *Attachment 5*, 102 [7.35].
[122] Marbuck Duroux, "Subm ss on No 5 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Family Response to the Murders in Bowraville* (February 24, 2014) 1.
[123] *Attachment 5*, 116 [7.93].
[124] Toohey, "Subm ss on No 3," 5.
[125] *Attachment 5*, 108 [7.58].
[126] *Attachment 5*, 102 [7.34], 103 [7.40].
[127] "Ev dence to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, Sydney, (May 12, 2014), 16 (Tracey Westerman).

The Role of Race

'The actual murders were not a black-white issue. The actual murder was just an evil person with a cold heart and no morals. But the way we were treated and the way it was investigated was a black/white issue'.[128]

36. Racial prejudice played a key role in the failures of the Original Investigation. At the outset, family members' attempts to report Colleen, Evelyn and Clinton missing were not taken seriously by the local police.[129] Police officers responded to the families' distressed calls for action with racist remarks suggesting that the children, including four-year-old Evelyn, had 'gone walkabout', or that the families themselves were somehow responsible for their children's disappearances.[130] In the case of Colleen, the Bowraville police took three months to take an official statement from her mother.[131] Evelyn's mother was treated as a suspect from the beginning, with police suggesting that she was an unfit mother and that she had sold her daughter.[132] Despite being the third child to go missing in a five-month period, Clinton's disappearance received limited attention from the Bowraville police, and 'the search was principally shouldered by his family'.[133] In her submission to the 2014 Bowraville Inquiry, Michelle Jarrett argued that 'if the police had have listened to Colleen's family, Evelyn and Clinton might still be with us….If they had done this properly in the first place, we wouldn't be sitting here all these years later'.[134]

37. Following Clinton's disappearance, the Child Mistreatment Unit was assigned to the case, and the families were subjected to further blame and racially-driven stereotypes regarding their capacity to care for their own children.[135] The families have long held the belief that if Colleen, Evelyn and Clinton had been white, the investigation would have handled completely differently. Mr Jubelin attested to this in his submissions to the 2014 Bowraville Inquiry;

> 'The families told me that right from the start in 1997 that people did not care because they are Aboriginal. I naively thought they were wrong, but I 100 per cent support what they say… We are talking about the murder of three children living in the same street over a five-month period. It should have been solved and it could have been solved if the appropriate attention was given'.[136]

38. We endorse the sentiment of Marbuck Duroux who has previously said, 'the wheels of justice roll slowly but only for us black fellas'.[137]

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[128] *Attachment 5*, 113 [7.82].
[129] *Attachment 5*, 15 19.
[130] *Attachment 5*, 15 18, 20.
[131] *Attachment 5*, 16 [3.5].
[132] *Attachment 5*, 17 18 [3.12].
[133] *Attachment 5*, 18 [3.17].
[134] *Attachment 5*, 21 [3.27].
[135] *Attachment 5*, 21 [3.27].
[136] "Ev dence to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, Macksv e (May 1, 2014), 6 (Gary Jube n).
[137] *The Bowraville Murders*, 01:05:45.

39. Mr Jubelin said there can be a disparity in how missing children cases are treated:

> 'I have to say in the past, with Bowraville, that it was clear to me that because the victims were Aboriginal, and also socioeconomic factors come into play, that they were in the lower socioeconomic group, that they didn't get the resources supplied initially. The ramifications of which play out to this day'. [138]

40. Mr Jubelin was brought on to investigate the murders in 1996 and went into the case believing racism wasn't a factor in why the murders hadn't been solved. However, he quickly came to the realisation that the fact the victims were Indigenous played a significant part in how the case had been handled initially;

> 'There is also this unconscious bias that comes out. It might not necessarily be race, it might be someone that lives in a low socioeconomic area and their kid disappears and people think that's just what happens in that area'.[139]

41. The families of the victims in Bowraville had to campaign tirelessly to get their stories heard and Mr Jubelin believes this had a profound impact on them;

> 'They weren't just dealing with the fact they had lost their children but they were also dealing with the fact that no one cared and I believe that became very traumatic for them'.[140]

42. He says properly resourcing cases right from the start is key to solving missing children and murder cases and media attention has a big impact on this;

> 'What I have seen in my policing career is if there's media response to it, it tends to get greater resourcing. Where there is media attention, they're virtually obliged to properly resource it'.[141]

Ineffectual Law Reform and the *Crimes (Appeal and Review) Act 2001* (NSW)

'We don't understand why the double jeopardy hasn't worked. It was changed with us in mind…It seems like we jumped through all the hoops but we are still jumping, just to get justice for [our] kids'.[142]

[138] R ah Matthews, "Gary Jube n on rac sm n po ce cases and how C eo Sm th shou d be a benchmark," *News com au*, November 6, 2021, accessed 17 October, 2022, https://www.news.com.au/ festy e/rea fe/news fe/gary ube n on rac sm n po ce cases and how c eo sm th shou d be a benchmark/news story/b54469687be692e113cbad7948a701ba.
[139] Matthews, "Gary Jube n on rac sm n po ce cases."
[140] Matthews, "Gary Jube n on rac sm n po ce cases."
[141] Matthews, "Gary Jube n on rac sm n po ce cases.".
[142] *Attachment 5*, 91 [6.90].

43. The failure to properly reform the NSW law on double jeopardy has consistently frustrated justice in this case. As recognised in the Bowraville Report, in October 2006, amendments were made to that law after significant and sustained advocacy by the families and communities.[143] The amendments.[144] After continuous and extensive lobbying by the families and community the amendment was introduced and subsequently passed on 17 October 2006, inserting a new Part 8 into CARA.[145] also followed the acquittal of the suspect for the murder of Evelyn,[146] and the finding of the NSW State Coroner in September 2004 that the suspect was involved in the disappearance of Colleen on the basis of the strikingly similar characteristics it shared with the murders of Evelyn and Clinton.[147]

44. The amendments introduced a new Part 8 into CARA, including section 100 which allowed for the CCA to make orders for the retrial of a person acquitted for a life sentence offence where:

> (a) there was 'fresh and compelling' evidence against the person in relation to the offence; and
>
> (b) it was in the 'interests of justice' for such orders to be made.[148]

45. 'Fresh' evidence was evidence that:

> (a) was not adduced in the proceedings in which the person was acquitted, and
>
> (b) could not have been adduced in those proceedings with the exercise of reasonable diligence.[149]

46. However, CARA did not include a definition of the term 'adduced',[150] which is capable of meaning, in this context, either 'admitted', 'tendered' or 'available'. The failure of the NSW Parliament to define this term and thus to articulate clearly its intentions[151] has proven extremely damaging in light of the existing common law test for 'fresh and compelling' evidence in the context of applications seeking to appeal convictions or sentence,[152] which required evidence to have been 'unavailable' in order to satisfy the ground of 'fresh' evidence.[153]

[143] *Attachment 5* 11 [2.29].
[144] *Attachment 5* 11 [2.29].
[145] *Attachment 5* 11 [2.29].
[146] *Attachment 5* 11 [2.28].
[147] *Attachment 5*, 10 [2.23].].
[148] CARA s 100.
[149] CARA s 102.
[150] CARA s 102.
[151] *Attachment 1*, 33.
[152] *Attachment 1*, 41.
[153] *Attachment 1*, 41.

47. As explored in our supplementary submission to the 2014 Bowraville Inquiry, this was important because much of the tendency and coincidence evidence obtained during the Reinvestigation had been gathered at the time of the suspect's trial for the murder of Evelyn in 2005, but was clearly inadmissible under evidence law given the acquittal of the suspect in Clinton's matter.[154]

48. As noted in the chronology above, the Bowraville Report invited the NSW Government to clarify the meaning of the word 'adduced' in 2014.

49. The difficulties facing the families now were entirely predictable, and the Government and opposition were aware in 2014 that there was a risk that the NSW Court of Criminal Appeal before whom the application was to be heard would interpret the word 'adduced' to mean 'tendered, an outcome likely fatal to any retrial of the suspect on the facts in these cases. Jumbunna identified that risk in its Supplementary Submission[155] and previous applications to Attorneys-General had been rejected in part because of a view the word 'adduced' would be interpreted in that way.[156] At the same time, CARA provided a clear prohibition against bringing more than one application against the suspect. It is worth noting also that no application had ever been previously brought under the relevant provisions, meaning that they were untried (CARA s 105(1)).

50. David Shoebridge attempted to clarify the meaning of 'adduced' in May 2015 by way of a private members bill that would have clarified the meaning of the definition of 'fresh' evidence to allow the substantial evidence obtained during the Reinvestigation to be considered on the application. Notwithstanding the comments of members of the Legislative Council during the tabling of the Bowraville Report, the 2015 Bill was defeated a year later on 5 May 2016, 25 votes to 8, with no amendments offered by the legislature to the existing law to clarify the central ambiguity in CARA.[157]

51. In the face of this lack of political will, and against the spectre of more community and family members (as well as witnesses) dying or losing competence, Jumbunna received instructions from the families to work with Mr Jubelin to draft an application to the (then) Attorney-General Gabrielle Upton to bring an application on behalf of the Bowraville matters. Jumbunna Research undertook this advocacy role not only because the community asked us to, but because it appeared to us that the NSW Police Force had limited resources committed to the matters, and we held no faith that an application prepared by the NSW Police Force would properly reflect community wishes, or properly engage with the substantial evidence to date.

52. The Application was successful and the Attorney-General filed the proceedings in the CCA instructing the Crown Solicitor's Office to have the suspect retried. The application

[154] For a more deta ed exp anat on of th s po nt see *Attachment 1*, 17, 40 41; *Attachment 5*, 10 11, 41, 44.
[155] *Attachment 8*, 13.
[156] For examp e, Letter from (former) Attorney Genera Greg Sm th SC to A ens dated February 8, 2013, *Attachment 1*, 82 85.
[157] New South Wa es, *Parliamentary Debates*, Leg s at ve Counc (May 5, 2016), 27.

was heard before the CCA over the course of six days between November and December 2017 with the ambiguity in the wording of the definition of 'fresh and compelling evidence' was central to the hearing.

53. Because of the refusal by parliament to clarify the meaning of the word 'adduced', the application was brought in the face of substantial uncertainty as to the legal test that would be applied by the Court, and against the knowledge that no further applications could be brought. This meant the application, which was itself a complex one involving multiple murders joined by tendency and coincidence evidence, became the vehicle to resolve the statutory ambiguity. It was deeply unfair that, after so many decades of advocacy in the face of racism and indifference, the Families were placed in the position of being 'guinea-pigs' in how a Court would approach a complex provision in criminal law.

54. On 13 September 2018, almost a year after the hearing and on the anniversary of Colleen's disappearance, the Court handed down its judgment denying the Application.[158] The extended wait, along with the selection by the Court of the anniversary of Colleen's disappearance, caused substantial, unnecessary trauma to the families. On the court steps Leonie Duroux said:

> 'The way that the judgment was delivered, very insensitive. Very insensitive. Especially on a day like today, being Colleen's anniversary. I thought it was disgraceful'.

55. It is difficult to conceive of a case in the Court docket in that week that could not have been moved to avoid the delivery of the judgment on that date. The selection of that date created hope in the families of a successful outcome and was consistent with the decades of indifference shown to the families by different institutions of the NSW 'justice' system. The result of the judgment is that the suspected serial killer of children obtained a permanent statutory protection against being retried. It is unthinkable that a case involving the multiple murder of white children in the eastern suburbs of Sydney would have been selected with such attenuated risks. The meaning of 'adduced' would have been resolved in advance. For the families and community it is deeply frustrating that a law which was supposedly amended to change the legal status of the Bowraville cases, has now been interpreted in a manner which forecloses their capacity to finally achieve justice.

56. The community was and continues to remain highly critical of the Parliament's failure to clarify the meaning of 'adduced', viewing the amendments as being poorly made. In the community's view these amendments ultimately created ambiguity regarding the meaning of 'fresh and compelling', and did not provide clear and unequivocal support for

[158] *Attorney General for New South Wales v XX* [2018] NSWCCA 198 [225].

a retrial of the suspect, which was immensely frustrating and disheartening after so many years of fighting for justice.

A Return to a Broken Relationship

'I don't know who the officers are that are involved'.[159]

57. We are aware that some in the NSW Police Force were disinterested in the Bowraville matters and wished they 'would go away'. Unlike other cases we are aware of, and with the exception of some individual and dedicated officers, at many times during the years in which we have worked in these matters one often-repeated impression we have experienced is that the NSW Police Force has consistently committed substantially greater resources to other investigations that involve the tragic deaths or disappearances of non-indigenous children, such as William Tyrrell. This culture has continued to affect the relationships with the families as is evident from the families' submissions.

58. The 2014 Bowraville Inquiry recognised substantial and devastating failures in communications by the Government, including the NSW police, with the community, [160] a characteristic that continues until today.

59. Moreover, police continue to withhold important information from the families, and do not consult with community before releasing information to the media or public. This was evident as Clinton's family were unaware of additional bones belonging to Clinton for twelve years and were only made aware of this information by accident. The family were confused as to why they were not informed of this and later the police made a statement that they had told the family about it when they had not. This was also evident in 2020 where police publicly released information regarding allegations of historical sexual assaults related to Bowraville, without consulting with the families first.[161]

60. Another central theme raised in our 2014 submissions concerned the community's frustrations regarding the manner in which previous Attorney-Generals have dealt with the families' and the community's applications seeking for the CCA to order a retrial.[162] These have been characterised by both extensive delays in responding to previous applications[163] and insensitivity in the manner in which such decisions were communicated to the families and community, causing considerable hurt.[164] In both instances the respective Attorney-Generals did not deliver their decision in person or

[159] Thomas Duroux, "Subm ss on to Senate Lega and Const tut ona Affa rs References Comm ttee," Commonwea th Par ament, *Inquiry into Missing and Murdered First Nations Women and Children* undated.
[160] *Attachment 5*, 60 [4.98], 89 [6.83].
[161] A am, "Bowrav e fam es d stressed."
[162] *Attachment 1*, 71 73 73.
[163] *Attachment 1*, 71.
[164] *Attachment 1*, 71 72).

visit the families to explain the reasoning for their determination,[165] despite having each been personally invited to the community.[166] Moreover, decisions were communicated late in the day on a Friday, leaving the families and community without an opportunity to seek further information and clarification or sufficient time to contact the weekend media.[167] The community felt, and continues to feel, that this recurrence was not coincidental but rather was a deliberate act.[168]

61. In addition, it has been felt by the families and community that the Government has, with respect, adopted a bare-minimum approach, failing to 'go the extra yard' to assist in achieving the desired legal outcome.[169] This can be starkly contrasted with the situation where a white child is missing or murdered, where there is often an aggressive pursuit for justice on the part of the Government.[170] In particular the families and community felt let down by the lack of proposals by the Government for ways forward.

[165] *Attachment 1*, 71 72.
[166] *Attachment 1*, 61.
[167] *Attachment 1*, 26 2628, 72.
[168] *Attachment 1*, 27 28.
[169] *Attachment 1*, 61.
[170] *Attachment 5*, 20 [3.23].
Attachment 5, 20 [3.23].

The Bowraville Report Recommendations

62. The Bowraville Report contained 15 recommendations intended to improve the policies and practices of the NSW Police Force, increase access to the Aboriginal Witness Assistance Services, extend cultural awareness training across the legal profession and Government, improve the use of culturo-lingual jury directions, examine the adequacy of mental health services in Bowraville and Tenterfield and increase their funding, and support funding for the beautification of the victims' memorials.[171] Importantly, the Committee also recommended that the NSW Government clarify the meaning of 'adduced' in CARA, which would, had it been done, have provided the families and the Attorney-General, with certainty as to the legal tests that would be applied on any application to have the suspect retried.[172]

63. On 2 June 2015 the NSW Government tabled its official response to the fifteen recommendations made in the Bowraville Report.[173] In principle, the Government supported all of the recommendations, though they noted those recommendations relating to the appointment of Aboriginal Witness Assistance Service Officers (subject to the Office of the Director of Public Prosecutions requirements) and the two recommendations relating to the appointment of mental health worker positions (noting these are funded by the Commonwealth).[174] When considered alongside the strong statements of the Committee members during the tabling of the Bowraville Report, this support created an impression that the Government was intending to take substantive action that would seek to address, and rectify, systemic practices that had caused such trauma to the families.

64. As the evidence submitted to the Inquiry demonstrates however, these promises have remain unfulfilled. The relationship between the community and the institutions of justice in NSW (in particular, the NSW Police Force, the NSW Government and the NSW Parliament) are again characterised by mistrust, disappointment and frustration.

65. Despite the Government's support of the Recommendations, there has been little effective implementation of them. We have been unable to identify, on the public record, how the NSW Police Force have 'consulted' with Aboriginal people in the review recommended by the Bowraville Report, other than work that Jumbunna has done with the NSW Police for the development of educational training based upon the Bowraville Case Study.

66. As is evident from the submissions of the various family members provided to this Inquiry, the NSW Police Force continue to exhibit 'quiet assumptions' of 'active and passive ideas of racial superiority': disinterest in Indigenous complaints of violence

[171] *Attachment 5*, x .
[172] *Attachment 5*, x v.
[173] *Attachment 6*.
[174] *Attachment 6*.

against themselves or their loved ones, the use of discretion against Aboriginal people for social control and a cavalier attitude that is revealed in such steps as declaring public rewards in the matters without properly communicating those rewards, or how they work, to the families of the murdered children. It is inconceivable that parents of murdered non-Indigenous children would find themselves told by police officers to 'get over it' or, to have had such poor contact as to not even have met the officers apparently responsible for the investigation into the murders. As resonates from the families' submissions to this Inquiry, it has become increasingly clear in the years since the 2014 Bowraville Inquiry, and since the departure of Mr Jubelin, that the NSW Police Force are once again demonstrating indifference to the families of the murdered children.

67. The experiences recounted by the families in their submissions to this Inquiry are moreover consistent with the broader culture that continues to be demonstrated by the NSW Police Force, which has failed to address the discriminatory aspects of its culture. Evidence provided to the 2021 Report of the NSW Parliament's *Select Committee on The High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* demonstrates that the NSW Police Force has not learnt any lessons from Bowraville. Experts provided evidence of the continuing use of the infamous 'trifecta' practice by the NSW Police Force, with Tony McAvoy SC (Chair of the NSW Bar Association's First Nations Committee) stating that 'the use of summary offences as a form of social control over Aboriginal and Torres Strait Islander communities is notorious'.[175] Another example of this culture in the NSW Police Force is the fact that Aboriginal people are less likely to be diverted from Court, a decision that is at the discretion of the police officer.[176] As recently as July this year the NSW Police Force have been accused of 'using "oppressive" and potentially unlawful tactics on subjects of a secretive blacklist disproportionately used to target young Indigenous people'.[177] Whatever steps the NSW Police Force have taken, they have moved nowhere.

68. As far as we have been able to identify, the Government has only clearly implemented four of the twelve recommendations supported (recommendations 4, 5, 8 and 15).[178]

[175] "Leg s at ve Counc Se ect Comm ttee on the h gh eve of F rst Nat ons peop e n custody and overs ght and rev ew of deaths n custody," Par ament of New South Wa es (Report, Apr 15, 2021), 59, [3.27].
[176] "Leg s at ve Counc Se ect Comm ttee," 59.
[177] M chae McGowan, "NSW po ce accused of 'oppress ve' tact cs aga nst subjects on secret ve b ack st," *The Guardian*, Ju y 4, 2022, accessed Ju y 4, 2022, https://www.theguard an.com/austra a news/2022/ju /04/nsw po ce accused of oppress ve tact cs aga nst subjects on secret ve b ack st.
[178] *Attachment 8*; *Attachment 9*; Ind genous Cu tura Competency for Lega Academ cs Program, "NSW Department of Just ce Recommends M n mum Standards for Teach ng of Cu tura Competency for a Law Students," *ICCLAP News and Events*, accessed 1 December 2022, https:// cc ap.edu.au/?post_ d=60&t t e=nsw department of just ce recommends m n mum standards for teach ng of cu tura competency for a aw students; James Wood, *Review of Section 102 of the Crimes (Appeal and Review) Act 2001 (NSW)* (Report, September 2015); "Bowrav e Memor a ," *Monument Australia*, accessed December 1, 2022, <https://monumentaustra a.org.au/themes/cu ture/cr me/d sp ay/110400 bowrav e memor a #:~:text=Three%20ex st ng%20p aques%20current y%20 ocated,memor a %20and%20p ace%20for%20ref ect on>; <https://coffs.reco ect.net.au/nodes/v ew/71310# dx117565>; "C nton "Speedy" Duroux," *Monument Australia*, accessed December 1, 2022, https://monumentaustra a.org.au/themes/peop e/cr me/d sp ay/110399 c nton %22speedy%22 duroux; "Eve yn Greenup," *Monument Australia*, accessed December 1, 2022, https://monumentaustra a.org.au/themes/peop e/cr me/d sp ay/110403 eve yn greenup.

69. In regard to recommendations 4, 5 and 8, which relate to training (recommendations 4 and 5) and a review of s 102 of CARA (recommendation 8),[179] the Government has undertaken the steps committed to in its official response in carrying out the relevant reviews. Little has changed for the families, however.

70. Following a review of the merit of requiring lawyers to undergo Aboriginal cultural awareness training (recommendation 4), the Department of Justice determined that training should be mandatory for lawyers at the major government legal agencies providing family and criminal law advice and indicated it would make training mandatory for court officers.[180] Nonetheless the Department of Justice concluded that training should remain voluntary for most relevant lawyers and judicial officers.[181] Further, whilst the NSW Department of Justice has liaised with stakeholders about including Aboriginal cultural awareness training in legal training and education (recommendation 5), the Legal Services Council ultimately determined that such training should not be mandatory.[182]

71. Again, the position of the Government and the Legal Services Council reflects a reactive approach. As noted by the Royal Commission into Aboriginal Deaths in Custody, and confirmed by countless inquiries and overwhelming research, Indigenous people suffer discrimination throughout the Australian legal system. The focus on areas of law such as criminal and family law, not only reinforces stereotypes of Aboriginal people as offenders and/or victims (or as dysfunctional spouses or parents), but also ignores research that demonstrates the unmet legal needs of Indigenous people in other areas. For example, it is inexplicable that such training is not mandatory for legal officers in government departments in environmental or planning law, where government legal officers and regulatory officers regularly determine cultural heritage work. Large prosecutorial discretions (and persistent biases) exist in such areas of law (for example, prosecutions of Aboriginal fishers by government fisheries officers on the South Coast of New South Wales persisted even in the face of substantial costs awards being made against prosecutors by the Courts).[183]

72. This approach also fails to grapple with the reality that Aboriginal clients may be less frequently seen in other areas of law (such as civil law) because access to legal services is severely restricted, resulting in a largely unseen and 'unmet need'.[184]

[179] A though the Hon. James Wood AO QC was appo nted by the Government to undertake a ega rev ew of s 102 of the *Crimes (Appeal and Review) Act 2001* (NSW) (recommendat on 8), the Wood Report conc uded that the aw, as t stood n 2015, d d not contemp ate an nterpretat on of 'fresh' that wou d 'enab e a retr a where a change of the aw renders prev ous y nadm ss b e ev dence adm ss b e at a ater date'
[180] *Attachment 8*; *Attachment 9*.
[181] *Attachment 8*; *Attachment 9*.
[182] *Attachment 8*; *Attachment 9*; Ind genous Cu tura Competency for Lega Academ cs Program, "NSW Department of Just ce Recommends M n mum Standards."
[183] Vanessa M ton, Ke ra Proust and Wayne Carberry, "As More Ind genous F sh ng Cases are W thdrawn, Court Costs Mount aga nst NSW DPI," *ABC*, October 7, 2022, accessed October 7, 2022, https://www.abc.net.au/news/2022 10 07/ nd genous cu tura f sh ng court costs mount for nsw dp /101503900.
[184] F ona A son, Chr s Cunneen and Me an e Schwartz, *The Civil and Family Law Needs of Indigenous People 40 Years After Sackville: Findings of the Indigenous Legal Needs Project* (Sydney: Federat on Press, 2017), 231, 248.

73. Finally, we note that even in relation to criminal law, the largest tranche of criminal prosecutors in the employ of the State are Police prosecutors who prosecute the vast majority of criminal prosecutions in NSW. Such prosecutors are not required to have law degrees or practicing certificates and would not be required to undertake such training

74. Ultimately, the failure of the Government's approach lies in a fundamental failure to understand the lessons of the Bowraville Report, which demonstrates the need for non-Aboriginal people to gain an awareness and understanding of their own implicit biases before they are capable of understanding how to professionally act for Aboriginal people. As Leonie Duroux points out in her evidence to the Inquiry, those Australians who are unable to identify racism are not the experts on whether it exists.[185] As reflected in the comments of the committee and the insights of the Royal Commission into Aboriginal Deaths in Custody,[186] all legal officers are the product of, and work within, a settler colonial system, whose primary goal is ultimately to eliminate Indigenous peoples in order to secure the legitimacy of settler sovereignty.[187] In failing to extend mandatory training to all lawyers and judicial officers, and thus in ignoring the insights from the Committee and the Royal Commission into Aboriginal Deaths in Custody, the Government perpetuates this bias.

75. Progress towards recommendations 1, 13 and 14 appears to be limited. Although the NSW Government updated its Aboriginal Strategic Direction in 2018,[188] it is unclear whether any progress has been made towards achieving its goals. Further, whilst it is now mandatory for police in NSW to ask all offenders and victims if they are Aboriginal or Torres Strait Islander and to record their response in their database,[189] this appears to be an isolated, ad hoc reform rather than part of a broader picture of systemic reform, entailing a fundamental overhaul of the existing policies and practices. With respect to Government funding (recommendations 13 and 14), only Clinton's family have participated in a funded healing program,[190] and consistent funding continues to remain an issue for the Nambucca Youth Services Centre, as noted by Chris Hewgill, Chairperson of the Board of the Centre.[191]

76. We could identify no publicly available information regarding the implementation of recommendations 2, 6 and 12 and no Government action was committed to in response to recommendation 7.

[185] Leon e Duroux, "Subm ss on No 7 to Leg s at ve Counc Stand ng Comm ttee on Law and Just ce," Par ament of New South Wa es, *Inquiry into the Family Response to the Murders in Bowraville* (February 24, 2014) 8.
[186] *Attachment 5*; *Royal Commission into Aboriginal Deaths in Custody* (F na Report, Apr 1991).
[187] Patr ck Wo fe, "Sett er Co on a sm and the E m nat on of the Nat ve," *Journal of Genocide Research* 8(4) (2006): 387, 388.
[188] *Aboriginal Strategic Direction 2018 2023* (Po cy Document, 2018).
[189] Sa y Rawsthorne and Cameron Goo ey, "NSW Po ce to Record Ind genous Status of A V ct ms and Perpetrators," *Sydney Morning Herald*, January 14, 2022, accessed November 4, 2022, https://www.smh.com.au/nat ona /nsw/nsw po ce to record nd genous status of a v ct ms and perpetrators 20220113 p59o1y.htm .
[190] Donna Ward, "C nton Speedy Duroux's Fam y Meet on a Pos t ve Note," *Tenterfield Star*, March 17, 2017, accessed September 22, 2022 https://www.tenterf e dstar.com.au/story/4536539/sett ng the dust after 26 years of hurt/.
[191] Rache McGregor A en, "Nambucca Va ey Youth e Offers Programs and Outreach Serv ces to Support Loca Young Peop e," *News of the Area*, May 4, 2021, accessed December 5, 2022, https://www.newsofthearea.com.au/nambucca va ey youth e offers programs and outreach serv ces to support oca young peop e 69054.

Conclusion

77. As a result of an under-resourced and discriminatory police investigation that disregarded the reports of the parents of the Bowraville victims, the Bowraville families have experienced ongoing trauma. Their continued fight for justice for their murdered children has been made harder by a justice system that refuses to recognise and address its failings. Even when, through the families' long and hard work, lessons seemed to have been learnt, they have been quickly forgotten.