



WESTERN NSW COMMUNITY
LEGAL CENTRE AND WESTERN
WOMEN'S LEGAL SUPPORT

Joint Submissions Inquiry into Murdered and Missing First Nations Women and Children

12 December 2022

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Committee Secretary
Senate Legal and Constitutional Affairs Committee

Dear Honourable Members,

Western NSW Community Legal Centre Inc (**WNSWCLC**) and Western Women's Legal Support (**WWLS**) are grateful for the opportunity to make a submission to the Commonwealth Government's Inquiry into Missing and murdered First Nations women and children (**the Inquiry**).

It is quite sobering and distressing to read in the recent article by the Guardian about the Inquiry that "*Aboriginal and Torres Strait Islander women are 11 times more likely to die due to an assault and are 32 times more likely to be hospitalised due to family violence than non-Indigenous women*".^[1] We note this statistic only covers reported incidents.

WNSWCLC is a community-based, not-for-profit organisation located in Dubbo that provides free legal services to people in Western NSW who experience social, economic and/or geographic disadvantage. WNSWCLC provides legal advice, ongoing casework, referrals and representation, and offers outreach services to rural and remote towns, servicing an area of approximately 200,000 square kilometres, bordered by Mudgee in the east, the Queensland border in the north, and Bourke and Cobar in the West. WNSWCLC also engages in community legal education, law reform and offers media comment on issues of importance. WNSWCLC also provides legal advice and assistance to two local maximum security correctional centres (Wellington Correctional Centre and Macquarie Correctional Centre), servicing approximately 1,500 inmates.

WWLS is WNSWCLC's specialist domestic violence unit. WWLS was established in 2015 after the Commonwealth Government identified Western NSW as having some of the highest rates of family and domestic violence in NSW. WWLS provides holistic legal and non-legal support to female victim-survivors of family, domestic and sexual abuse and their children. WWLS covers the same geographic area as WNSWCLC but has recently broadened its area to include Forbes, Parkes, West Wyalong, Lake Cargelligo and Condobolin. WWLS is the only specialist family and domestic violence legal service-based west of the Blue Mountains that assists all demographics of society, including First Nations, culturally and linguistically diverse, gender and sexually diverse and homeless people.

Our offices are located on the land of the Tubba-Gah people of the Wiradjuri Nation, who we recognise as its traditional owners. We also work across the traditional land of the Kamilaroi, Wongaibon, Wailwan, Ngemba, Murrawarri and Yuwaalaraay peoples. We acknowledge that sovereignty over these lands was never ceded.

[1] Sarah Collard, "*Horrorific First Nations missing and murdered cases to be focus of Australia-wide inquiry*", The Guardian, 4 August 2022, <'Horrorific' First Nations missing and murdered cases to be focus of Australia-wide inquiry | Indigenous Australians | The Guardian>

Explanation of terms

The term Family and Domestic Violence (FDV) captures both physical abuse and non-physical abuse. Overwhelmingly, our clients experience FDV at the hands of their intimate partner or in a household setting and it is a known precursor to intimate partner homicides.[2]

FDV is almost exclusively perpetrated by men against women as it is *“both a cause and consequence of gender inequality”*.^[3] The United Nations Declaration on the Elimination of Violence against Women states that *“violence against women is a manifestation of historically unequal power relations between men and women, which have led to domination over and discrimination against women by men and to the prevention of the full advancement of women”*.^[4]

This submission will primarily use gender-binary terms (i.e., women and men) to reflect current literature on FDV as gendered in nature and more common in heterosexual relationships. We do acknowledge that men and gender-diverse persons can also be victim-survivors of FDV.

[2] In NSW alone, between 2008–2016, 111 out of 112 domestic violence homicides featured a relationship of coercive and controlling behaviour. NSW Government, NSW Domestic Violence Death Review Team Report 2017–19 (2020) Recommendation 27.1 <https://www.coroners.nsw.gov.au/documents/reports/2017-2019_DVDRT_Report.pdf>.

[3] Australian Human Rights Commission, Submission to the Senate Finance and Public Administration Committee Inquiry into Domestic Violence and Gender Inequality, 4 April 2016, p. 4 <Year (humanrights.gov.au)>.

[4] United Nations, Declaration on the Elimination of violence against Women (1993), UN Doc. A/RES/48/104.

Introduction

In this submission, WNSWCLC and WWLS are providing feedback to the following terms of reference:

D

The systemic causes of all forms of violence, including sexual violence, against First Nations women and children, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children

E

The policies, practices and support services that have been effective in reducing violence and increasing safety of First Nations women and children, including self-determined strategies and initiatives

F

The identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children

In preparing these submissions we have spoken to our colleagues and considered statistics. We note the terms of reference above are similar to the ones in the *"Reclaiming Power and Place – National Inquiry into Missing and Murdered Indigenous Women and Girls"* (**Canadian Inquiry**). Due to time limitations, we have not had the opportunity to consult with our First Nations client's and community organisations in relation to this Inquiry. Given the serious nature and sensitivity of the Inquiry, we ask the government ensure that a far greater period of time (for example 6 months) be given for submissions in the future. It is crucial to allow contributors the opportunity to properly consult and discuss the issues to be addressed.

We acknowledge the many women with whom we work. It is not our intention to speak on behalf of First Nations women and children and their experiences. Their experiences and voices should be heard directly from them and their families. Instead, we will provide our observations and experiences on providing a legal service and casework to First Nations women and children who are victim-survivors of FDV. Please note in the below case studies the names of our client and other parties have been changed.

D. Systemic causes of all forms of violence

For most of our First Nations clients they are already fighting the stigma and barriers of underlying social, economic, cultural, institutional and historical causes which are embedded in everyday life. Whether this is through interpersonal forms of violence, through institutions like the health care system and the justice system, or in the laws, policies and structures of the Australian society.[5]

Central West NSW represents approximately 2% of the total population of NSW but is home to over 10.5% of NSW First Nations persons. In the 2021/2022 financial year, 39% of our clients identified as First Nations. 45% of these clients received WWLS services.[6]

There is no singular form or cause of violence; especially FDV. As outlined earlier, we note and reinforce that violence is based in gender inequality: both within a societal construct as well as specific interpersonal relationships. This normalisation has created a cultural context in which men presume and believe they are legitimately empowered to exert their influence and control over women and children. The manner in which this control is demonstrated in the family home takes many forms, but are commonly categorised as physical violence, verbal, emotional, financial and sexual abuse, technology facilitated control, social isolation and more generally, coercive control.

The disempowerment and lack of resources (such as suitable housing and legal protections) available to women and children to leave such violence serves to reinforce the legitimacy of the male's actions. There is still a stigma and expectation that responsibility lies with the woman to leave the relationship and protect her children, as opposed to the male being held accountable by society for his actions. Phrases such as *"why doesn't she just leave"* or *"why does she keep going back"* underpin gender inequality and victim-shaming. Social constructs must be dismantled and the focus shifted to the behaviour and accountability of men for their behaviour, in order to assist with reducing systemic causes of DFV.

[5] Canada Privy Council Office, "Reclaiming Power and Place - Executive Summary of Final Report - National Inquiry into Missing and Murdered Indigenous Women and Girls", p. 4

[6] Western NSW Community Legal Centre, Annual Report, 2021/2022, p. 30

E. Effective policies, practices and support services

The current statistics and the purpose of this Inquiry speaks for itself and indicate the current policies, practices and support services in place are ineffective in reducing violence and increasing safety of First Nations women and children. It is not clear what self-determined strategies and initiatives are in place to address the concerns of the Inquiry.

The statistics of missing and murdered First Nations women and children are distressing but not new. This has been an ongoing issue. Over the years, there have been many different variations of Inquires, Royal Commissions and Statutory Reviews regarding how to reduce the high statistics concerning First Nations people. These reports have identified the ineffective policies, practices and support services but there has been no substantial change. The reports, submissions and consultations have identified systemic issues which contribute to all forms of violence.

Further, a common theme arises around the lack of consultation, recognition, respect and engagement of the First Nations people when implementing policies, practices and support services affecting them. This is reflective in the case studies below.

Case Study: Mia

Mia attended our WWLS service for assistance in dealing with Housing NSW. Mia had left a severely physical abusive relationship with her ex-partner. Mia and her child were staying at a local motel in [REDACTED] facilitated through Housing NSW.

One day Mia's accommodation was cancelled on the allegation there were drugs in the room. Mia in the past was a drug user but had been clean for some time. The allegation was unfounded and it was a different room that had the drugs.

Despite the mistake, Housing NSW refused to give Mia back her accommodation. They then shifted the blame on Mia stating she had misused her right to the Link2Home accommodation by leaving her accommodation for 3 days, in breach of Housing NSW policy. Mia's solicitor pressed Housing for this policy and no such policy existed. Mia was away from the accommodation as she was visiting her estranged family for the day but had missed the bus and had to stay with them overnight. When Housing NSW found this out a comment was made, "*oh she has family, she doesn't need accommodation*". Her family lived out of town.

The interactions our solicitor, our First Nations caseworker and Mia had with a male Housing representative was frustrating. This particular Housing representative was dismissive to Mia and disrespectful. He was aware she is a victim-survivor of severe domestic violence. Mia was traumatised and intimidated by how he treated her. However, when he was dealing with the solicitor and First Nations caseworker, he switched his attitude to one of being respectful and polite.

Case Study: Margaret

Margaret was in an abusive DV relationship since 1996 until recently when she left. Margaret's ex-partner had a pattern of behaviour where he would assault her, disappear then come back, stalk and harass her and then physically assault her again. Margaret attended our office to seek assistance with applying for an Apprehended Domestic Violence Order (ADVO). Police had refused to provide assistance as it had been sometime since the last ADVO.

WNSWCLC, in collaboration with a WWLS caseworker, provided advice on how to apply for an ADVO. We made enquiries with Police to obtain the COPs entries of all the reports Margaret had made against her ex-partner. Police refused to provide Margaret a copy of these documents and directed her to get her lawyer to do it. We then attempted to access the documents and were advised by Police that only the client can get them.

After some discussions, between our solicitor and Police Domestic Violence liaison officers they decided to engage with Margaret and provide assistance. We left Margaret in Police's care.

A few months later, Margaret came back for assistance in a separate but related matter. Margaret informed us she had been unsuccessful with the ADVO matter in Court as she had insufficient evidence to prove the need for the ADVO. It was disheartening to hear that a victim-survivor who has been in an FDV relationship for 26 years did not have sufficient evidence. It later came to our attention that whilst Police were assisting with the matter they didn't assist prepare a statement of Margaret's evidence in support of the application. Margaret, as the victim-survivor, had to prepare her own statement and missed key critical details essential to her ADVO application.

Now our client is not protected and she has concerns her ex-partner will physically assault her again.

From our experiences, in providing legal services and support to First Nations women there is a lack of trust in our legal system and law enforcement – to the point they will not make any reports of abuse suffered or if other family members have taken their children. We know with remote and regional towns with a small population, our clients stay silent on what they are going through to avoid everyone knowing their business, but which limits what services they choose to engage with for support. There is also a disparity on reporting to, or seeking assistance from, Police. From our dealings with Police on behalf of victim-survivors there is a clear distinction on which commands will or will not assist our clients.

Case Study: Aimee

Aimee needed assistance from WNSWCLC in taking an ADVO out against a family member. This family member is well known to the local Police Command. The local Police have been great in providing support to Aimee but do not have a Domestic Violence Unit (DV Unit) to assist with an application for an ADVO.

the DV unit assists our victim-survivors in making an AVO application. So with this in mind our office contacted the DV unit which covered our client's catchment. We were advised by a DV officer they were not able to help our client in making an ADVO application as it is not part of their role. This was extremely frustrating as we had to refer the client back to her local area Police Command for help. We are grateful this command are supportive to our client.

WWLS clients have often made the comment that if their ADVO is not going to benefit their situation, and police are going to ignore their wishes relating to conditions contained therein, they will not report breaches or seek further help from police in the future. This is clearly counterintuitive and counter-productive to the intent and purpose of such a protective mechanism.

Case Study: Hayley

Hayley attended our WWLS seeking assistance in varying the conditions of an ADVO Police have applied for against her partner. Hayley reported the last FDV incident to Police. The perpetrator is her long term partner, with whom she has kids. The partner has a history of being violent towards Hayley in the past but it has been some time since the last incident.

The partner's bail was refused and the conditions imposed included no contact with the kids.

Hayley loves her partner but knew she needed to report the violent incident. Police took her partner away with no regards to Hayley or her children's needs. Hayley doesn't want the conditions stipulated in the ADVO as they prevent her partner from providing any support to the children. She has asked the police to change the conditions but they will not do so.

Many of our clients complain of ADVO conditions being too restrictive, especially when the victims are already safe and have limited family support. Police refuse to listen to the victim-survivor and the victim is often viewed as enabling her partner's violent behaviour.

F. Identification of concrete and effective actions to remove systemic causes of violence and increase the safety of First Nations women and children

It is critical that any action taken to remove the systemic causes of violence and increase the safety of First Nations women and children needs to be led and developed by First Nations people, in consultation with appropriate experts where required.. This will achieve the goal of self-determination. It will also ensure any actions implemented will be accepted and engaged with by First Nations people.

There is need for any government department or organisation to address and take steps to end their individual specific cultural biases of First Nations people which are now incorporated in policy and practices. As stated in the Canadian Inquiry, "*we maintain that agencies, institutions, and governments must be willing to work with those who hold the most expertise – those impacted by violence – and to recognize the solutions they bring to the table.*"[7]

Further, any action taken needs to:

- acknowledge cultural First Nation laws and lores
- understand the fluid nature of First Nations families
- consider the effectiveness of the Canadian Inquiry
- be trauma informed
- acknowledge and accept a First Nations person basic human rights
- show compassion and respect to First Nations people
- invest in upfront supports and services for both victim survivors and perpetrators
- provide education, FDV and cultural awareness training.

[7] Canada Privy Council Office, "*Reclaiming Power and Place – Executive Summary of Final Report – National Inquiry into Missing and Murdered Indigenous Women and Girls*", p. 22

Conclusion

Writing this report has been a sobering experience. We hope by partaking in this Inquiry and the public hearings there is substantial change and any recommendations are acted upon.

We recommend at the heart of this Inquiry, the submissions and public hearings, the First Nations voice is put at the forefront of all conversations, decisions and actions going forward.

WNSWCLC and WWLS strongly recommends the Government take the opportunity to further consult with First Nations people. The success and effectiveness of the Inquiry will come from listening to lived experiences of First Nations victim-survivors and incorporating it into any policy or practice taken to reduce violence and increase safety of First Nations women and children.

Yours faithfully

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