

ANTAR



Submission: Inquiry into missing and murdered First Nations women and children

With thanks:

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ANTAR is proud to acknowledge and pay our respects to First Nations Peoples as the traditional owners of the lands on which we work across the continent.

The Australian Lawyers Alliance (ALA) office is located on the land of the Gadigal of the Eora Nation.

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About ANTAR

ANTAR is a national advocacy organisation working for Justice, Rights and Respect for Australia's First Nations Peoples. We do this primarily through campaigns, advocacy, and lobbying.

ANTAR is working to mobilise Australians to vote YES at the referendum for a First Nations Voice to Parliament enshrined in the Constitution, and for this to be complemented with a Makarrata Commission to drive agreement making and truth-telling processes across Australia.

We also engage in national advocacy across various policy and social justice issues affecting Aboriginal and Torres Strait Islander communities, including cultural heritage protection; justice reinvestment, over-incarceration and raising the age of criminal responsibility; anti-racism campaigns, native title and land rights, and closing the life equality gap.

ANTAR is a foundational member of both the Close the Gap Campaign and Change the Record Campaign Steering Committee, and an organisational and executive committee member of Just Reinvest NSW. ANTAR has been working with Aboriginal and Torres Strait Islander communities, organisations and leaders on rights and reconciliation issues since 1997. ANTAR is a non-government, not-for-profit, independently funded and community-based organisation.

About Australian Lawyers Alliance (ALA)

The Australian Lawyers Alliance (ALA) is a national association of lawyers, academics and other professionals dedicated to protecting and promoting justice, freedom and the rights of the individual.

We estimate that our 1,500 members represent up to 200,000 people each year in Australia. We promote access to justice and equality before the law for all individuals regardless of their wealth, position, gender, age, race or religious belief.

The ALA is represented in every state and territory in Australia. More information about us is available on our [website](#).

“It is devastating to hear from families who don’t understand why the system does not take these cases seriously... As a former police officer, I know there is a different urgency into looking for First Nations women and girls.”

Yamatji Noongar woman and Greens Senator for Western Australia, Dorinda Cox.

Introduction

Thank you for the opportunity to provide comments to inform the Senate Legal and Constitutional Affairs References Committee’s ‘Inquiry into missing and murdered First Nations women and children’.

There is a national crisis happening in Australia that we cannot fully comprehend due to the failure of basic data representation and a lack of media coverage. From the data available, the rate at which First Nations women and children go missing, or become victims of murder and homicide is a crisis that demands immediate redress. The reality in Australia is that First Nations women and children are not only at risk of harm in the community, but also within the institutions that are meant to protect them without bias relating to cultural background or the circumstances.

Failing to adequately investigate missing persons reports, homicide and murder cases, or children fleeing unsafe living conditions of either family homes or out-of-home care, is a violation of not only the Universal Declaration of Human Rights¹ and the United Nations Convention on the Rights of the Child,² but also the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP).³

The compilation of state and territory police auditing reports uncovers a disturbing yet recurring pattern of police prejudice and the watering down of incidents that involve First Nations people.

¹ [Universal Declaration of Human Right](#)

² [United Nations Convention on the Rights of the Child](#)

³ [United Nations Declaration on the Rights of Indigenous Peoples \(UNDRIP\)](#)

Unfortunately, in light of the Royal Commission into Aboriginal Deaths in Custody which identified the discriminatory policies and procedures of Australia's criminal justice system, we have not seen the full implementation of the recommendations that leave First Nations people at risk of having their basic human rights violated through the lack of culturally appropriate service provision.⁴

In this submission, ANTAR and the ALA will demonstrate with supporting evidence that the current government funded policies and procedures that exist across Australia are failing First Nations communities and would be better placed in First-Nations-led organisations, programs and services.

The terms of reference that will be addressed in this submission are:

- a. The number of First Nations women and children who are missing and murdered;
- b. The current and historical practices, including resources, to investigating the deaths and missing persons reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children;
- c. The institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children;
- 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.

⁴ [Redfern Statement – Family Violence and Justice Workshop \(2017\)](#)

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

First Nations women commonly face negative experiences with police when attempting to report violence. This can include criminalisation for past offences.⁵ In particular, Aboriginal and Torres Strait Islander women are at a high risk of police misidentification, and are more likely to be misidentified 'simply because they are Aboriginal.'⁶ Such responses reinforce the idea of First Nations people as the 'ideal offender' rather than the 'ideal victim,' who are thereby rendered unworthy of the same time, attention, or credibility given to non-Indigenous people.⁷

There remains no official data of the exact number of missing and murdered Aboriginal and Torres Strait Islander women in Australia. However, as has been recently reported, we know that there has been at a minimum, 315 women killed or disappeared in the last two decades.⁸ Research on data collection raised serious concerns about the rate at which First Nations women and children feel comfortable reporting incidents to authorities, and the rate at which authorities record Aboriginal and Torres Strait Islander status. Lack of appropriate reporting processes impedes the ability to activate the services that are funded by the government for the purpose of supporting Aboriginal and Torres Strait Islander peoples at risk of violence or coming into contact with the criminal justice system.

The Australian Human Rights Commission's *Wiyi yani u Thangani* report (2020) indicated that:

'Aboriginal and Torres Strait Islander women make up 16% of all female murder victims in Australia and also make up 10% of unsolved missing persons cases.'⁹

⁵ [Anrows: Innovative models in addressing violence against Indigenous women: State of knowledge paper](#)

⁶ [UNSW Sydney. Unintended, but not unanticipated. Coercive control laws will disadvantage First Nations Women.](#)

⁷ [NITV: OPINION: First Nations kids make up about 20 per cent of missing children, but get a fraction of the media coverage](#)

⁸ [Four Corners: How Many More?](#)

⁹ [AHRC: Wiyi yani u Thangani report](#) (2020)

Despite only making up less than 6% of the Australian population under 18, First Nations young people comprise approximately 20% of missing children's cases.¹⁰ Governments have a responsibility to award the same level of urgency to First Nations children as they do to non-Indigenous children.

The *Strong Families: Safe Kids* report by the Secretariat of National Aboriginal and Islander Child Care (SNAICC), National Family Violence Prevention Legal Services (NFVPLS), and National Aboriginal and Torres Strait Islander Legal Services (NATSILS) found that across five jurisdictions between 2008-12, First Nations women were victims of homicide cases at a rate 15 times higher than non-Indigenous women.

The reality of these statistics is likely to be higher with the acknowledgement that 90% of domestic violence incidents within Aboriginal and Torres Strait Islander communities remain unreported.¹¹ This is attributed to systemic racism within Australian policing that has resulted in victims being perceived by officers as perpetrators of violence, or being arrested for unrelated warrants.

The inconsistency of statistics of missing and murdered First Nations women and children makes it difficult to develop practical and effective responses that will have a positive impact on protecting the most vulnerable groups within Australian society.

Australian data statistics distinguish First Nations and non-Indigenous populations on an ad hoc basis despite the continual demand for statistics to accurately portray the disproportionate experience of First Nations people. There are First Nations institutions such as Maiam Nayri Wingara Indigenous Data Sovereignty Collective who have established themselves on the principles of benefiting and protecting First Nations Peoples' rights.¹²

It is recommended that institutions such as those who seek to accurately represent First Nations people within the Australian population are supported to continue to address the data representation gap and ultimately strategise how to protect victims.

¹⁰ [NITV: OPINION: First Nations kids make up about 20 per cent of missing children, but get a fraction of the media coverage.](#)

¹¹ [AHRC: Wiyi yani u Thangani report](#) (2020)

¹² [Maiam nayri Wingara](#)

B. The current and historical practices, including resources, to investigating the deaths and missing persons reports of First Nations women and children in each jurisdiction compared to non-First Nations women and children

New South Wales

When families of missing Aboriginal and Torres Strait Islander women and children report their concerns to authorities, they are oftentimes met with disbelief, suspicion and indifference about the severity of the matter.¹³ In 2014, NSW Police revealed that First Nations people make up 7% of unsolved cases and 10% of missing females were Aboriginal and Torres Strait Islander women.¹⁴ No data has been updated since. In NSW, like in other states, the idea that First Nations people are transient often leads to the understanding of missing persons cases which relate to First Nations people as less serious or the perception that the missing person is less likely to be at risk of harm or danger than it were a non-Indigenous person.¹⁵

In the Bowraville Case¹⁶, the NSW Legislative Council noted that disinterest, the negative relationship between police and First Nations community, and inexperienced officers in charge, were obstacles to bringing justice to the missing children.

The Bowraville children's family have called for NSW police to:

- Reform the policies and procedures used in regards to First Nations children to include consultation with First Nations people; and
- Develop a case study as a future reference that highlights the various lessons and outcomes learned from the Bowraville investigation.¹⁷

More recently, the NSW legal system failed Lynette Daley. Lynette was brutally raped and murdered by Adrian Attwater and Paul Maris in 2011.¹⁸ Three years later, a police investigation took place and coronial findings suggested that charges be laid.

¹³ [Deathscapes: 'Indigenous femicides and the killing in progress'](#).

¹⁴ [ABC: 'Lost, Missing or Murdered?'](#)

¹⁵ [ABC: Constance Watcho's death is unspeakable, yet it isn't listed as a homicide](#)

¹⁶ [The Family response to the murders in Bowraville](#)

¹⁷ *Ibid.*

¹⁸ [ABC: 'Lynette Daley death: Adrian Attwater and Paul Maris jailed for brutal attack'](#).

However, the NSW Director of Public Prosecutions (DPP) dropped the charges and left Lynette's family feeling traumatised, shocked and confused. Lynette's stepfather noted that "she was just a statistic" to the DPP, and that:

"If it was two Aboriginal boys and they had done that to a non-Indigenous person, they would've been in jail ages ago and that's the difference. I don't care how much you sugar coat it, that is the difference."¹⁹

After nearly seven years of fighting for justice, the two men were charged and sentenced. Dr Hannah McGlade, a Nyungar woman, and Associate Professor at the Curtin School of Law explained:

"This shocking case showed the violent racism, not just of the individual male perpetrators who violated her in the most inhumane way, but of the legal system that also failed to treat her life as worthy."²⁰

Australian Capital Territory

Many reports and publications tend to exclude the Australian Capital Territory (ACT). The Child Protection and Aboriginal and Torres Strait Islander Children Sourcesheet stated that new and repeat client information in the ACT has not been available since 2016/17.²¹ Limitations to data in regards to domestic violence, sexual violence and child abuse is due to under-reporting in circumstances where First Nations communities fear the media, racism, and child removal.

In 2009, the ACT Victims of Crime Coordinator published the *We Don't Shoot Our Wounded*²² report urging the ACT government to implement a family violence service for First Nations victims. It was revealed that 6% of the calls received were Aboriginal and Torres Strait Islander women. However, the service lacked cultural knowledge and urgently needed a reform.

¹⁹ [Independent Australia: 'The Lynette Daley story: A failure in the justice system for Indigenous Australians'.](#)

²⁰ [Mamamia: 'Lynette Daley was raped and murdered in 2011. It took six years for her killers to be sent to prison'.](#)

²¹ [Child Family Community Australia: 'Child protection and Aboriginal and Torres Strait Islander Children'](#)

²² [ACT Victims of Crime Coordinator: We Don't Shoot Our Wounded](#)

The report went into further detail, highlighting the clear difference in how First Nations people interact with the services and mentions the severed relationship between the criminal system and the victims.

Several recommendations were suggested including:

- Implementing frameworks and strategic plans to support and heal the victims;
- Setting up a First Nations specific service where legal, advocacy and practical activities can be delivered;
- Develop education programs to help men live violent-free lives; and
- Provide assistance and support to women from the time they report to police to court processes.

It took the ACT government ten years to address and respond to the report. The recommendations were confronted in the ACT Aboriginal and Torres Strait Islander Agreement 2019-2028²³ which also reflects Closing the Gap targets. With the ten year delay, the Dhunlung Yarra Service was created to specialise in case management for high-risk cases in the ACT.²⁴ The *We Don't Shoot Our Wounded* report is an example of the ongoing pressure for governments to address the disadvantages of First Nations people.

Queensland

As we continue to see reports emerge of systemic racism within the Queensland Police Service (QPS) and Queensland senior officers being accused of racialised language and dishonest behaviour towards the QPS First Nations reference group,²⁵ it is First Nations victims that suffer the consequences. The recent refusal to grant the United Nations Subcommittee on Prevention of Torture (SPT) access to inpatient units in Queensland demonstrates the ready denial of Australia's most vulnerable peoples' basic human rights.²⁶

²³ [ACT Aboriginal and Torres Strait Islander Agreement 2019-2028](#)

²⁴ [Canberra weekly: 'Indigenous Family Violence Service Set Up Years After Recommendation'](#)

²⁵ [The Guardian: 'You people' : second-top cop accused of racialised language towards Queensland First Nations leaders](#)

²⁶ [Australian Lawyers for Human Rights: Joint statement of concern regarding suspension of UN Subcommittee on Torture visit to Australia following lack of co-operation in New South Wales and Queensland.](#)

The statistics on missing people in Queensland was notably more difficult to pinpoint than other states. A statement released by the Queensland Government in July 2022, stated that 'there are currently 394 people in Queensland on the long-term missing persons register'.²⁷

It was also reported by the Police Commissioner that 'on average 25 people were reported missing to police every day in Queensland'.²⁸ The Australian Federal Police Missing Persons database only identifies 64 registered long-term missing persons in Queensland and the only way to identify an Aboriginal or Torres Strait Islander Person is through the stereotypical physical features in the ad hoc supply of images.²⁹

The Queensland Police website includes a portal for victims of crime, however, there is no immediate indication of culturally sensitive services that would be appropriate for Aboriginal and Torres Strait Islander peoples.³⁰

Like the many other families who seek closure and justice on the disappearance or murder of their loved ones, First Nations mother-of-ten Constance Watcho's case should have been front page news across the world following the discovery of her remains in a sports bag in Brisbane in 2018.³¹ Despite evidence linking a suspect who lived with Constance, Coroner Stephanie Gallagher adjourned the hearing by stating:

"The evidence is very much full of conflict and there is very little new or useful information in there to inform this court and the family of what actually happened to her".³²

The perceived instability of Constance Watcho's life following her release from prison cannot be used as an excuse to water down a murder case or police due diligence.

Reports of missing and murdered First Nations women that fail to have basic protocols of investigation deployed, negatively impact the relationship between the State and First Nations victims or people at risk.³³

²⁷ [Queensland Government: 'Supporting National Missing Persons Week' \(2022\)](#)

²⁸ Ibid.

²⁹ [Australian Federal Police: Missing Persons: Queensland](#)

³⁰ [Queensland Police, victims of crime.](#)

³¹ [NIT: 'Emotional start to probe into slain Queensland Aboriginal mother'.](#)

³² [ABC: 'Man living with Constance Watcho and her partner tells inquest he loaned her the bag her bones were found in'.](#)

³³ [The Guardian: 'Queensland police inquiry hears allegations of recruits being taught racism, officers being raped'.](#)

The Women's Safety and Justice Taskforce, *Hear Her Voice* report seeks to address coercive control and domestic and family violence in Queensland.³⁴

The recommendations in the report outline in depth:

- Recommendation for systemic reform;
- Raising awareness and understanding in the community;
- Improving primary prevention;
- Improving service system responses;
- Holding perpetrators accountable to stop the violence;
- Improving police responses;
- Improving how legal practitioners and judicial officers respond;
- Improving court responses;
- Immediate legislative reforms against coercive control;
- Legislating against coercive control;
- Monitoring, evaluation and governance.

Extensive consultation and reporting on how to address issues of domestic and family violence are already underway. Rather than generating new reports that confirm the credibility of previous recommendations, resources need to be directed towards implementing the recommendations and programs that are First Nations initiated and led in line with cultural needs.

Northern Territory

There are 31 people registered as missing in the Northern Territory (NT) on the Australian Federal Police's Missing Persons database³⁵, although the real figure is assumed to be much higher. The number of missing First Nations women in the state currently sits at 15.³⁶ It is claimed that due to the remoteness of the NT that the NT Police 'can't confirm how many people there are missing'.³⁷ As of 2021, First Nations

³⁴ [Women's Safety and Justice Taskforce: Hear Her Voice](#)

³⁵ [Australian Federal Police, Missing Persons](#)

³⁶ [Vanished: The Unsolved Cases of First Nations Women](#). (SBS).

³⁷ [NT News, 'Missing: The people who vanished into thin air in the Northern Territory'](#).

people represented 30.8% of NT's population. First Nations people in the NT makeup 7.8% of the national First Nations population.³⁸

In 2014, First Nations woman and mother Joanne Anderson vanished from the small town of Makarata, NT. Police investigations in response to the case were:³⁹

- Under-resourced and suffered from limited staffing, resulting in time delays and inefficiency;
- Culturally misinformed and negligent – police assumed the victim went 'walkabout', citing the commonly held idea that First Nations women lead an 'itinerant' lifestyle;
- Further investigations failed to be carried out as a result;
- It took police three weeks to follow up on eye witness reports, all of which turned out to be inconclusive.

Given the delicate timeframe within which authorities operate to find a missing person, this approach delayed "a crucial search time in what could have been the difference between life or death".⁴⁰

For domestic violence related offences that result in murder, there is a similarly observed pattern of police neglect or 'under-policing' with respect to First Nations women. According to the British Journal to Criminology, 75% of First Nations women who were killed 'experienced police reluctance and inaction following domestic violence.' This was the case for Ms Rubuntja, who was murdered by her ex partner in Alice Springs in 2021. It is noted that police were contacted 18 times over two years for allegations of abuse, but this failed to amount to any formal charges. It was revealed later in court that her perpetrator murdered his ex partner in 1997 during a stabbing spree, and had a history of violent crime. Despite clear warning signs requiring intervention, no actions were taken by police to ensure the victim's safety.⁴¹

The NT experiences the highest rates of domestic, family and sexual violence (DSFV) in Australia. DFSV related homicides are also disproportionately high, and in 2015 rates of sexual assault were almost 50% higher than the next highest jurisdiction.⁴² People in

³⁸ [Northern Territory Government: Northern Territory Economy: Department of treasury and Finance \(2021\)](#)

³⁹ [Vanished: The Unsolved Cases of First Nations Women.](#) (SBS).

⁴⁰ Ibid.

⁴¹ [Four Corners: How Many More?](#)

⁴² [NTCOSS Submission to the Inquiry into domestic, Family and Sexual Violence.](#) (2020).

rural and remote regions are particularly vulnerable to both the causes and effects of DFSV and sexual assault, including higher levels of unemployment, homelessness, and lower levels of educational attainment.⁴³

Aboriginal and Torres Strait Islander people are vastly overrepresented in these areas, comprising 74.8% of the population in very remote Australia (NT).⁴⁴ First Nations women are particularly impacted by domestic, family and sexual violence, with rates of victimisation 18 times higher than for non-Indigenous women.⁴⁵ These disproportionate rates are not mirrored in government policy or investigation methods.⁴⁶

An audit into policing in remote NT showed that policing resources are inappropriately channelled. First Nations communities in the NT are over-regulated and over-managed, without seeing any of the expected benefits.⁴⁷ For example, although the Northern Territory Emergency Response saw an increase in policing in remote communities (which in 2009 had the largest police workforce in Australia), law enforcement in these communities is limited, non-existent, or wholly culturally inappropriate.⁴⁸ Currently, the NT has the highest ratio of police in the country, yet rates of crime and levels of safety have failed to improve.⁴⁹ Resourcing for early intervention, education, community development, and other solutions for addressing the root causes of violence and crime are not prioritised, despite being shown to be more effective.⁵⁰

A contextually driven approach in the NT is required, along with needs-based funding to take into account 'high levels of violence, racism, distance, language and other structural barriers.'⁵¹

⁴³ Ibid.

⁴⁴ [ABS: Very Remote Australia \(NT\): 2016 Census All Persons QuickStats.](#)

⁴⁵ [NTCOSS Submission to the Inquiry into domestic, Family and Sexual Violence.](#) (2020).

⁴⁶ Ibid.

⁴⁷ [The Guardian. 2021. More police in remote NT areas is a direct threat to Aboriginal community, elders say.](#)

⁴⁸ [The Allen Consulting Group: Independent Review of Policing in Remote Indigenous Communities in the Northern Territory: Policing Further into remote communities,](#) 2010.

⁴⁹ [NT Police Ratios highest in the nation, yet territorians still feel unsafe. 2021.](#)

⁵⁰ [The Allen Consulting Group: Independent Review of Policing in Remote Indigenous Communities in the Northern Territory: Policing Further into remote communities,](#) 2010.

⁵¹ [Closing The Gap Campaign Report. \(2021\). Transforming Power: Voices For Generational Change. Lowitja Institute for the Close the Gap Steering Committee Report.](#)

Western Australia

An investigation into family and domestic violence fatalities showed that whilst Aboriginal and Torres Strait Islander people made up 3.1% of Western Australia's population in 2012, they accounted for 33 percent of victims of family and domestic violence offences.⁵² In particular, First Nations women in Western Australia (WA) are at a high risk of murder and are 17.5 times more likely to be a victim of homicide. Despite these findings, there is an observed lack of resources, attention, and culturally appropriate services dedicated to investigating the deaths and missing persons of First Nations Women and children.⁵³

This divide is demonstrated by comparing the high-profile disappearance of the non-Indigenous child Cleo Smith, who was abducted from a campsite in WA in 2021, to that of Baby Charlie Mullaley – a 10-month-old First Nations boy who was tortured and killed after being kidnapped by his mother's former partner in WA in 2013.⁵⁴ In Cleo's case:

- Police were dispatched within ten minutes of a missing person's report being filed;
- Shortly after, an air, land and sea search was conducted around the area where she disappeared;
- The disappearance was well publicised, receiving extensive media coverage and over 1,000 community calls to crime stoppers;⁵⁵
- The police offered \$1 million for information on her whereabouts.

Cleo's case received a well-resourced, targeted, and immediate response, while the disappearance of baby Charlie received comparably little police commitment, with a 2016 investigation by the Corruption and Crime Commission finding a 'delayed and ineffective response by individual officers on the night of Charlie's disappearance.'⁵⁶

For example, although police were notified that Charlie was in grave danger around midnight on the night of his disappearance, a police report was not generated until

⁵² [VRO Family and Domestic Violence Investigation Report.](#)

⁵³ [NITV: Voice of missing and murdered heard in WA Parliament. \(SBS\).](#)

⁵⁴ [ABC News: Cleo Smith case sparks calls to treat Indigenous missing children equally.](#)

⁵⁵ [The West Australian: Cleo Smith search, Timeline of important events.](#)

⁵⁶ [Corruption and crime commission \(2017\): Report on the response to a particular incident of domestic violence on 19-20 March 2013.](#)

1.20AM, several hours later. The Mullaley family also dealt with significant red tape in the process of investigation that is not mirrored in Cleo's case, such as requiring the family to produce medical proof that Ms Mullaley was Charlie's biological mother.⁵⁷

Although the official stance taken by authorities is that it is 'impossible to know' if a more rapid response could have saved Charlie's life,⁵⁸ research literature observes that deaths occur where police fail to follow established procedures and apply these procedures inconsistently.⁵⁹

Western Australia's new plan to reduce family and domestic violence was launched in 2020.⁶⁰ A review of the previous State Strategy identified numerous inadequacies of the governing framework. It lacked a dedicated strategy for First Nations Peoples, failed to establish coherent procedural guidelines for police reporting and monitoring of progress for stated outcomes under the plan, and did little to improve data gaps relating to different communities experiencing higher levels of violence.⁶¹

An audit into cultural security within WA police also revealed a significant lack of cultural competence training for police, nor any development strategy targeted to managing Aboriginal and Torres Strait Islander matters. Issues of transparency and accountability were identified in all existing processes, procedures, and frameworks, as well as minimal, if any, involvement from the First Nations community in informing them.⁶²

Whilst police undoubtedly have a fundamental role to play in addressing the aforementioned issues, there also needs to be culturally-secure policies and organisational practices established that support the right attitudinal and cultural shifts to occur. This is something that can only be achieved with the explicit and direct involvement of First Nations communities at every stage of this process.⁶³

⁵⁷ [Enormous Support for inquest into Charlie Mullaley's brutal murder.](#)

⁵⁸ [Enormous Support for inquest into Charlie Mullaley's brutal murder.](#)

⁵⁹ [VRO Family and Domestic Violence Investigation Report.](#)

⁶⁰ [Western Australia's Strategy to Reduce Family and Domestic Violence \(2021\).](#)

⁶¹ [Western Australian Ombudsman Investigation.](#)

⁶² [Cultural Security Audit for WA Police \(2018\).](#)

⁶³ Ibid.

South Australia

According to South Australia (SA) Police's Annual report 2020-21, 12,494 South Australians were reported missing, with 99.9% of those also reported found.⁶⁴

Where police are perceived as being more likely to delay response times or resources for investigating missing persons cases, First Nations victims' families turn to their own resources prior to seeking police assistance, increasing the risk of danger for victims.⁶⁵

Recently, two First Nations brothers, Peter and David Woodford aged 12 and nine respectively, went missing after being seen leaving their Christies Beach home in Adelaide's south on BMX bikes. Despite the children going missing on Tuesday 20 September 2022, community appeal was delayed until Sunday 25 September. Police waited five days before releasing images of the young boys and issuing a missing persons report.⁶⁶

Earlier in 2021, Coober Pedy elder, Aunty Shirley Williams – who lived with dementia – was reported missing following investigations carried out by her family. Inaccurate official records of Aunty Shirley's age and the knowledge of her dementia made Aunty Shirley a high-risk missing person. Despite cooperation with police, the Williams family criticised the operation for being too little, too late, and expressed their concerns by saying:

“That's my mother who's out there in the middle of nowhere, she's a human being like us.”⁶⁷

South Australia Police's Annual report 2020-21⁶⁸ also identified that of 1,928 complaints received by the public:

- 928 complaints related to 'failure to action service request; poorly informed decisions; incorrect or incomplete service provided';
- 795 complaints related to 'service design doesn't meet customer needs; poor service fit with customer expectations';

⁶⁴ [South Australia Police, Annual report 2020-21.](#)

⁶⁵ [Australian Institute of Criminology: 'Missing Persons: Who is at risk?' Research report 08 \(2017\).](#)

⁶⁶ [NIT: 'Missing Aboriginal children Peter and David Woodford found after six days'.](#)

⁶⁷ [SBS News: 'Family of missing Indigenous elder asked why authorities aren't doing more to help find her.'](#)

⁶⁸ [South Australia Police, Annual report 2020-21: Public Complaints.](#)

- 79 complaints related to 'lack of staff punctuality; excessive waiting times (outside of service standard); timelines not met'; and
- 73 complaints related to 'customer's confidentiality or privacy not respected; information shared incorrectly'.

First Nations families, like any victim's family, want closure as to whether their family member is safe, or in the worst of cases be able to commemorate the body of a person who could not be located alive through cultural ceremonies.

Police competency when responding to reported incidents should be of least concern when a victim's family depends on the resources and training of police departments to locate their loved ones.

Victoria

The 2022 audit titled *Victoria Police handling of complaints made by Aboriginal people*⁶⁹ identified concerning patterns in how Victorian Police respond to and investigate matters relating to Aboriginal people. The audit highlighted areas of concern included:

- Police use of force;
- Low level of complaints that were substantiated;
- Inappropriate interviewing, documentation of contact and welfare checks for Aboriginal children under the age of 17;
- Lack of understanding of human rights, especially relating to Aboriginal people;
- Poor recording of Aboriginal status;
- Failure to update complainants on investigation progress;
- Inadequate use of specialised resources;
- Evidence of bias or lack of impartiality; and
- Inaction of conflicts of interest raised by Aboriginal stakeholders.

Despite the Victoria Police having dedicated resources such as an Aboriginal Community Liaison Officer and a Police Aboriginal Liaison Officer, these resources become redundant when there is insufficient declaration of Aboriginal and/or Torres

⁶⁹ [Victoria Police handling of complaints made by Aboriginal people.](#)

Strait Islander status or the watering down of complaints that may not make it to the stage of requiring a referral.⁷⁰

A better alternative is to invest in the community controlled services already well established in the communities in Victoria. The Victorian Aboriginal Child Care Agency⁷¹ (VACCA) provides services such as cultural strengthening programs, family violence services and justice support services that are culturally informed.

Tasmania

The 2021 Census of Populations and Housing identified that 30,000 people identified as Aboriginal and/or Torres Strait Islander, representing 5.4% of Tasmania's population.⁷² Similar to other states and territories, the distinction of First Nations populations from non-Indigenous populations is difficult when attempting to investigate the rate of missing and murdered First Nations women and children.

The lack of statistics doesn't mean that there aren't any cases of Aboriginal and Torres Strait Islander women and children missing or murdered in Tasmania. It is more likely that they are included in general Australian statistics, however, due to First Nations women being the most legally disadvantaged group in Australia⁷³, issues of injustice and lateral violence cannot be addressed if there is no clear indication on the rate at which First Nations women or children are victims of domestic violence or missing persons cases. A report where SNAICC, NFVPLS, and NATSILS collaborated identified that low reporting could be explained by fear of criminalising other First Nations people who are perpetrators of violence, fear of having children taken away, and lack of confidence in police or community support.⁷⁴ In the AHRC *Wiyi yani u Thangani report* (2020), a women from Hobart reflected:

'Unless there is a healing pathway, no one will say anything. Everything is about punishment – a learned behaviour from colonisation. Not a way of repair. These were hard conversations to have. Then working with male prisoners – talking

⁷⁰ Ibid.

⁷¹ [Victorian Aboriginal Child Care Agency \(VACCA\)](#)

⁷² [ABS, 'Tasmania: Aboriginal and Torres Strait Islander population summary'](#).

⁷³ [Vice, 'Life for Australian Indigenous Women is Tough, But There's Plenty to be Hopeful About.'](#)

⁷⁴ [Strong Families, Safe Kids: Family violence response and prevention for Aboriginal and Torres Strait Islander children and families](#)

about being raped by the mothers. They felt like they can't tell these stories. The denial and suppression of the continued atrocities that happen. Every man I have worked with in jail that has enacted child sex abuse, every one was violently sexually assaulted as a child. It is so complex. It is not saying it is ok, but there needs to be understanding and that they deserve help.⁷⁵

Despite the clear disproportionate experience of domestic violence, racism and application of investigative measures reported across Australia in relation to First Nations women and children, there doesn't appear to be easily accessible or obvious resources and services to investigate missing or murdered First Nations peoples that differ in their cultural appropriateness when compared with non-Indigenous cases. This appears counterintuitive when considering the extensive research which supports the need for First Nations specific services. If there are services, they need to be linked through the mainstream services to ensure referral.

A review of each jurisdiction has uncovered a pattern of inefficient and inappropriate procedures to investigate matters involving First Nations victims, with recommendations for culturally appropriate reforms being ignored. Failure to address institutional racism places First Nations lives at greater risk. **ANTAR recommends that a justice reinvestment model is adopted to address the inefficiency of the Australian criminal justice system.** Change the Record⁷⁶ provides evidence that investment in communities addresses the root causes of offending as well as risk factors that deter victims from leaving dangerous environments. A justice reinvestment model centres around place-based, community-driven solutions to criminal justice issues which can be adjusted to the specific needs in each jurisdiction by providing housing, employment, health care and education.⁷⁷

⁷⁵ [AHRC: Wiyi yani u Thangani report \(2020\)](#).

⁷⁶ [Change the Record: Justice Reinvestment](#).

⁷⁷ [Just Reinvest NSW](#).

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

Despite extensive strategic plans available relating to family and domestic violence, binding legislation relating to each state and territory include:

- Family Law Act 1975⁷⁸ (Federal);
- Crimes (Domestic and Personal Violence) Act 2007⁷⁹ (NSW);
- Domestic and Family Violence Protection Act 2012⁸⁰ (QLD);
- Family Violence Act 2016⁸¹ (ACT);
- Domestic Violence Act 2018⁸² (SA);
- Family Violence Protection Act 2008⁸³ (VIC);
- Family and Domestic Violence Act 2007⁸⁴ (NT); and
- Family Violence Act 2004⁸⁵ (TAS).

Evaluation of these acts highlighted that there is minimal if any reference to Aboriginal and Torres Strait Islander peoples beyond basic definitions of the identity of a First Nations person.^{86 87 88 89} There fails to be any identification of a vulnerability that requires vigilant protection parallel to non-Indigenous legislation other than in Queensland's Domestic and Family Violence Protection Act (2012)⁹⁰. For decades, it has been demonstrated that violence against First Nations people is a crisis that demands immediate reform.

⁷⁸ [Family Law Act 1975](#).

⁷⁹ [Crimes \(Domestic and Personal Violence\) Act 2007](#).

⁸⁰ [Domestic and Family Violence Protection Act 2012](#).

⁸¹ [Family Violence Act 2016](#).

⁸² [Domestic Violence Act 2018](#).

⁸³ [Family Violence Protection Act 2008](#).

⁸⁴ [Family and Domestic Violence Act 2007](#).

⁸⁵ [Family Violence Act 2004](#).

⁸⁶ [Crimes \(Domestic and Personal Violence\) Act 2007](#).

⁸⁷ [Family Violence Act 2016](#).

⁸⁸ [Domestic Violence Act 2018](#).

⁸⁹ [Family and Domestic Violence Act 2007](#).

⁹⁰ [Domestic and Family Violence Protection Act 2012](#).

Despite the Family Law Act (1975)⁹¹ outlining the right for First Nations children to enjoy cultural connection with support and encouragement, First Nations children as young as ten continue to be detained at unprecedented rates.⁹²

Victoria's Family Violence Protection Act (2008)⁹³ provides the most extensive mention of First Nations Peoples' right to self-determination and data sovereignty. Under the *family violence intervention orders*, section 4 (a) and (b) outline the need to maintain connection between First Nations young people, their culture and their community where possible. Under the *principles* section it is also highlighted that the collection and dissemination of data relating to First Nations people should promote self-determination and is culturally sensitive. Unfortunately these declarations are lost in translation when we consider Victoria Police's handling of complaints by First Nations people.⁹⁴ The Tasmanian Family Violence Act (2004)⁹⁵ further fails to mention even a definition of Aboriginal and Torres Strait Islander people.

Reports such as the White Ribbon's proposed Aboriginal and Torres Strait Islander violence prevention framework targeted at men and boys,⁹⁶ and the Australian Institute of Health and Welfare 2018 report of family, domestic and sexual violence in Australia⁹⁷ have acknowledged the disproportionate experience of domestic and family violence against First Nations women and children.

Although recommendations set out in reports consistently recognise the impacts of intergenerational trauma, structural violence and founding violence which relates to the dispossession of land, there still fails to be legislation which appropriately aligns with the needs of Aboriginal and Torres Strait Islander victims and perpetrators of domestic and family violence. Current community-based and run programs are characterised by their limited capacity to function as a consequence of underfunding, under-resourcing and their voluntary nature. The mainstream programs available to victims and perpetrators fail to mitigate the indicators of First Nations peoples health and wellbeing.⁹⁸

⁹¹ [Family Law Act 1975](#).

⁹² [Raise The Age](#).

⁹³ [Family Violence Protection Act 2008](#).

⁹⁴ [Victoria Police handling of complaints made by Aboriginal people](#).

⁹⁵ [Family Violence Act 2004](#).

⁹⁶ [White Ribbon: Australia towards an Aboriginal and Torres Strait Islander violence prevention framework for men and boys](#).

⁹⁷ [AIHW: Family, domestic and sexual violence in Australia 2018](#).

⁹⁸ [White Ribbon: Australia towards an Aboriginal and Torres Strait Islander violence prevention framework for men and boys](#).

Disregard for the ongoing advocacy for legislation which protects and promotes the wellbeing of First Nations people, is an injustice to the increased marginalisation that occurs as a result of failing to establish culturally informed training within programs. It is recorded that Aboriginal and Torres Strait Islander women are 34 times more likely to be hospitalised for family violence than non-Indigenous women, with a rate which is higher for First Nations women living in remote areas.⁹⁹

In the 2022-2023 National Plan to end Violence against Women and Children there was the establishment of a standalone First Nations National Plan which includes an Aboriginal and Torres Strait Islander Advisory Council.¹⁰⁰ Committing to reduce violence against First Nations women by at least 50% by 2031 will require co-designed processes and the overhaul of punitive measures which criminalise First Nations victims, to be replaced with a justice reinvestment model, such as Just Reinvest NSW, which contributes to broader systemic reform in education, health, care and child protection.¹⁰¹

⁹⁹ [Australian Government: National Plan to Reduce Violence against Women and their Children.](#)

¹⁰⁰ [Australian Government Department of Social Services: National Plan to End Violence against Women and Children 2022-2023.](#)

¹⁰¹ [Just Reinvest NSW.](#)

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

“Aboriginal women who are victims of violence are often re-victimised in media representations following their deaths... They are painted in dehumanising terms and seen as responsible for their own deaths. When attempts are made to ‘humanise’ them, it is always in language that sees ‘human’ as close to whiteness, as most palatable to white Australia.”¹⁰²

Darumbal and South Sea Islander journalist, Amy McQuire

Social and Cultural

First Nations women and children experience racial profiling, racial prejudice and negative social stigma that contribute to the unjust and unacceptable levels of violence, abuse and neglect. Socially, the concepts of motherhood and femininity were stripped by colonisation, which rather deemed First Nations women as commodities.

Stigmatising connotations such as ‘failed mothers’, ‘alcoholics’, ‘insignificant’ and ‘unrescuable’ painted them to be less valuable than the western colonial portrayal of women.¹⁰³

The media and the public turns a blind eye towards the degree of violence faced by First Nations women and often, victims also place blame on mothers and women for the violence they endured.¹⁰⁴ In doing so, women’s stories are silenced and the ongoing violence fails to be addressed. The normalised violence in households often stems from unaddressed mental health issues that were direct results of the traumatic experiences First Nations peoples face.

¹⁰² [‘Australia Needs an Inquiry into Murdered and Missing First Nations Women’.](#)

¹⁰³ [A Global Silence: A Critical Interpretive Synthesis of Aboriginal Mothering Through Domestic and Family Violence..](#)

¹⁰⁴ [‘Media constructions of Indigenous women in sexual assault cases: reflections from Australia and Canada’.](#)

The *Bringing Them Home Report* highlighted the great extent of various unhealthy coping mechanisms children may resort to. The lack of social supports meant no protection nor comfort which ultimately enhances the guilt, shame and low self-esteem that came with abuse.¹⁰⁵

First Nations culture consists of reciprocity and proudly proclaims a complex kinship system connecting First Nations people to each other and Country. Systemically, the First Nations kinship system has been eroded by colonialist structures to conform to the modern nuclear family and western societal standards of nurturing.

Networks and connections based on reciprocity have become weakened. Together with men, First Nations women are responsible for handing down customs and lore.¹⁰⁶ The power imbalance introduced by colonisation in domestic settings can be reflected in the gender based violence that First Nations women now greatly endure.¹⁰⁷ It has become clear that First Nations women who experience violence may be reluctant to leave the physical and emotional support that is intrinsically tied to Country and families. Children also find themselves alienated from society due to the loss and destruction of culture that tarnishes their sense of cultural identity.

Economic

Economic factors in the ongoing violence perpetrated against First Nations women and children are primarily the critical under-resourcing of available community programs and services.¹⁰⁸ Social determinants such as education, employment and income are crucial to being able to live a healthy and content life. A person's level of education, employment and income influence their access to better housing and social services.

With the employment rate of First Nations people being 49% compared to 76% of the non-Indigenous population, pressures from financial instability can create domestic pressures that contribute to the ongoing violence First Nations women and children experience.¹⁰⁹ Without financial stability, women and children are unable to obtain the

¹⁰⁵ [Human Rights Commission: 'Bringing Them Home' report.](#)

¹⁰⁶ [Restoring the Balance First Nations Women, Community, and Culture.](#)

¹⁰⁷ [The Guardian: 'The deaths of Aboriginal women must spark outrage – and change'.](#)

¹⁰⁸ [A Global Silence: A Critical Interpretive Synthesis of Aboriginal Mothering Through Domestic and Family Violence.](#)

¹⁰⁹ [AIHW, Determinants of health for Indigenous Australians.](#)

resources needed to aid their education, limiting their employment opportunities and furthermore aggravating the continuous cycle of poverty.

In 2018-19, Australian Bureau of Statistics health survey data revealed that one in five Aboriginal and Torres Strait Islander people live in overcrowded housing, a factor that impacts education, employment and income.¹¹⁰ Children who live in overcrowded housing are more likely to experience neglect and abuse, especially in single parent households.¹¹¹ Statistics reveal that 55,300 Aboriginal and Torres Strait Islander children received child protection services and the number of children receiving child protection services rose between 2016-17 and 2019-20, from 49,200 to 55,300. The reason for an increase in contact between First Nations children and child protection services is likely to be associated with factors such as racial profiling, identified over-policing in communities, and State actions which perpetuate colonial attitudes towards First Nations people.

Situational factors such as poverty created an environment for opportunistic police arrests and the systemic failures to address unemployment, lack of housing and health care fostered the likelihood of violence.¹¹² To gain access to social services, First Nations women and children living in remote areas are forced to travel to towns which incurs costs to households. The financial burden of travelling in order to access health or justice services should not be placed on vulnerable First Nations communities nor should the decision to leave harmful environments where family or domestic abuse is present be a decision that leaves First Nations women and children further marginalised. When First Nations women and children are forced onto the streets due to fleeing family or domestic violence and social services fail to provide support, First Nations people become targets of police profiling and criminalised for their circumstances.¹¹³

The AIHW statistics, 2018-19, reports that more than half of First Nations Peoples aged 15 and over could not raise \$2,000 within a week for an emergency and that 39% of households reported they went some days without money for basic living expenses in the last twelve months.¹¹⁴ National Australia Bank (NAB) published a report in 2019

¹¹⁰ [AIHW, Determinants of health for Indigenous Australians.](#)

¹¹¹ [Cant et al. 'Overcrowded housing: One of a constellation of vulnerabilities for child sexual abuse. Author links open overlay panel', Science Direct.](#)

¹¹² [NSW Health: 'Aboriginal Family Health Strategy 2011-2016.'](#)

¹¹³ [NSW Courts, 'Policing the Poor: The History of Vagrancy Laws and the Criminalisation of Homelessness.'](#)

¹¹⁴ [AIHW: Indigenous income and finance.](#)

highlighting that 48.8% of Aboriginal and Torres Strait Islander participants were experiencing severe or high financial stress, compared with only 11% of the general population.¹¹⁵ These statistics reveal that due to financial vulnerability, the hardship for women and children can not be ignored.

Institutional and Historic Causes of Violence

The Incarceration Crisis: Locking up children

The ALA and ANTAR believe that current forms of violence against First Nations women and children cannot be understood, nor addressed, unless there is an assessment of broader historical and institutional causes of violence against First Nations peoples and their children.

As we have consistently advocated,¹¹⁶ our organisations consider that raising the age of criminal responsibility is a key measure in reducing the rate of incarceration of young people, who by accepted legal principle, should only be detained as a last resort. Currently, the minimum age of criminal responsibility is ten years. This is in breach of international human rights standards and puts Australia out of step with much of the rest of the world; the worldwide median age of criminal responsibility is 14 years.¹¹⁷

We are concerned that by criminalising the behaviour of children who may not be aware of the consequences and nature of their conduct, a dangerous cycle of disadvantage is initiated, causing children to become entrenched in the criminal justice system where inevitable physical violence and mental deterioration is experienced.

Several studies confirm that when children are drawn into the criminal justice system at a young age, there is a significantly higher likelihood of subsequent reoffending, and a lower likelihood of that child completing her/his education or securing employment.¹¹⁸

Research has established that imprisonment generally can have a 'criminogenic' effect because of difficulties adjusting to life post-incarceration, stigma making it difficult for

¹¹⁵ [NAB: 'Money stories: Financial resilience among Aboriginal and Torres Strait Islander Australians'](#).

¹¹⁶ [Australian Lawyers Alliance \(ALA\). The Criminal Law \(Raising the Age of Responsibility\) Amendment Bill. 2021. Submission to the Queensland Parliament Community Support and Services Committee, 8 October 2021.](#)

¹¹⁷ [Australian Human Rights Commission, National Children's Commissioner, Children's Rights Report 2016, 187.](#)

¹¹⁸ [Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice, supervision, 2014–15.*](#)

ex-prisoners to find employment or housing, weakened links with families and friends, and exposure to older prisoners that may provide an 'education in crime' and build networks with older offenders.¹¹⁹

In 2020, close to 600 children aged ten to 13 years were locked away in prisons across Australia and many more were pushed through the criminal legal system.¹²⁰ The ALA draws attention to the fact that Aboriginal and Torres Strait Islander children are disproportionately impacted by laws that imprison them, with 65% of children as young as ten-years-old identifying as Aboriginal or Torres Strait Islander in 2020.¹²¹

The ALA and ANTA consider that the mass imprisonment of Aboriginal and Torres Strait Islander children is a national crisis that must be addressed by reconsidering outdated notions of retributive punishment that leave little room for understanding the health and welfare implications of the ongoing, well-documented impact of intergenerational trauma and incarceration.¹²²

We believe that health and welfare response, in addition to a justice reinvestment approach, will play an important part in addressing ongoing violence towards and particular vulnerabilities of First Nations women and children.

Child Mass Incarceration – Northern Territory's Don Dale prison

The incarceration of First Nations children in the condemned youth detention facility known as Don Dale, continues unabated in Darwin. There is currently a record high number of 'prisoners' with some as young as ten and eleven, and many if not all being Aboriginal or Torres Strait Islander.¹²³

Don Dale was originally an adult maximum-security prison, repurposed as a youth detention centre in 2015 and became the subject of a 2017 royal commission after

¹¹⁹ [Australian Government - Productivity Commission Research Paper, Australia's prison dilemma, October 2021 p15.](#)

¹²⁰ [Australian Institute of Health and Welfare \(2021\) Youth detention population in Australia 2021, AIHW, Australian Government, accessed 08 November 2022; Sophie Trevitt, 'Australian governments continue to fail kids by refusing to raise the age at which children can be locked in prison' \(Media release, 27 July 2020\).](#)

¹²¹ [Lorena Allam, 'Jailing of nearly 500 children aged 13 and under a 'failure' by Australia's top legal officers, advocates say', *The Guardian* \(News article, 27 July 2021\).](#)

¹²² [McCallum, D. \(2022\). Law, justice, and Indigenous intergenerational trauma - a genealogy. *International Journal for Crime, Justice and Social Democracy*, 11\(3\), 165–177.](#)

¹²³ [Office of the Children's Commissioner – Northern Territory, *Don Dale Youth Detention Centre Monitoring Report*, \(No. 461, 6 October 2021\); Lorena Allam, "System is broken": all children in NT detention are Aboriginal, officials say", *The Guardian* \(News article, 31 May 2019\).](#)

distressing footage of the treatment of juvenile detainees was broadcast on the ABC, showing the use of restraints, strip searches, teargas and spit hoods. While the Royal Commission found that it was 'wholly inappropriate' for children and recommended it be closed (the NT government declaring acceptance of all but ten of the 227 Royal Commission recommendations) conditions continue to remain completely unacceptable for the detention of children.¹²⁴

The Royal Commission into the Protection and Detention of Children in the Northern Territory found that the NT's detention system failed to uphold basic binding human rights standards in the treatment of young people who were denied their basic needs such as water, food and use of toilets.¹²⁵

In an article for the Arena, criminal barrister John Lawrence SC writes the following of his eleven-year-old client held in Darwin's Don Dale prison:

'No human being should be held in such a dystopian relic, let alone a troubled Indigenous child. Billy spends twenty to twenty-two hours each day on his own in that cell, released for only fifteen minutes every four hours, to sit in a concrete yard in the company of one other child. There's virtually no sport or recreation available and little education. Most, if not all of the children held in Don Dale, require therapeutic, trauma-informed care from qualified and experienced staff. This was the basis of three White/Gooda Royal Commission recommendations (2017): 16.7, 19 and 28.2. What they actually get is trauma-compounding.

Note again, Billy is only eleven years old. Back in 2011, then-CEO of NT Adult Corrections, Ken Middlebrook, described Berrimah Jail in his evidence to a coronial inquest as being 'only fit for a bulldozer'. I've been through the place. It's derelict, all crumbling concrete and rusting steel mesh, with a dilapidated basketball court with broken hoops. Most of the staff are inadequately qualified to work effectively with the troubled Indigenous child inmates. This is

¹²⁴ [Lorena Allam, 'Is it really going to take a death?': legal advocates say Don Dale must be shut down', *The Guardian* \(News article, 10 June 2022\)](#)

¹²⁵ [Royal Commission and Board of Inquiry into the Protection and detention of children in the Northern Territory \(Final Report, November 2017\) vol. 4](#)

barbarism. And yet it continues unabated. We have moved backward. We have become backward.’¹²⁶

According to data provided by the Department of Territory Families, Housing and Communities, there were 54 incidents of self-harm between July 2021 and December 2021 inside Don Dale; a more than 500 per cent increase from the corresponding period in 2020, when there were eight instances of self-harm reported.¹²⁷ Nationally, suicide deaths represent a higher proportion of deaths in young First Nations Australians age groups compared to non-Indigenous Australians. From 2016 to 2020, almost a quarter (24%) of deaths in Indigenous Australians aged zero to 24 were due to suicide, compared to 17% in non-Indigenous Australians.

For those who witness and hear about these deaths, there is a compounding effect of trauma that the ALA and ANTA believe must not be ignored. For example, a First Nations boy attempted to take his own life by stabbing himself in the stomach and days later, three other children in Don Dale were reported to have been hospitalised after self-harming.¹²⁸

Our organisations believe that incarceration of children and the associated violence that children experience in prison is not only immoral, but it is unlawful and a gross form of institutionalised violence experienced predominantly by Aboriginal and Torres Strait Islander young people and children. Don Dale Youth Detention Centre is operated by the Department of Territory Families, Housing and Communities.

The Department owes a duty of care towards young people in Don Dale, along with the standards set out in various international legal conventions as signed and ratified by Australia (e.g., the 1990 UN Rules for the Protection of Juveniles Deprived of their Liberty and the 1990 UN Convention on the Rights of the Child). Despite the Royal Commission recommending that the Northern Territory, Government close the centre

¹²⁶ [John B. Lawrence SC, 'Indigenous child abuse continues in Australia', *Arena* \(News article, 29 June 2022\).](#)

¹²⁷ [Steve Vivian, 'Self-harm incidents inside Don Dale spark intervention of NT Children's Commissioner', *ABC News* \(News article, 10 June 2022\).](#)

¹²⁸ [Amanda Parkinson and Zizi Averill, 'Self-harm and suicide rates double across Northern Territory detention centres', *NT News*, \(6 July 2022\).](#)

and replace it with a new purpose-built facility, accepting all 227 recommendations,¹²⁹ Don Dale prison remains open.

The government must adopt a therapeutic framework to guide its operations and treatment of children who by all standards are not cognitively developed enough to be measured by the standards of an adult.¹³⁰ In addition to the mental and physical violence experienced by First Nations children in detention settings, the ALA draws attention to ample research showing that imprisonment generally has a "criminogenic" effect because of difficulties adjusting to life post-incarceration, weakened links with families and friends, and exposure to older prisoners that may provide an "education in crime" and build networks with older offenders.

We support viable, effective and more appropriate alternatives to incarceration that work to address offending behaviour in children. Right around the country, community-driven solutions, intensive family support programs, trauma-informed mentorship and on-country learning are supporting children to learn from their mistakes instead of locking them away. The choice to continue along the path towards mass incarceration of Aboriginal and Torres Strait Islander children is to deny their basic right to life.

Bail law reform: Increasing contact with the criminal justice system

The ALA draws attention to 'tough on crime' rhetoric being at odds with youth diversion programs. It is well-documented that tightening bail laws has led to significant increases in the number of incarcerated Aboriginal children and therefore, the duration of mental harm and physical violence they experience within our institutions. For example, last year the NT Government toughened youth bail laws¹³¹ and subsequently imprisoned children at rates higher than they have ever been. Half (50%, or 410 of 819) of all young people in detention on an average night in the June quarter 2021 were Aboriginal or Torres Strait Islander people. This is stark given that First Nations young

¹²⁹ [Northern Territory, *Parliamentary Debates, Legislative Assembly*, 21 November 2017, p. 60 \(Mr Gunner, Chief Minister\).](#)

¹³⁰ [Kelly Richards, 'What makes juvenile offenders different from adult offenders?', *Trends & Issues in crime and criminal justice*, No. 409, February 2011, 4; Laurence Steinberg, 'Risk taking in adolescence: new perspectives from brain and behavioural science', \(2007\) 16 *Current Directions in Psychological Science* 55, 56.](#)

¹³¹ [Youth Justice Legislation Amendment Act 2021.](#)

people make up just six per cent of the Australian population aged ten–17.¹³² In addition, young First Nations Australians aged 10–17 were 20 times as likely as young non-Indigenous Australians to be in detention on an average night in the June quarter 2021, and this fluctuated, at 16–25 times the non-Indigenous rate over a four-year period.¹³³

NSW had a similar experience in September 2021; 107 children and young people were in prison without having been sentenced, with 68 children and young people detained under sentence. In the June quarter 2021, the number of people held in prison without being sentenced was more than double the number detained under sentence.¹³⁴

Continual bail law amendments (e.g. increasing ‘show cause’/reverse onus offences) has a significant impact on the over-incarceration of Aboriginal and Torres Strait Islander peoples and children alike. It is well documented that remand can significantly affect the lives of those subjected to it, particularly by negatively effecting mental health, with higher rates of suicide among the remand population compared with the sentenced prison population.¹³⁵

As recently noted in ALA’s submission to the New South Wales Law Reform Commission, placing people on remand or in prison has ripple effects that are often felt by third parties, such as children and people who are cared for by the detained person.¹³⁶ This is particularly concerning given the well-documented intergenerational trauma experienced from historical experiences of child removal from families.

We are concerned with the overuse of remand which has undoubtedly serious consequences for individuals and their families; particularly for Aboriginal and Torres Strait Islander children. The remand rate for First Nations Australians was already significantly higher than that of non-Indigenous adults – 17.3% compared to 6.5%. After the Bail Act amendment in NSW, the rate of remand for First Nations Peoples increased

¹³² [Australian Institute of Health and Welfare \(2021\) Youth detention population in Australia 2021, AIHW, Australian Government, accessed 09 November 2022.](#)

¹³³ [Ibid.](#)

¹³⁴ [New South Wales Custody Statistics, Quarterly Update \(September 2021\).](#)

¹³⁵ [New South Wales Law Reform Commission, *Bail*, \(Report 133, 2012\) ch 5.](#)

¹³⁶ [Australian Lawyers Alliance, Submission No BL12 to NSW Law Reform Commission, *Bail: Firearms and Criminal Associations* \(28 September 2022\); New South Wales Law Reform Commission, *Bail: Firearms and Criminal Associations* \(Report No 150, 4 November 2022\).](#)

by 14.4% and for non-Indigenous adults by only 7%.¹³⁷ Notably, these statistics occurred despite provisions in the *Bail Act 2013* (NSW) that allowed the court to consider kinship and community ties when assessing the probability that Aboriginal and Torres Strait Islander Australians would appear in court, and to consider their 'special needs'.¹³⁸

Tightening bail laws, particularly for offences affecting youth, is unconscionable as it has the effect of keeping children detained under harmful conditions.

Discriminatory impact of 'Public Order' offences

The ALA's recent submission to the Queensland Community Support and Services Committee, highlighted the discriminatory impact of public order offences such as public intoxication, public urination and begging which are significantly influenced by attitudes to drinking, poverty, and systemic racism.¹³⁹ This is affirmed by the fact that First Nations deaths in custody occur largely as a result of the disproportionate number of arrests, remand, and jailing which First Nations people experience relative to the general population. For example, racial profiling has also been shown to significantly impact the way in which police carry out their duties.¹⁴⁰ For example, in 2021 – a total of 2102 people were charged or fined for 'public order' offences; public intoxication charges accounted for 1256 of those charges, with half of the offenders identifying as Indigenous despite only making up 4.6% of the population.¹⁴¹

Generally speaking, First Nations people significantly more likely to be arrested and imprisoned than other Australians¹⁴² and as a consequence, are six times more likely to die in police custody than non-Indigenous people.¹⁴³ Between 1979-80 and 2018-19,

¹³⁷ [NSW Bureau of Crime Statistics and Research, The Impact of the Bail Amendment \(Repeat Offenders\) Act 2002, Crime and Justice Bulletin No 83 \(2004\).](#)

¹³⁸ [Victorian Law Reform Commission, Review of the Bail Act \(Final Report, September 2007\), 45.](#)

¹³⁹ [Calla Wahlquist, "Tanya Day's family 'devastated' that no police will face charges for death in custody", The Guardian \(News article, 27 August 2020\).](#)

¹⁴⁰ [Racial Profiling and Police Subculture Janet Chan Canadian Journal of Criminology and Criminal Justice 2011 53:1, 75-78; Evan Young, "After new allegations, Indigenous legal expert says racial profiling by police is still 'very common'", SBS News \(News article, 31 March 2021\).](#)

¹⁴¹ [Matt Dennien, 'Lawyer flags support for offensive language law rethink amid broader reforms, Brisbane Times \(News article, 14 July 2022\).](#)

¹⁴² [Alexandra Gannoni and Samantha Bricknell, Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody \(Australian Institute of Criminology, Statistical Bulletin 17, February 2019\).](#)

¹⁴³ [Laura Doherty and Samantha Bricknell, Deaths in custody in Australia 2018-19 \(Australian Institute of Criminology, Statistical Report 31, 2020\) 12.](#)

Indigenous deaths comprised 18% of prison custody deaths and 22% of police custody deaths across Australia, despite making up just over 3% of the Australian population.¹⁴⁴

The impact of racial profiling and discrimination on the operation of punitive laws cannot be ignored if the issue of mass incarceration of Aboriginal and Torres Strait Islander women and children is to be holistically understood and effectively addressed. It is well-documented that the effect of mass incarceration increases vulnerabilities of these cohorts and weakens the general social fabric of the First Nations community. When existing empirical data suggests that early contact with the criminal justice system is generally detrimental to health outcomes, the compounding of this trauma for Aboriginal and Torres Strait Islander women and children is clearly reflected in the statistics on mass incarceration.

Domestic and Family Violence – Policing Responses

A culture of gender and racial prejudice

There is an inherent failure by police services to appropriately support and protect First Nations women. Nationally, Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised due to family violence than non-Aboriginal women, ten times more likely to die due to assault, and 45 times more likely to experience violence.¹⁴⁵ First Nations women are five times more likely to be victims of homicide than non-Indigenous females, and are more likely to be killed by strangers.¹⁴⁶ A substantial amount of data also suggests that First Nations women suffer from levels of sexual violence many times higher than in the wider population.¹⁴⁷

The stories of Aboriginal and Torres Strait Islander women and from police services themselves demonstrate the reality experienced by many; that while the State purports to protect them, the actual experience of First Nations women is often characterised by direct and indirect violence. Accounts from First Nations women detail the stereotyping and racial profiling experienced as a result of seeking help from police, as

¹⁴⁴ [Australian Institute of Criminology, National Deaths in Custody Program.](#)

¹⁴⁵ [Marcia Langton, 'Two Victims, No Justice'. The Monthly \(July 2016\).](#)

¹⁴⁶ [Change the Record, 'Pathways to Safety Report', Pathways to Safety - Report \(2021\), p. 3; National Inquiry into Missing and Murdered Aboriginal Women and Girls, 'Our Women and Girls Are Sacred, Interim Report' \(2017\), p.56.](#)

¹⁴⁷ [Marcia Langton, 'Two Victims, No Justice'. The Monthly \(July 2016\).](#)

well as experiences of direct police assault, dismissal of complaints, child removal and incarceration. The Institute for Collaborative Race Research (ICCR) and Sisters Inside have provided some stories from survivors themselves below. Their stories demonstrate that First Nations women are frequently belittled, not believed and are even actively criminalised and cast as perpetrators.

The following story recounted by a Sister's Inside worker by a woman – Samantha*, illustrates a common experience amongst First Nations women. Samantha had a long history of sexual violence victimisation and received a five-year imprisonment sentence for fraud offences. Upon her release from prison, she experienced violence in a new relationship:

'When the relationship broke down he came to collect his things and was physically violent towards me, he held me against a wall with one hand around my throat, and one arm across my body and arm. My sister was there and so was his friend. My sister called the police and they made me give him his property but did not provide any protection to me. The police told me that it was all sorted and that he was not pressing charges. I was shocked and told them that he had attacked me. They dismissed me and left.

Two days later he was still sending me abusive texts and bruising had come up all over my neck and arms so I returned to the police to press charges and get a protection order. I showed the police woman the messages, and she advised there was little she could do as the officers who came after the assault had listed me as the aggressor as he had told them I had refused him access to my apartment to collect his things and that I had been to prison. As she looked at the extremely visible bruising across my neck, she told me that it was his word against mine, and that I had been in prison and he had no criminal history. If he pressed charges also it may affect my suspended sentence. She advised that they could not do anything further. I will never go back to the police for help again. The police have shown that they do not believe me because of my criminal history.'¹⁴⁸

¹⁴⁸ [Sisters Inside and the Institute for Collaborative Race Research, Report No to the Independent Commissioner, Inquiry into Queensland Police Service responses to domestic and family violence, \(13 July 2022\).](#)

A 2017 review of domestic and family violence (DFV) related deaths in Queensland found that almost half of the women killed had been identified as a respondent to a DFV protection order on at least one occasion. In the case of Aboriginal and Torres Strait Islander women, that number rose to 100% of deceased women recorded as 'both respondent and aggrieved prior to their death.'¹⁴⁹

The ALA and ANTAR believe that stories and statistics go hand-in-hand to address fundamental flaws in existing service provision and the urgent need for a non-carceral, non-violent and preventative approach to domestic violence case management. We support solutions that invest in social housing, employment, childcare, supported training or education, healthcare, counselling and other enabling social services that allow women to exercise greater agency in ensuring their own safety while helping to build a less inequitable and more just society.

There is a need to seriously question and understand with genuine curiosity why it is that First Nations women are frequently misidentified as perpetrators of domestic violence, and often, to tragic ends.¹⁵⁰

In response to the recent inquiry into Queensland Police Service responses to domestic and family violence, the Institute of Collaborative Race Research (ICRR) points out that society rarely sees First Nations women as legitimate victims who do not deserve their suffering and that these attitudes have long-standing roots in the colonial practice of denying First Nations women's humanity in ways that legitimise their dispossession and violation.¹⁵¹ The view that Aboriginal and Torres Strait Islander women are seen as culpable in their own suffering is supported by accounts that draw reference to gender and racial sympathies and solidarity experienced by victims of domestic violence where police are called to attend.

One woman that Sisters Inside supported, Wendy* felt that police did not take her suffering seriously due to a masculine culture of 'mateship' between her partner and

¹⁴⁹ [Queensland Government, 'Domestic and Family Violence Death Review and Advisory Board - Annual Report 2016-2017 \(courts.qld.gov.au\)' \(2017\).](#)

¹⁵⁰ [Ben Smee, 'Queensland police: woman who was raped and abused killed herself after being wrongly identified as offender, report finds', *The Guardian*, \(31 October 2022\).](#)

¹⁵¹ [Libby Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier' In Robert Manson \(eds\): *Legacies of violence: rendering the unspeakable past in modern Australia* \(Berghahn Books, 2017\); and Liz Conor, *Skin Deep* \(University of Western Australia Press, 2016\).](#)

the male police officer that would attend the incidents. She felt that her distress was treated as a mere annoyance by this police officer.¹⁵²

‘The fighting got so bad that I started calling the police – in total 17 times. We both ended up taking out DVOs on each other. I would be the one who was taken away or ordered to leave every time the police came because it was his house. They would always chat to him like he was a mate and would always take his side of the story over mine. A Constable once said to me “if you don’t stop making these calls, you’ll end up in jail”’

According to the ICRR, a core issue of the violence experienced by First Nations women at the hands of police (by omitting to act where necessary for example) is that First Nations women are subject to dehumanising racial stereotypes that are much more powerful and prevalent than any evidence that stands before police no matter how confronting the scene they are called to. This renders the violence unseeable to them, to the point that police deny victimhood when faced with it.

History speaking: Racialised and Gendered Violence

These attitudes and perceptions that First Nations women are complicit in the violence that they endure follows them even after their death. ICRR has carried out confidential work relating to cases of missing and murdered Indigenous women and found that even in death First Nations women are not deemed worthy of proper investigation.¹⁵³

The current crisis of missing and murdered First Nations women and children must be looked at through the lens of First Nations women’s views and stories in order to be fully understood. Furthermore, an informed understanding of the causes of violence experienced by Aboriginal and Torres Strait Islander women in domestic violence cases must not be separated from the impact of a colonial history on how First Nations women were viewed and treated in Australia.

¹⁵² [Sisters Inside and the Institute for Collaborative Race Research, Report No to the Independent Commissioner, Inquiry into Queensland Police Service responses to domestic and family violence, \(13 July 2022\).](#)

¹⁵³ Ibid p.7.

Historically, the refusal to prosecute non-Indigenous perpetrators at a time when sexual violence against and murder of First Nations women was tolerable and socially accepted, is a clear indication of the prevalence and strength of prejudiced views about the worth of the life of a First Nations woman. The strong sense of ‘mateship’ and solidarity between policemen and colonial society must be observed to understand how the violent deaths of Aboriginal and Torres Strait people were framed, talked about and understood.

The impact of legislation on the criminalisation of First Nations children and policing responses to domestic violence against First Nations women cannot be fully understood nor addressed without addressing social forces like racial prejudice and sexism in how Aboriginal and Torres Strait Islander women and their families experience implementation and application of the law.

In life and in death: Dismissal and Desensitisation

A key institutional cause of violence comes from a reluctance to properly investigate and prosecute direct murders of First Nations women. We reference the stories of Aboriginal and Torres Strait Islander women and their families as well as research that finds police are more likely to declare them missing of their own accord or somehow responsible for their own deaths. For example, the highly regarded Canadian Inquiry into Missing and Murdered First Nations Women and Girls found that First Nations women are more likely to go missing and remain missing, both because they are subject to higher levels of violence when all other factors are controlled for, and because the police are less likely to fully investigate their disappearance.¹⁵⁴

After several years of gathering data, the inquiry found a devastating pattern of police disregard and inaction on reports of missing women based on stereotypical assumptions that the women were either drunk, partying, engaged in sex work or otherwise to blame for their own disappearance. Families were often left searching for their loved ones themselves, while police had dismissed their disappearance as the women having just wandered off.¹⁵⁵

¹⁵⁴ [Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls](#), p.469.

¹⁵⁵ Ibid.

The National Inquiry found an automatic assumption that First Nations women are engaged in criminal behaviour, resulting in excessive use of force by police officers, higher contact, arrest, prosecution and conviction rates, sexual harassment and assault by police officers, and a reluctance to see these women as genuine victims.¹⁵⁶

Stereotypes and victim blaming of First Nations women as culpable in their own demise is itself an institutional cause of violence against them since it is perpetrated by the State such that those in power effectively slow down or impede investigations into Aboriginal women's disappearances or deaths.

'This is not to say Indigenous (sic) women are not crying out for support: they are and have been. However, they are often confronted with a dilemma of who is safe to turn to, and what the consequences of reporting might be.'¹⁵⁷

The ALA and ANTAR position is that institutional and historical causes of violence against First Nations women and children cannot be fully understood or addressed without due regard for the experiences of Aboriginal and Torres Strait Islander women and their families. Therefore, we urge the Australian Government to continue to amplify the voices of First Nations people and to continually seek to understand and act upon what is currently known about the operation of a number of policies that have the effect of compromising the right to life of Aboriginal and Torres Strait Islander women and children.

¹⁵⁶ Ibid.

¹⁵⁷ [The Conversation: 'Could the Sentate Inquiry into Missing and Murdered Indigenous Women and Children Prevent Future Deaths'](#)

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

First Nations-led Family and Domestic Violence and Prevention Programs and Services

Domestic and family violence in Aboriginal and Torres Strait Islander communities is a layered and cross-cutting issue that is shaped in and by a historical and cultural context of colonisation, intergenerational trauma, and systemic disadvantage. Community-controlled programs and services have been proven effective for providing holistic and sustainable care in a cultural context to all those affected by violence, often working with men, women, children, youth and Elders.¹⁵⁸

A number of early intervention and prevention programs demonstrate the critical role of the Aboriginal and Torres Strait Islander community-controlled sector in reducing violence and increasing community safety for First Nations women and their children.

Established in Adelaide, the Aboriginal Family and Healing Program (AFCH) is focused on family and community healing and developing effective culturally informed responses to family violence.¹⁵⁹ Effective in helping participants build skills in communication and conflict resolution, cited strengths of the program include its evidence-based design, intersectoral linkages, and holistic approach.

Regular participation between different groups in the program further enabled relationships of trust to develop, demonstrating the importance of dedicated and sustainable funding.

The Tangentyere Family Violence Prevention Program is a grass-roots, place-based primary prevention program that aims to achieve systemic solutions to the issues

¹⁵⁸ [White Ribbon, 2020. Towards an Aboriginal and Torres Strait Islander violence prevention framework for men and boys.](#)

¹⁵⁹ [An Aboriginal Family and community healing program in metropolitan Adelaide: description and evaluation.](#)

behind family and domestic violence. Strong advocacy from the Tangentyere Women's Family Safety group has seen significant success in challenging racism, sexism, gender inequality, uneven power relations and other societal dynamics that contribute to violence against Aboriginal and Torres Strait Islander Women.¹⁶⁰

Empowering women through strengths-based approaches and self-determination has been identified as best practice. Consequently, successful prevention programs have focused on re-building confidence and reinforcing women's strength.¹⁶¹ Aboriginal Women Against Violence is a peer-mentor program in Western Sydney that equips First Nations women with the skills they need to take on community-based leadership and advocacy roles.

Informed and shaped by First Nations community development, empowerment principles and cultural knowledge, the program led to the creation of a confidential, supportive, and culturally-safe space for women to share their experiences of violence, disrupting the dominant client/provider relationship model, and challenging non-Indigenous services to improve their relationship with First Nations women. At the completion of the eight-week course participants were also provided with a certificate that could be accredited toward a TAFE course, further reinforcing women's agency and autonomy.¹⁶²

Creating a safe, culturally appropriate environment for people to interact with organisations has also been identified as important for improving community awareness of services, which is often disaggregated and inaccessible. This implies a need for communications to be conducted 'on the ground.' Sisters Day Out is a weekend workshop event that has been shown to positively improve First Nations women's access to a variety of service providers in the Geelong area (Victoria). The relaxed, informal and reciprocal environment further helped to build trust between the services and the community.¹⁶³

Other programs have focused on addressing domestic and family violence through education and awareness. The Alice Springs Domestic and Family Violence Outreach

¹⁶⁰ [Closing The Gap Campaign Report. \(2021\). Transforming Power: Voices For Generational Change. Lowitja Institute for the Close the Gap Steering Committee Report.](#)

¹⁶¹ [Aboriginal health and wellbeing services: Putting community-driven, strengths-based approaches into practice \(2019\)](#)

¹⁶² [Helping Ourselves, Helping Each Other: Lessons from the Aboriginal Women against violence Project \(2014\)](#)

¹⁶³ [Sister's Day Out: Promoting Well-Being and Safety for Aboriginal Women \(2011\)](#)

Service provided targeted outreach support and education services to women experiencing family and domestic violence. An independent evaluation in 2012-13 found that the program significantly improved the safety of women in Alice Springs and saw a reduction in the use of crisis accommodation services.¹⁶⁴

Aboriginal and Torres Strait Islander women face many challenges when dealing with the Australian legal and justice system, including racial discrimination as well as a lack of culturally-competant and accessible legal supports. Aboriginal and Torres Strait Islander Legal Services (ATSILS) and Family Violence Prevention Legal Services (FVPLS) provide a range of services to victims of domestic and family violence and the Broader First Nations community. This includes culturally appropriate legal assistance, casework, counselling and court support, community legal education, prisoner through-care and law reform, and other advocacy activities.¹⁶⁵

In Victoria, FVPLS provides legal services to First Nations victims of family violence and sexual assault, advocates for legal and policy reform and conducts a range of activities as part of its Community Legal Education (CLE) program.¹⁶⁶ Other community support, such as intensive case management and therapeutic services, are provided through programs like the Kunga Stopping Violence Program, run by the Central Australian Aboriginal Legal Aid Service; the Strong Mothers, Strong Women Program, run by the Western Australian Aboriginal Family Law Service; and the Aboriginal Children and Young Justice Project, run by the Victorian Aboriginal Legal Aid Commission¹⁶⁷.

Notwithstanding the cultural and professional expertise they provide, these services are much more likely to be utilised by Aboriginal and Torres Strait Islander peoples if they are First Nations-led.¹⁶⁸ This is important considering the problems associated with data gaps given the under-reporting of violence by Aboriginal and Torres Strait Islander women. It is crucial that funding for ATSILS, FVPLS, and other First Nations-led services is strengthened to enable culturally safe and respectful responses to domestic and family violence in Aboriginal and Torres Strait Islander communities.

¹⁶⁴ [Australian Government: Family violence prevention programs in Indigenous communities. Australian Institute of Health and Welfare and Australian Institute of Family Studies \(2017\).](#)

¹⁶⁵ [SNAIC, NATSILS, NFVPLS Policy Paper \(2017\).](#)

¹⁶⁶ [Karahasan, B. \(2014\). Evaluation Report of the Aboriginal Family Violence Prevention and Legal Service Victoria's Early Intervention and Prevention program. Indigenous Justice Clearinghouse.](#)

¹⁶⁷ [SNAIC, NATSILS, NFVPLS Policy Paper \(2017\).](#)

¹⁶⁸ Ibid.

Recommendations

In considering and responding to the Terms of Reference of this important inquiry, ANTAR make the following recommendations for the Senate Committee's consideration:

1. Funding for Community Controlled services in health, justice, family violence and child protection;
2. Reform of the standards in data collection relating to First Nations people. Data collection must reflect the priorities of rural and remote communities as well as those First Nations Peoples who are currently excluded, where possible and appropriate;
3. Reform of police reporting processes to include identification of First Nations heritage for all incidents involving First Nations Peoples. It is recommended that this policy is established in consultation with First Nations communities to address under reporting and misidentification;
4. Reform to procedures relating to missing persons reports, specifically those involving First Nations people to increase response rate and allocation of resources;
5. Establish State and territory First Nations advisory groups who consult with police to guide appropriate engagement and response to matters relating to First Nations communities. These must include appropriate representation;
6. Establish referral processes for First Nations victims and perpetrators, including services for victim's families in missing persons cases. These processes should be culturally appropriate, community-based programs and include allocated funding to support the functioning and evolution to support referred First Nations people;
7. Community-based cultural awareness training specifically in communities identified as having a high First Nations population;
8. Commitment to a truth-telling process to educate the broader non-Indigenous population on the impact of racial profiling and address racial prejudice towards First Nations people;
9. Incorporate cultural safety into investigation processes, ensuring the rights of First Nations women and children are upheld throughout all justice measures;
10. Establish a co-designed framework between government agencies and community-based First Nations organisations to address the impact of family and domestic violence;

11. Address the incarceration and criminalisation of First Nations children by raising the age of criminal responsibility to a minimum of 14 in all States and territories;
12. Reform bail laws and the deployment of 'Public Order' offences to address the disproportionate impact that racial profiling has on First Nations people;
13. Utilise a justice reinvestment model to disrupt the streamlining of contact between First Nations people and the criminal justice system; and
14. In developing strategic plans to address the impact of institutional racism the knowledge gained through the lived experience of First Nations women and children must guide proposed reform and forward thinking.

Conclusion

This inquiry is an important opportunity to share the awful truth of failed justice for too many First Nations women and children. We hope that the Committee's report is not just another marker of our collective failure, but rather a circuit-breaker that instigates real reform in the Justice system to better serve and protect First Nations communities.

The ALA and ANTAR thank the Committee for the opportunity to make this submission.