



AUSTRALIAN
LAWYERS
FOR
HUMAN RIGHTS™

Submission to inquiry into missing and murdered First Nations women and children

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

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Australian Lawyers for Human Rights Inc

PO Box A147, Sydney South NSW 1235
president@alhr.org.au alhr.org.au

Acknowledgements

Australian Lawyers for Human Rights (**ALHR**) acknowledges the traditional owners and custodians of the lands on which we work across Australia as the first people of this country. We recognise that the land belonging to these peoples was never ceded, given up, bought, or sold. We pay our deep respect to Elders past, present and emerging and express our strong support for the Uluru Statement from the Heart.

Aboriginal and Torres Strait Islander people should be warned that this submission refers to the sensitive issue of death and dying and includes the names of deceased persons.

About Australian Lawyers for Human Rights

ALHR was established in 1993 and is a national association of Australian solicitors, barristers, academics, judicial officers and law students who practise and promote international human rights law in Australia. ALHR has active and engaged National, State and Territory committees and specialist thematic committees.

ALHR seeks to utilise its extensive experience and expertise in the principles and practice of international law and human rights law in Australia to:

- Promote Federal and State laws across Australia that comply with the principles of international human rights law;
- Engage with the United Nations in relation to Australian human rights violations;
- Promote and support lawyers' practice of human rights law in Australia;
- Engage internationally to promote human rights and the rule of law.

Through advocacy, media engagement, education, networking, research and training, ALHR promotes, practices and protects universally accepted standards of human rights throughout Australia and overseas.

Executive Summary

Australian Lawyers for Human Rights (**'ALHR'**) is grateful for the opportunity to provide this submission to the Senate Legal and Constitutional Affairs Committee Inquiry into Missing and Murdered First Nations Women and Children (**the Inquiry**). Murder rates for First Nations women are approximately eight times higher than for their non-Indigenous counterparts and ALHR welcomes the opportunity that this Inquiry presents for politicians to consider the human stories behind the statistics and identify systemic issues responsible for

failing these women¹. ALHR notes the critical importance of listening to First Nations women and children and implementing fully funded, evidence-based First Nations led solutions that work for communities and uphold Australia’s international human rights law obligations. As noted by Kyllie Cripps Scientia Associate Professor, School of Law, Society & Criminology, Faculty of Law & Justice, UNSW Sydney, UNSW Sydney

“[T]he United Nations’ violence against Indigenous women and girls [report](#) states, Indigenous women already have to navigate violence in the form of racial discrimination and system inequities. Our calls for help need to be met with a culturally safe person who can hear our stories and respond with care and respect to help us navigate our way to safety.”

Relevant International Human Rights Law Obligations

Violence against First Nations women and children engages a range of interrelated and interdependent rights in the core United Nations human rights treaties ratified by Australia, including the *International Covenant on Civil and Political Rights*², *International Covenant on Economic, Social and Cultural Rights*³, *Convention on the Elimination of All Forms of Discrimination against Women* (CEDAW)⁴ and the *Convention on the Rights of the Child* (CRC).⁵ Rights engaged by the subject matter of the Inquiry include civil and political rights such as the right to liberty and security of person and the right to life⁶ and economic, social and cultural rights such as the right to an adequate standard of living and the highest attainable standard of physical and mental health.⁷ Furthermore, the *United Nations Declaration on the Rights of Indigenous Peoples*⁸, with respect to which Australia has made a formal statement of support, recognises the right to Indigenous peoples and individuals to the full enjoyment of human rights and fundamental freedoms without discrimination.⁹

¹ [Could the Senate inquiry into missing and murdered Indigenous women and children prevent future deaths?](#)

Kyllie Cripps Scientia Associate Professor, School of Law, Society & Criminology, Faculty of Law & Justice, UNSW Sydney, UNSW Sydney

² UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol. 999, p. 171

³ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December 1966, United Nations, Treaty Series, vol. 993, p. 3

⁴ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, p. 13

⁵ UN General Assembly, *Convention on the Rights of the Child*, 20 November 1989, United Nations, Treaty Series, vol. 1577, p. 3,

⁶ Articles 9 and 6 respectively of the International Covenant on Civil and Political Rights

⁷ Articles 11 and 12 respectively of the International Covenant on Economic, Social and Cultural Rights

⁸ UN General Assembly, *United Nations Declaration on the Rights of Indigenous Peoples : resolution / adopted by the General Assembly*, 2 October 2007, A/RES/61/295

⁹ Arts 1-2, UN Declaration on the Rights of Indigenous Peoples.

With respect to the rights of children, the subject matter of the Inquiry also engages the CRC. Standards set out in the convention include the principle requiring the primary consideration in all actions concerning children to be the best interests of the child¹⁰, the requirement that the state ensure such protection and care as is necessary for the child's well-being¹¹, the right of the child to life, survival and development,¹² the obligation to ensure that the child not be separated from parents unless necessary in the child's best interests,¹³ the obligation to protect the child from all forms of physical or mental violence, abuse, neglect or maltreatment,¹⁴ the care and support for children and measures to support the recovery and social reintegration of children who have experienced such treatment¹⁵ and the right to health.¹⁶

A meta-principle underpinning all core human rights treaties is the principle of equality and non-discrimination. As detailed in this submission, violence against First Nations women and children is a consequence and manifestation of systemic and intersectional discrimination and entrenched inequality. The UN Committee on the Elimination of Discrimination against Women (the CEDAW Committee) has recognised that 'intersectional discrimination increases the risk and heightens the adverse consequences of violence when it occurs.'¹⁷ The CEDAW Committee has recognised gender-based violence as a form of discrimination which impairs or nullifies the enjoyment by women of human rights and fundamental freedoms and may amount to cruel, inhuman or degrading treatment or torture.¹⁸ The right to a life free from gender-based violence is seen by the CEDAW Committee as being indivisible from and interdependent on other human rights, including the rights to life, health and security of person.¹⁹ Australia's obligations are not limited to acts of violence perpetrated by state actors. Under both the CEDAW and customary international law, Australia may be responsible for the conduct of private actors if it fails to prevent foreseeable acts of

¹⁰ Article 3(1), Convention on the Rights of the Child.

¹¹ Ibid, Article 3(2).

¹² Ibid, Article 6.

¹³ Ibid, Article 9(1).

¹⁴ Ibid, Article 19(1).

¹⁵ Ibid, Articles 19(2) and 39.

¹⁶ Ibid, article 24.

¹⁷ Committee on the Elimination of Discrimination against Women, Report of the Inquiry concerning Canada of the Committee on the Elimination of Discrimination against Women under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, CEDAW/C/OP.8/CAN/1, 20 March 2015, para 200.

¹⁸ Committee on the Elimination of Discrimination against Women, General Recommendation 35 (2017) on Gender-Based Violence Against Women, Updating General Recommendation No 19 (1992), CEDAW/C/GC/35, 26 July 2017, para 16.

¹⁹ Ibid, para 15.

gender-based violence by non-state actors and to investigate, prosecute and punish the perpetrators of such acts.²⁰

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

There is a serious lack of information accurately recording the number of First Nations women and children who are missing and murdered in Australia. The egregious lack of a national figure on this issue arises because many States are not counting the cases, or measuring the size of the problem, either sufficiently or at all.

The Inquiry has found “Murder rates for Indigenous women are eight times higher than for their non-Indigenous counterparts”;²¹ with numbers likely to be even higher when they include manslaughter rates. According to the *Homicide Report Australia 2019 -20* report²² the rate at which women are murdered in Australia has been declining over time between 2005/06 and 2019/20 but not for First Nations women. From the information that is recorded, we know that:

- Indigenous women account for 16 % of female homicides in Australia.²³
- In Australia, Aboriginal women are 17 times more likely to die from homicide compared to non-Indigenous women.²⁴
- While First Nations young people make up less than 6% of the Australian population under the age of 18, they comprise around 20% of missing children. In reality, this rate is likely higher, with information on cultural identity often missing in national missing persons data.²⁵
- At least 25.6% of children under 12 and 18% of those aged between 13 and 17 who go missing while in care are Indigenous, despite First Nations children making up just 5.9% of the total population under 18.²⁶
- Aboriginal women are 35 times more likely to be hospitalized as a result of family violence and Aboriginal mothers are 17.5 times more like to be a victim of homicide than non-Aboriginal mothers.²⁷

²⁰ Ibid, paras 24–26

²¹ [Indigenous women at higher murder risk](#), By Tara Cosoleto October 5, 2022

²² [Homicide in Australia 2019–20](#) AIC reports Statistical Report 39

²³ [Indigenous Femicide and the Killing State – Deathscapes \(2016-2020\)](#)

²⁴ [‘Why isn’t this a national crisis’: Report calls for action on Indigenous women’s deaths | SBS NITV](#)

²⁵ [First Nations kids make up about 20% of missing children, but get a fraction of the media coverage \(theconversation.com\)](#)

²⁶ [Children Youth Missing From OOHC \(002\).pdf \(missingpersons.gov.au\)](#)

²⁷ [Australian Indigenous women are overrepresented in missing persons statistics - ABC News](#)

- In Western Australia, Aboriginal people make up 17.5% of unsolved missing persons cases, despite making up just 3% of the state's population.²⁸
- In Queensland, police estimate 6% of open, unsolved missing persons cases are Indigenous people.²⁹
- In New South Wales, police provided data only to 2014. In that time Indigenous people made up 7% of unsolved cases. Also in NSW, 10% of females not found since 2014 are Indigenous women, but they make up less than 3% of the state's population.³⁰

When the circumstances surrounding murdered and missing First Nations women and children are investigated further, we learn that:

- Aboriginal and Torres Strait Islander women are 11 times more likely to die due to an assault and are 32 times more likely to be hospitalised due to family violence than non-Indigenous women.³¹
- According to the Australian Institute of Criminology (AIC) National Homicide Monitoring Program (NHMP), during 2012-14, two in five Indigenous homicide victims were killed by a current or previous partner, compared with one in five non-Indigenous homicide victims (AIHW).³²
- Over three-quarters of all female Indigenous victims compared with almost two-thirds of all female non-Indigenous victims were victims of domestic or family homicides. Data from the NHMP 1989–90 to 2011–12, also suggested that Indigenous women were less likely to be killed by a stranger than non-Indigenous women. Homicides involving Indigenous people also occurred less frequently in a home setting (41%) than non-Indigenous people (51%) (Cussen & Bryant 2015).³³
- Research into the mortality of mothers between 1983 and 2010 by the Centre for Research Excellence in Aboriginal Health and Wellbeing found that Aboriginal mothers were about 17.5 times more likely to die from homicide than non-Aboriginal mothers. The study also found that Aboriginal women 'had higher rates of death due to external causes and higher rates in the sub-categories of accident, suicide and homicide than other women' (2016, 461).

²⁸ [Australian Indigenous women are overrepresented in missing persons statistics - ABC News](#)

²⁹ [Australian Indigenous women are overrepresented in missing persons statistics - ABC News](#)

³⁰ [Australian Indigenous women are overrepresented in missing persons statistics - ABC News](#)

³¹ ['Horrorific' First Nations missing and murdered cases to be focus of Australia-wide inquiry | Indigenous Australians | The Guardian](#)

³² [Indigenous Femicide and the Killing State – Deathscapes \(2016-2020\)](#)

³³ [Indigenous Femicide and the Killing State – Deathscapes \(2016-2020\)](#)

The group Destroy the Joint, which was established in 2012, has attempted to document femicide in Australia through their 'Counting Dead Women' initiative. Following on from this, Celeste Liddle, an Arrernte community organiser and writer, attempted to identify what percentage of these women were Aboriginal or Torres Strait Islander. The RED HEART campaign also maps Australian femicide and child death.³⁴

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

Missing First Nations women and children

Despite the over-representation of First Nations people in missing person cases, it is widely acknowledged that these cases rarely make national, let alone international, headlines.³⁵ However, news coverage of police and community coming together to solve the disappearances and deaths of white persons – particularly children - frequently make the front pages and capture the nation.

For example, when William Tyrell went missing in 2014 and Cleo Smith disappeared in 2021, those stories dominated news coverage for weeks. William Tyrell's case has continued to cycle back through news feeds throughout the years, with the investigation into his disappearance continuing with significant resources today. Cleo Smith, through widespread pleas to the community, a dedicated police force, and a \$1 million reward, was located 18 days after her disappearance.

On the other hand, the disappearances of First Nations children garner only a fraction of the media coverage of non-Indigenous children. In 2013, a 10-month old First Nations boy, Charles Mullaley, was abducted and murdered in Western Australia. His abduction and his family's journey for justice have received very little police commitment. The family is still waiting for the government's commitment to a public inquest. Similarly, the murders of three First Nations children in Bowraville in 1991 evidence a lack of urgency in media coverage and police response and the remains unresolved today.

³⁴ [Indigenous Femicide and the Killing State – Deathscapes \(2016-2020\)](#)

³⁵ [First Nations kids make up about 20% of missing children, but get a fraction of the media coverage \(theconversation.com\)](#)

First Nations women are also over-represented in missing persons statistics, yet their disappearances receive little media attention compared to the disappearances and deaths of white women. This discrepancy was coined the “missing white woman syndrome” by American journalist Gwen Ifill in 2004.³⁶

All of this points to a persistent, broader and systemic issues across Australia in relation to who is perceived to be an ‘ideal victim and whose lives are attributed ‘value’’. Police, media and community responses frequently reinforce negative stereotypes of First Nations people. This is evidenced by the disparity between the media coverage dedicated to the community unrest that arises when a First Nations person is murdered or goes missing, compared to the media coverage garnered to actually find the missing person or to solve the murder.

The difficulties First Nations people encounter when engaging with law enforcement bodies also contributes to the lack of assistance provided to them in their times of need. Difficulties with violence, mental illness and substance abuse have been found time and time again to contribute to their claims made to police officers being dismissed or ignored, leaving First Nations people to seek justice for themselves.

Greens Senator Dorinda Cox, a Yamatji Noongar woman, has previously commented on the mismatch of resources dedicated to missing cases of First Nations women and children:

“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.”³⁷

Murdered First Nations women and children

In December 2019, then Federal Shadow Minister for Indigenous Australians Linda Burney called for a Senate inquiry into violence against Indigenous women, also commenting on the same “lack of urgency”, imploring the government to give the crisis “greater attention and consideration”.³⁸

In January 2022, the National Justice Project made a submission to the United Nations Special Rapporteur on Violence Against Women to draw attention to systemic violence

³⁶ [The ‘Missing White Woman Syndrome’ still plagues America | Derecka Purnell | The Guardian](#)

³⁷ [Historic inquiry into missing and murdered First Nations women \(womensagenda.com.au\)](#)

³⁸ [Historic inquiry into missing and murdered First Nations women \(womensagenda.com.au\)](#)

against First Nations women and children in Australia, following the apology from the Western Australian government to the Mullaley family for the shocking treatment they received from state institutions when “baby Charlie” was abducted and murdered in 2013.

The submission details the different manifestations of violence experienced by Indigenous women, girls, and their families in Australia including systemic and institutional racism and discrimination, violence and other harmful practices in the context of discriminatory policing and the healthcare and justice systems more broadly, in particular access to and engagement with complaints and accountability mechanisms.

In referring to the interaction between First Nations people and law enforcement agencies in Australia, the report states:

“In Australia, First Nations people are particularly vulnerable to discriminatory policing due to a colonial legacy of police implementing discriminatory and brutal policies and practices including the forced removal of children, forced servitude, massacres and segregation, that have continued to hamper police-community relationships. In the context of this violent colonial legacy, the pervasive use of racially charged, offensive and inflammatory language by police in their interactions with First Nations communities directly contributes to escalating community-police tensions and perpetuates the cycle of violence and abuse against First Nations people by police.

Racial profiling, aggressive over-policing, intimidation, abuse of power and disproportionate use of force by police against First Nations people directly contribute to the criminalisation and hyper-incarceration of First Nations people as they continue to suffer unjust and unacceptable levels of violence, abuse and neglect and continue to die in custody without accountability and without justice.

There is a profound lack of trust between First Nations Peoples and the Australian CJS, in particular police. The damaging patterns of police interaction have not improved despite constant reports and promises. Incarceration rates of First Nations people, particularly women and children, are escalating sharply, including for female victims of DFV who continue to be criminalised. Police and legal systems frequently choose to punish rather than protect First Nations women and girls.

Nancarrow et al (2020) note Queensland Domestic Violence Death Review and Advisory Board data which demonstrates that in just under half (44.4%) of all cases of female deaths subject to review, the woman had been identified as a respondent to a DFV protection order on at least one occasion.⁹ The further impact of racism on this ‘misidentification’ is clear; in nearly all DFV-related deaths of Aboriginal people, the deceased had been recorded as both respondent and aggrieved prior to their

*death. The Mullaley case provides one of the most egregious and specific examples of this normalised pattern of racism against First Nations women by police.*³⁹

In the Special Rapporteur's final report,⁴⁰ it detailed how the intersecting forms of structural discrimination in Australia results in limited access to justice for Indigenous women and girls, and widespread impunity for perpetrators of gender-based violence against them. The Rapporteur concluded that this violence 'is rooted in historic and unequal patriarchal power structures, racism, exclusion, and marginalization enabled by a legacy of colonialism.'⁴¹

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

The institutional approaches to managing, reducing and preventing violence experienced by First Nations women and children is ad hoc and inconsistent. They are also arguably ineffective. The various approaches comprise a mixture of state and Commonwealth based policies and programs aimed at punishing criminal behaviour and preventing further acts of violence among these groups.

Human rights-based frameworks are an anchor for engaging nation states in their responsibilities regarding violence against women, as enshrined in international instruments and agreements. While other stakeholders also need to play a part, the need (and obligation) for the state to take primary responsibility for this work is clear.⁴² These obligations are articulated in the United Nations conventions to which Australia is a signatory.

The approaches at both state and Commonwealth level can be classified into 3 subgroups: primary prevention, early intervention or secondary prevention and tertiary prevention or intervention. As family violence does not follow a linear trajectory, interventions are designed accordingly.

³⁹ [Exposing violence against First Nations women and girls at the UN - National Justice Project](#)

⁴⁰ [OHCHR | Call for inputs – Report on violence against indigenous women and girls](#)

⁴¹ [OHCHR | Call for inputs – Report on violence against indigenous women and girls](#)

⁴² The elimination of all forms of violence against women and girls is also recognised as critical to the goal of achieving gender equality under the United Nations Sustainable Development Goals, United Nations Economic and Social Affairs, Sustainable Development, Goal 5, Achieve gender equality and empower all women and girls; Fulu, E., & Warner, X. (2021). Literature review: Ending violence against women and girls. Equality Institute; United Kingdom Department for International Development. (2012). A theory of change for tackling violence against women and girls (CHASE Guidance note 1), p. 4.

Primary prevention

A primary prevention approach works to change the underlying social conditions that produce and drive violence against women, and that excuse, justify, ignore or even promote it. It works across the whole population to address the attitudes, norms, practices, structures and power imbalances that drive violence against women and girls. Individual behavioural change (to stop people using violence) may be the ultimate aim of prevention activity, but behavioural change cannot be achieved prior to, or in isolation from, broader and deeper change in these underlying drivers of violence, which are embedded within relationships, families, communities, organisations, institutions and society as a whole.

Comprehensive primary prevention aims to influence laws, policies, and the practices and behaviours of organisations, groups and individuals. It seeks to engage and reach people of all ages in all the places they live, work, learn, socialise and play. Through this whole-of-society approach, primary prevention addresses the systems, structures, norms, attitudes, practices and power imbalances that drive violence against women.⁴³

Existing measures in this category include (but are not limited to):

- The imposition of court mandated family counselling and/or family violence educational programs arising from violence-related criminal charges
- Community service orders or family protection orders imposed by courts
- Educational programs in remote and regional communities delivered by governmental or community-based organisations
- Education on violence prevention and identification in schools, particularly in those with large First Nations populations
- Programs implemented by First Nations employers requiring education on violence prevention and provision of support services such as EPA schemes and family counselling
- Public information and awareness-raising in mass media, workplaces and communities- such as the work undertaken as part of/in connection to the Respect@Work Inquiry and Report into Sexual harassment (and violence) into Australian workplaces, Our Watch, and the '*No More Violence*' and associated community education.

⁴³ See e.g. World Health Organization, & London School of Hygiene and Tropical Medicine. (2010). Preventing intimate partner and sexual violence against women; World Health Organization. (2017). Violence against women, Key facts; World Health Organization. (2019). RESPECT women: Preventing violence against women. World Health Organization.

Early/secondary intervention

Early intervention targets individuals and groups that may be at risk of violence against women and children and who often have exhibited early warning signs. Measures include education to change behaviours and warn against the consequences – legal, cultural and personal – of perpetrating violence against others. It also seeks to provide support to at-risk women and children who may be experiencing, or about to experience, some form of violence.

Measures of secondary intervention operating within Australia include (but are not limited to):

- The operation of specific state-wide or national support hotlines such as the First Nations-specific hotline operated by Support Act and other hotlines such as Lifeline, 1800 Respect
- Home visits from social workers where women and children are deemed to be at risk of violence in the home
- The provision of support services by employers such as access to EPA programs and other relevant assistance
- Mandated sexual harassment and violence training within schools and workplaces
- The existence of Family Safety Meetings and response frameworks in various jurisdictions such as South Australia and the Northern Territory for people at risk or experiencing/perpetrating violence.
- Various and local perpetrator violence prevention programs provided in custodial settings and mandated.

Tertiary intervention

Tertiary interventions are designed to intervene when people are experiencing family violence. Post-crisis interventions are long-term programs aiming to support victims to escape and overcome family violence and provide support to perpetrators to change their attitudes and cease violent behaviours. A frequent tertiary prevention strategy that is regularly utilized by Police is the mandatory referral for family violence victim-survivors.

Measures in this space include (but are not limited to):

- Mandatory reporting, and child protection orders requiring the removal of children from a home where violence has occurred or is occurring.

- Mandatory reporting of DFV in jurisdictions such as the Northern Territory.
- Criminal justice intervention through incarceration, mandated community-based programs for rehabilitation, separation orders and protection orders.
- The provision of housing and other fundamental support for women and children fleeing violent households.
- The provision of domestic violence paid leave from work, as recently legislated by the Federal government.
- Domestic Family Violence (DFV) education and training available for workplaces to better support employers/employees to respond to DFV.⁴⁴
- Stop sexual harassment orders now available through the Fair Work Commission.

Improving existing frameworks to eradicate violence against First Nations women and children

When discussing the institutional legislation, policies and practices implemented to combat violence against First Nations women and children, it is important to identify the suggestions for improvement of these systems. Delegates at the 2022 Wiyi Yani U Thangani First Nations Women's Safety Policy Forum identified the following factors they consider essential to effective and inclusive policies for the protection of First Nations women and children:⁴⁵

- Policies must include First Nations' self-determination to guarantee that First Nations women lead in the development and delivery of a stand-alone plan, and inform the program, policy and legislative decisions that impact their lives, consistent with human rights, especially UNDRIP.
- Systems should elevate, embrace and design specific engagement processes to include the voices of First Nations women, gender diverse people, and their families in all their diversity including their old people, Stolen Generations, people living remotely, those with, and caring for people with disabilities, LGBTQIA+SG people, those in incarceration, and children in the juvenile detention or child protection system.
- Centring the voices of First Nations children, especially girls who are at increased risk of sexual abuse in the development of the stand-alone plan to ensure specific child-centred actions, and to support community-controlled organisations and other mainstream services to work effectively with children and families impacted by violence.

⁴⁴ [Welcome to DFV Work Aware - Working Women's Centres of Australia](#)

⁴⁵ [delegate_statement_wyut_womens_safety_forum_final_2.pdf \(humanrights.gov.au\)](#)

- Grounding the plan in a human-rights based approach that recognises Australia's obligations to the treaties it has ratified and endorsed.
- Ensuring the plan takes a holistic culturally informed family-oriented approach to understand the drivers of violence and how all people are affected by violence and ensuring that men are not excluded, that they are included as part of the solutions, and that evidence-based perpetrator responses are developed and accessible.
- Recognising all forms of intersectional discrimination as major drivers of violence, including but not limited to racism, sexism, ableism, homophobia and transphobia.
- Understanding and addressing the violence caused by individual, systemic and institutional racism, how racism is present within policies and legislation, and the particular effects it has on First Nations women and children in everyday life and when interacting with services, the public and when seeking help.

Delegates also elevated the role of system enablers in achieving the objective of ending violence against First Nations women and families including:⁴⁶

- Sustained and targeted long-term investment by all levels of Australian governments across the family and domestic violence sector and into women and family orientated community-controlled organisations and women's centres.
- Designing and strengthening governance arrangements and mechanisms to ensure accountability of governments at all levels, policymakers and stakeholders and for First Nations women and organisations to have clear and accessible pathways to participate in decision-making processes.
- Investing in First Nations data sovereignty as a key tenet of self-determination and ensuring significant improvements to data collection and research to form a comprehensive understanding of violence, what works to prevent violence, and to be able to measure and track progress toward ending all forms of violence experienced by women, children, and families.

To improve prevention of and responses to violence across the service system, delegates prioritised:⁴⁷

- Enabling women's economic independence through education, employment, and economic development, and improving their financial security through guaranteeing social security payments above the poverty line and addressing the causes of poverty.

⁴⁶ See the full list here: [delegate_statement_wyut_womens_safety_forum_final_2.pdf \(humanrights.gov.au\)](#)

⁴⁷ See the full list here: [delegate_statement_wyut_womens_safety_forum_final_2.pdf \(humanrights.gov.au\)](#)

- Urgent and immediate action to guarantee secure housing for women and their families, including crisis, transitional and long-term housing, and to end homelessness-related deaths.
- Holistic preventative measures grounded in culture and community, with education around respectful relationships.

In addition, Delegates included in their Statement at the National Summit on Women's Safety in 2021, the need for 'Aboriginal and Torres Strait Islander peoples must have their own First Nations specific Action Plan to address family safety under the National Plan and be empowered to lead all actions and responses in their communities'⁴⁸ rather than as an add-on to any Violence Prevention Action Plan.

The second edition of 'Change the Story' – a shared framework for the primary prevention of violence against women in Australia – prepared by Our Watch⁴⁹ also provides a detailed analysis of the current state of violence against women, including First Nations women and children, in Australia, the current frameworks in place to achieve primary prevention, the areas of improvement and suggestions for reform to achieve a meaningful, impactful and effective system of prevention in Australia.

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

It is well-recognised that Indigenous Australians have endured a long history of disadvantage, and that our laws and government institutions have been instrumental in this oppression.⁵⁰ What is not as easily recognised is that violence against First Nations women and children in Australia is completely preventable. This includes police and service responses and understanding of the mechanisms and pressures that prevent women from reporting or seeking help when needed and taking this more seriously it occurs despite its frequency.⁵¹

As reported by the Special Rapporteur on the rights of indigenous peoples in 2015, indigenous women and girls experience a broad, multifaceted and complex spectrum of

⁴⁸ [Insert Document Title \(msecnd.net\)](#)

⁴⁹ See here: [Change-the-story-Our-Watch-AA.pdf](#)

⁵⁰ [Getting to the roots of systemic inequality in Australia – Monash Lens](#)

⁵¹ [NT coroner calls for more supervision of violent offenders in inquest of woman killed by her ex-partner - ABC News](#)

mutually reinforcing human rights abuses.⁵² A close connection exists between gender-based violence perpetuated against them and the multiple forms of discrimination they face, based on the intersection of gender, race, ethnicity and socioeconomic circumstances.

Moreover, many forms of violence and abuse against indigenous women and girls involve a strong intergenerational and lateral violence component. Violations of the right to self-determination of indigenous peoples are historically and currently endemic and have been especially detrimental to the rights of indigenous women and girls.

The rise of indigenous women to claim their rights has – in several contexts – been met by resistance from inside indigenous communities, as women’s rights have often been considered divisive and external to the indigenous struggle. This false dichotomy between collective and women’s rights further entrenched the vulnerability of indigenous women and girls to abuse and violence, leaving them stripped of their rights to self-determination and agency by both violations of their collective rights and violations of their individual rights, creating and perpetuating systemic and generational vulnerability.⁵³

The different manifestations of gender-based violence perpetrated against indigenous women and girls include, but are not limited to: domestic violence, sexual harassment, sexual violence, trafficking, female genital mutilation, child, early or forced marriage, obstetric violence, violations of sexual and reproductive health and rights, gender-related or “honour” killings, forced displacement, kidnapping and forced labour. These actions are committed by varied actors, including State actors, private companies, criminal groups and members of women’s own indigenous communities, including family members. At a minimum, this series of structural violence results in indigenous women being victimized by the realities of their daily life and has a negative impact on the enjoyment of their fundamental human rights.⁵⁴

Delegates of the 2022 Wiyi Yani U Thangani First Nations Women’s Safety Policy Forum stated that these forms of violence against First Nations women and children, originating at

⁵² See A/HRC/30/41 accessible at:

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/30/41&Lang=E>

⁵³ A/HRC/30/41, para. 13-14, accessible at:

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/30/41&Lang=E>

⁵⁴ A/HRC/30/41, para. 46, accessible at:

<https://daccess-ods.un.org/access.nsf/Get?OpenAgent&DS=A/HRC/30/41&Lang=E>

colonisation, is a result of systemic exclusion, inequalities and all intersecting discriminations including racism and sexism.⁵⁵

The effect of these systemic forms of violence against First Nations women and children have wide ranging and pervasive effects. For example, being a witness or victim of family violence early in life increases the risk of future justice system involvement as an offender for First Nations women and children. An estimated 87% of all Aboriginal women in custody have been a victim of sexual, physical or emotional abuse, with most having suffered abuse in multiple forms. Seventy-one per cent of young people in custody were victims of abuse, trauma or neglect.⁵⁶

But violence against First Nations women and children is not limited to the traditional understanding of violence (i.e. causing physical harm to another person). For example, First Nations children in Australia are vastly overrepresented in child protection and out-of-home care systems. In out-of-home care, First Nations children are overrepresented at nearly 11 times the rate of non-Indigenous children.⁵⁷

This is, in part, because systemic racism proliferates all facets of Australia's child protection systems; from the care workers who initially remove the children, to the police and teachers who make the first call to child protection to notify of alleged abuse or neglect. Like the criminal justice system, systemic racism abounds in 'care' and 'protection' systems where the State assumes the role of the parent.

This reflects a form of racism that privileges white, Western ways of parenting and disregards Aboriginal and Torres Strait Islander child rearing norms. In child protection systems, systemic racism is manifested by privileging Western society's ideal version of 'family' and refusing to acknowledge and account for cultural differences central to First Nations child rearing practices.

These kinds of institutional, cultural and social settings give rise to a perpetual cycle of gender and cultural-based racism and disadvantage against First Nations women and children, stemming from colonisation and contributing to the ongoing susceptibility of these vulnerable groups to continuous and serious violence.

⁵⁵ Accessible at: [delegate_statement_wyut_womens_safety_forum_final_2.pdf \(humanrights.gov.au\)](#)

⁵⁶ [Underlying causes of Aboriginal over-representation | Aboriginal Justice](#)

⁵⁷ [Systemic racism in Australian child protection systems must be addressed - National Indigenous Times \(nit.com.au\)](#)

Sexual Violence

Sexual violence is a particular concern for First Nations women and children in Australia and therefore deserves a separate analysis in this submission. Despite its pervasiveness among First Nations women and children, there is limited empirical data on the prevalence of sexual violence against First Nations women. Prevalence is generally established through random surveys (as opposed to the numbers reported to police). A national survey on violence against women suggested that sexual violence over the previous 12 months against Indigenous women was three times more common than against non-Indigenous women, and that culturally and linguistically diverse (**CALD**) women were as likely to be at risk as non-CALD women (Mouzos & Makkai 2004).⁵⁸

Indigenous participants stressed that sexual violence is endemic in many Indigenous communities. Some women also saw sexual violence as inextricably linked to domestic violence, and drug and alcohol misuse.

A group of older Indigenous women said 'we all know about [sexual violence] and it's not something new within our group'.⁵⁹ According to these women, sexual violence is considered normative in some Indigenous communities - in remote areas and in small country towns. These older women also said that Indigenous young women often wonder whether the sexual violence was their own fault - that they had led the perpetrator to commit violence against them - because of their flirtatious behaviour, teasing or their jealousy. It was noted that sexual violence in some Indigenous communities is a big problem mainly because it remains hidden.

Sexual violence tends not to be discussed in Indigenous communities because of the associated stigma and risk of ostracism from family and community members. A group of older women referred to 'shame' as the main reason for not wanting to talk about the experience of sexual violence.

⁵⁸ [Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia | Australian Institute of Criminology \(aic.gov.au\)](#)

⁵⁹ [Adult sexual violence in Indigenous and culturally and linguistically diverse communities in Australia | Australian Institute of Criminology \(aic.gov.au\)](#)

Data from the Australian Bureau of Statistics highlights the following:⁶⁰

- 2.2 million women (23%) and 718,000 men (8.0%) aged 18 years and over have experienced sexual violence in their lifetime, including childhood sexual abuse and/or sexual assault since the age of 15
- The prevalence of sexual assault increased between 2012 and 2016 for women but not for men
- Women were more likely to experience sexual assault than men: 17% of women (1.6 million) and 4.3% of men (385,000) have experienced sexual assault since the age of 15.
- Both women and men were more likely to experience sexual assault by a known person than by a stranger. For women, the most common perpetrator was an intimate partner.
- 60% of women and 51% of men who experienced sexual assault experienced it more than once.
- 11% of women (1 million) and 4.6% of men (412,000) experienced childhood sexual abuse, most commonly by a known person who was not a family member.
- 2.2 million women (23%) and 718,000 men (8.0%) have experienced sexual violence in their lifetime (sexual assault since the age of 15 or sexual abuse before the age of 15).[1]
- Women were eight times more likely than men to experience sexual assault by an intimate partner since the age of 15 (8.4% of women compared with 1.1% of men).
- 4% of sexual assault victims recorded by police between 2014 and 2019 were family and domestic related.
- Intimate partners were responsible for a larger proportion of family and domestic related sexual assaults experienced by women (34%) compared with men (7.7%).

Sexual violence and abuse can take many forms- including reproductive coercion. Reproductive coercion 'is a deliberate abuse of power that can be exerted using physical violence, such as sexual assault, but can also occur in the absence of physical violence'.⁶¹

Reproductive coercion is behaviour that interferes with the autonomy of a person to make decisions about their reproductive health. Reproductive coercion includes any behaviour that

⁶⁰ [Sexual Violence - Victimisation | Australian Bureau of Statistics \(abs.gov.au\)](https://www.abs.gov.au/australian-bureau-of-statistics/publications/press-releases/2017/06/sexual-violence-victimisation)

⁶¹ [Reproductive coercion - Marie Stopes Australia](https://www.mariestopes.org/australia)

has the intention of controlling or constraining another person's reproductive health decision-making and can take a variety of forms.⁶²

In addition, when considering the drivers of reproductive coercion, it 'can occur on an interpersonal level within intimate partnerships or within families. It can also occur on a structural level where social, political, economic or cultural aspects can prevent people from making decisions about their reproductive health'.⁶³

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

Preventing and responding to violence against women and children requires a multi-sectoral approach. Whilst the problem of violence against First Nations women and children is still extremely prevalent and requires urgent attention, there are a number of initiatives in Australia that have been effective in reducing this violence.

In considering initiatives to combat violence against First Nations women and children, emphasis should be placed on programs and policies that aim for prevention such as education initiatives and support programs aimed at stopping violence before it begins. If and end to all kinds of violence is to be achieved, it needs to be eradicated at the source, rather than focusing resources only on prosecution once violence has already occurred.

Below are some examples of initiatives that are community led, First Nations informed and successful at addressing violence at the root cause.

1. Marninwarnikura Women's Resource Centre in Fitzroy Crossing

The establishment of this resource centre has reduced access to alcohol in the town, developed an inter-agency practice focused on screening children for fetal alcohol spectrum disorder and provided essential support to young mothers. The service also has a 'social enterprise' practice that builds women's resilience through arts and crafts using traditional techniques.

⁶² [Reproductive coercion - Marie Stopes Australia](#)

⁶³ [Reproductive coercion - Marie Stopes Australia](#)

2. Night Patrols

Groups of elders and senior members of communities walk around remote communities, 'keeping an eye on things' and negotiating when disputes arise rather than the imposition of sanctions (such as arrest if police were to be involved). The patrollers have the cultural, community, and linguistic knowledge to de-escalate and resolve issues in the community and strengthen community and family relationships. Some examples of night patrols include the Remote Area Night Patrol in Tangentyere, NT and the Yuendumu Women's Night Patrol also in NT.

3. Community Justice Groups in Central QLD – Coen Local Justice Group (Cape York, QLD)

Community Justice Groups provide community advice at the point of sentencing, focusing on rehabilitation and prevention, and takes community ownership of the problem-solving process. The group is made up of elders and members of First Nations communities in the region, and representatives from the QLD police, Education Queensland, Queensland Health, and the Coen Regional Aboriginal Corporation.

4. Nurse Family Partnership Program (USA, now also in Australia as the Australian Nurse-Family Partnership Program)

This program supports high-risk pregnant women and their children through regular visits from nurses which are focused on behavioural change, health education, questions the expectant mother may have, setting and maintaining goals, increasing the mother's self-efficacy, and involving the social network of the mother into the program and education initiatives.

Identify concrete and effective strategies and actions that can be taken to remove systemic causes of violence and increase safety

General principles for effective policy design

For strategies and actions aimed at removing systemic causes of violence to be effective among First Nations communities, they must be designed in very close consultation with and led by First Nations peoples and in particular, the relevant community] in the relevant area (giving due recognition to the differences in culture and practices among them). Policies and programs must recognise and respect the differences in culture and experiences of First

Nations people and put the people to whom the programs and policies are aimed at the centre of their design.

As part of this collaborative process, adequate compensation should be provided to First Nations communities and elders that participate in the design and consultation process and/or the provision of justice and community services. This will encourage cooperation, collaboration and respect which will lead to better outcomes.

Holistic and bottom-up approaches that address the root causes of violence among First Nations communities such as conditions of poverty, economic and social disadvantages, ongoing effects of colonisation and generational trauma are the key to successfully combating violence against First Nations women and children.

In addition to emphasising user-led design of these policies, capability among policy makers and program designers should also be prioritised. Trauma-informed practice that acknowledges intergenerational impacts and the legacy of colonisation and government policies (such as the forced removal of children from their families) is integral to improved outcomes for policies. Further, improved police practices and relationships with First Nations communities will aid the implementation and enforcement of policies and programs.

Programs and policies should be the subject of collaboration and coordination across sectors, communities and regulators, so that a uniform, harmonised and easy to understand (and comply) system is established. Overlapping programs and policies should be avoided and simplification whilst maintaining community standards and protections should be the goal.

Designing effective policies

Addressing the barriers that impact First Nations women and children

One of the leading causes of the continuation of violence against First Nations women and children is the barriers they face in seeking help when facing violence in their personal relationships or communities. These include (but are not limited to):

- Fear of child removal (relating to intergenerational trauma for child removal)
- Isolation from family and community

- Homelessness
- Shame among their community
- Inability to access support services due to lack of awareness and understanding or physical isolation and distance

To achieve effective strategies for combatting violence, steps must be taken to address these issues. This is where the general principles addressed above become even more relevant. For example, it is vital that people working in this space (such as police personnel, community engagement staff, First Nations representatives, health care workers, legal practitioners, community justice advocates) have the necessary training and education on the particular issues facing First Nations people such as intergenerational trauma and issues of isolation as well as cultural sensitivities. An understanding of these key issues will inform compassionate and effective engagement with First Nations women and children seeking help.

It will result in tailored assistance and support being provided for the particular vulnerabilities faced by each individual. For instance, some women may fear isolation from their family and community and may benefit from involvement in community groups with like-minded people who can provide that support where family support may be lacking. This could also require regular check ins with the supported individual to ensure ongoing mental and physical health or referrals to mental health services if needed. Further requirements such as transportation and financial support to access these services may also be required.

Only by removing these barriers and adopting a holistic approach will the systemic and root causes of violence against First Nations women and children be achieved.

Investing in First Nations led community services

One of the most important ways to ensure effective policies and programs in First Nations communities is to involve First Nations people (especially elders) in the design and implementation processes. Time and time again initiatives have failed because they neglect to take into account the nuances and features of First Nations customs, traditions and culture. This is a fatal blow to any policy or program targeting First Nations communities.

One example of a community-informed initiative that achieved great success in addressing violence against First Nations women and children is the establishment of 'Mens Sheds' in the Northern Territory. Whilst the program has now been discontinued, the Mens Sheds

provided peer support locations for men to cool off, seek support and remove themselves from escalating violent situations. This response recognises the different drivers of family violence among First Nations communities and the different requirements for combatting violence when dealing with different cultures and systems. Conversely, safe spaces for women (without police presence) to seek safety and support in a non-judgmental and confidential environment should also be considered. These resources should be well-resourced and placed in locations easily accessible to the target community.

User-designed policy is the only way to success.

Commit to consistent, fair and adequate funding of support services

Much like the Mens Shed initiative in the Northern Territory, many well-designed and effective strategies fail to launch or are terminated early due to lack of funding. For initiatives to be effective and achieve the long-term goal of reducing and eventually eradicating violence against First Nations women and children, consistent and adequate funding commitments from local, state and federal governments is a must.

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

There is only one appropriate way to answer this question – consult with those that are affected by the decision. The ways that various First Nations communities will honour and commemorate their loved ones will differ immensely. Only by asking and listening will we uncover and understand the appropriate way to achieve this goal. Importantly, when ideas are shared, they should be heard, respected and implemented in the precise way that they are explained, with full commitment to the traditions, customs, practices and wishes of the families.

If you would like to discuss any aspect of this submission, please email me at:

president@alhr.org.au.

Yours faithfully,

Kerry Weste

President

Australian Lawyers for Human Rights

Any information provided in this submission is not intended to constitute legal advice, to be a comprehensive review of all developments in the law and practice, or to cover all aspects of the matters referred to. Readers should take their own legal advice before applying any information provided in this document to specific issues or situations.