

# Inquiry into missing and murdered First Nations women and children

Submission to the Legal and Constitutional Affairs References Committee, December 2022

Domestic Violence NSW

**D** O M E S T I C  
V I O L E N C E  
**N S W**

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## Acknowledgement

This submission was written on the unceded lands of the Gadigal People of the Eora Nation and the Dharawal people of the Wodi Wodi nation. We pay respects to the Elders past, present and emerging.

Domestic Violence NSW would like to acknowledge Aboriginal and Torres Strait Islander people across the breadth and depth of Australia. We recognise that Aboriginal and/or Torres Strait Islander people have lived and cared for Country for over 65,000 years and continue to do so, honouring ancestors and knowledge holders within community, and observing ancient cultural practices.

We would like to recognise the impacts of colonisation and the ongoing systemic racism and oppression that is still present within institutions and the broader community.

We acknowledge the strength and resilience of Aboriginal and Torres Strait Islander people and hold their stories with great care.

We concede that Aboriginal and Torres Strait Islander women are at the highest risk of sexual, family and domestic violence compared with other women in Australia. We acknowledge that domestic and family violence are not part of Aboriginal culture.

Domestic Violence NSW works to position itself as an ally, to walk alongside, to listen, to give voice and strength, to respect, to never forget and to learn from past mistakes.



## Warning

**Aboriginal and Torres Strait Islander readers should be advised that this submission contains content about Aboriginal and/or Torres Strait Islander people who have died.**

## About Domestic Violence NSW

Domestic Violence NSW (DVNSW) is the peak body for specialist domestic and family violence services in NSW. We have over 125 member organisations across NSW.

Our members represent the diversity of specialist services working in NSW to support women, families and communities impacted by domestic and family violence.

Our member organisations include:

- crisis and refuge services,
- transitional accommodation and community housing providers,
- family support services,
- Aboriginal controlled organisations and specialist CALD organisations,
- specialist homelessness service providers,
- men’s behaviour change programs and networks,
- community organisations working with high-risk communities,
- specialist women’s legal support services,
- women’s health centres,
- women and children’s support services, and
- safe at home programs.

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## Executive summary

DVNSW acknowledges the strength of Aboriginal and/or Torres Strait Islander peoples and the diversity of experiences amongst women, children and communities. This submission has been drafted in consultation with the DVNSW Aboriginal and Torres Strait Islander Women's Steering committee. We acknowledge the leadership of Aboriginal women in responding to and preventing gendered violence in the community, in particular the tireless advocacy of the families of missing and murdered women and girls. DVNSW works to position itself as an ally, to walk alongside, to listen, to give voice and strength, to respect, to never forget and to learn from past mistakes.

This submission demonstrates the centrality of inequality due to racism and sexism as the driver behind the high numbers of women murdered and missing due to gendered violence. Considerable evidence verifies that Aboriginal and/or Torres Strait Islander women and children are far more likely to be victim-survivors of domestic and family violence and sexual violence than non-Aboriginal women (Australian Institute of Health and Welfare (AIHW), 2019a; Holder, Putt & O'Leary, 2015; Olsen & Lovett, 2016). However, there is a concerning lack of public knowledge and outcry, and appropriate Government-led response, on the appalling number of missing and murdered Aboriginal and/or Torres Strait Islander women in Australia.

Throughout this submission, we will examine the size of the issue, including concerns around under-reporting, and the systemic causes of gendered violence against Aboriginal and/or Torres Strait Islander women and girls. This submission will then examine both current practices and the practices required to investigate the deaths and missing person reports of Aboriginal and/or Torres Strait Islander women and children. Finally, we will examine the legislation, policies, and practices in response to gendered violence and how missing and murdered First Nations women and children can be honoured and remembered. We hope that the Inquiry will centre the voices of Aboriginal women, families and Aboriginal controlled organisations to lead the solutions needed to address the crisis of violence against Aboriginal and/or Torres Strait Islander women and girls in Australia.

The following submission speaks to the below terms of reference:

- b. 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;
- 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;
- g. the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated; and

**This submission is endorsed by Women's Legal Service NSW, WESNET and Safe and Equal.**

## Recommendations

Domestic Violence NSW calls on the Australian Government to implement the following recommendations:

1. Pilot and invest in first response alternatives that are centred around the victim-survivor e.g., piloting police/specialist DFV co-responder models.
2. Invest in cultural safety training for police, conducted by Aboriginal women and monitor the impact and outcomes.
3. Identify clear pathways to address misidentification of the primary aggressor.
4. Invest in domestic and family violence specialists in every police area command and increase the cultural diversity of police officers.
5. Address all deaths in custody recommendations.
6. Invest in culturally safe crisis accommodation and accessible housing for First Nations women and their children, including any children under 18.
7. Provide plain English, culturally appropriate information on coercive control and other basic and general legal information, available in the community and in schools for young people.
8. Provide culturally appropriate information on financial abuse.
9. Fund primary prevention of violence initiatives drawn from the Our Watch framework *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children*.
10. Invest in culturally safe, primary prevention and respectful relationships initiatives beginning from early childhood.
11. Invest in improvements with data collection to ensure data on Aboriginal and/or Torres Strait Islander women is collected by asking the questions about the cultural background of women.
12. Consider the findings of upcoming research project by the Monash Family Violence Prevention Centre on perpetrator registers and consider piloting for Aboriginal communities if considered an effective intervention
13. Ensure stringent processes for assessment to be a foster carer of Aboriginal and/or Torres Strait Islander children.
14. Consult with BlaQ and other first nations LGBTIQ+ orgs to ensure solutions to address high rates of violence against trans and gender-diverse Aboriginal and/or Torres Strait Islander people.
15. Invest in research into the extent of people trafficking in Australian Aboriginal communities.
16. Invest in cultural safety training for the DFV sector.
17. Ensure that the women's stories, and those of their families, are centred during the process of the Inquiry.
18. Introduce an honour roll to acknowledge missing and murdered First Nations women and children.
19. Introduce a specific day to remember, celebrate and mourn missing First Nations women and children.
20. Introduce a community remembrance fund for individuals/families and First Nations community organisations to enable community remembrance events for the missing and murdered First Nations women and children.
21. Ensure that the *Inquiry into missing and murdered First Nations women and children* is only the beginning of investment into investigating this issue, and that Federal Government funding and commitments follow.

## The magnitude of the issue

Whilst the reported data is a likely underestimate of the amount of violence experienced by Aboriginal and/or Torres Strait Islander women and girls, it is important to recognise that even in these statistics Aboriginal and/or Torres Strait Islander women are overrepresented compared to non-Aboriginal women.

- 3 in 5 Aboriginal and/or Torres Strait Islander women have experienced physical or sexual violence perpetrated by a male intimate partner since the age of 15 (Our Watch, 2018).
- The physical injuries resulting from violence are frequently more severe for Aboriginal and/or Torres Strait Islander women. Aboriginal and/or Torres Strait Islander women are 32 times more likely to be hospitalised due to family violence related assaults than non-Indigenous women (AIHW, 2019a).
- At least 315 Aboriginal and/or Torres Strait Islander women have either gone missing or been murdered since 2000 (Brennan et al., 2022).
- Aboriginal and/or Torres Strait Islander women are far more likely to be victims of homicide than non-Indigenous women.
  - Aboriginal and/or Torres Strait Islander women are nearly 11 times more likely to die due to assault and twice as likely to die due to DFV compared to non-Indigenous women (Olsen & Lovett, 2016).
  - In 2013, Aboriginal and/or Torres Strait Islander women were five times more likely to be victims of homicide than non-Indigenous women. More than half (55%) of these homicides were related to DFV (Chan & Payne, 2013).
  - Aboriginal and/or Torres Strait Islander women accounted for 14% of women killed in intimate partner violence (IPV) homicide cases in NSW from 2000-2019, whilst constituting only 2.9% of the NSW population (Domestic Violence Death Review Team Report, 2020).
  - Aboriginal and/or Torres Strait Islander women accounted for 24.6% of all homicide victims from 2010-2018 (Australian and Family Violence Death Review Network, 2022).
- Aboriginal and/or Torres Strait Islander women are more likely to be intimate partner homicide offenders, with 41.5% of female IPV homicides in 2010-2018 being perpetrated by a woman identifying as Aboriginal and/or Torres Strait Islander. It is key to note that 63% of these women reported being the primary victim of violence in the relationship with the victim (Australian and Family Violence Death Review Network, 2022). The researchers warn this is data that must be treated with caution due to the complexities of the cases and intersectional systemic issues faced by the women.
- Intimate partner violence contributes 11% of the burden of disease for Aboriginal and/or Torres Strait Islander women aged 18 to 44, more than any other health risk factor, including alcohol or tobacco use and being overweight or obese. This is more than 6 times higher than for non-Indigenous women (Webster, 2016).
- Aboriginal and/or Torres Strait Islander children are at greater risk of exposure to DFV than non-Indigenous children, with two thirds of Aboriginal and/or Torres Strait Islander adults who experience violence sharing the household with children compared to approximately half of non-Indigenous adults (AIHW, 2016).

As the Australian and Family Violence Death Review Network (2022, p. 12) stated, it is important to note that the overrepresentation of Aboriginal and/or Torres Strait Islander people as both IPV

homicide victims and offenders does not speak to DFV being a part of Aboriginal and/or Torres Strait Islander culture, and that there is “a complex range of interrelated factors associated with the disproportionate incidence and severity of family violence in Aboriginal and/or Torres Strait Islander communities”.

## Under-reporting

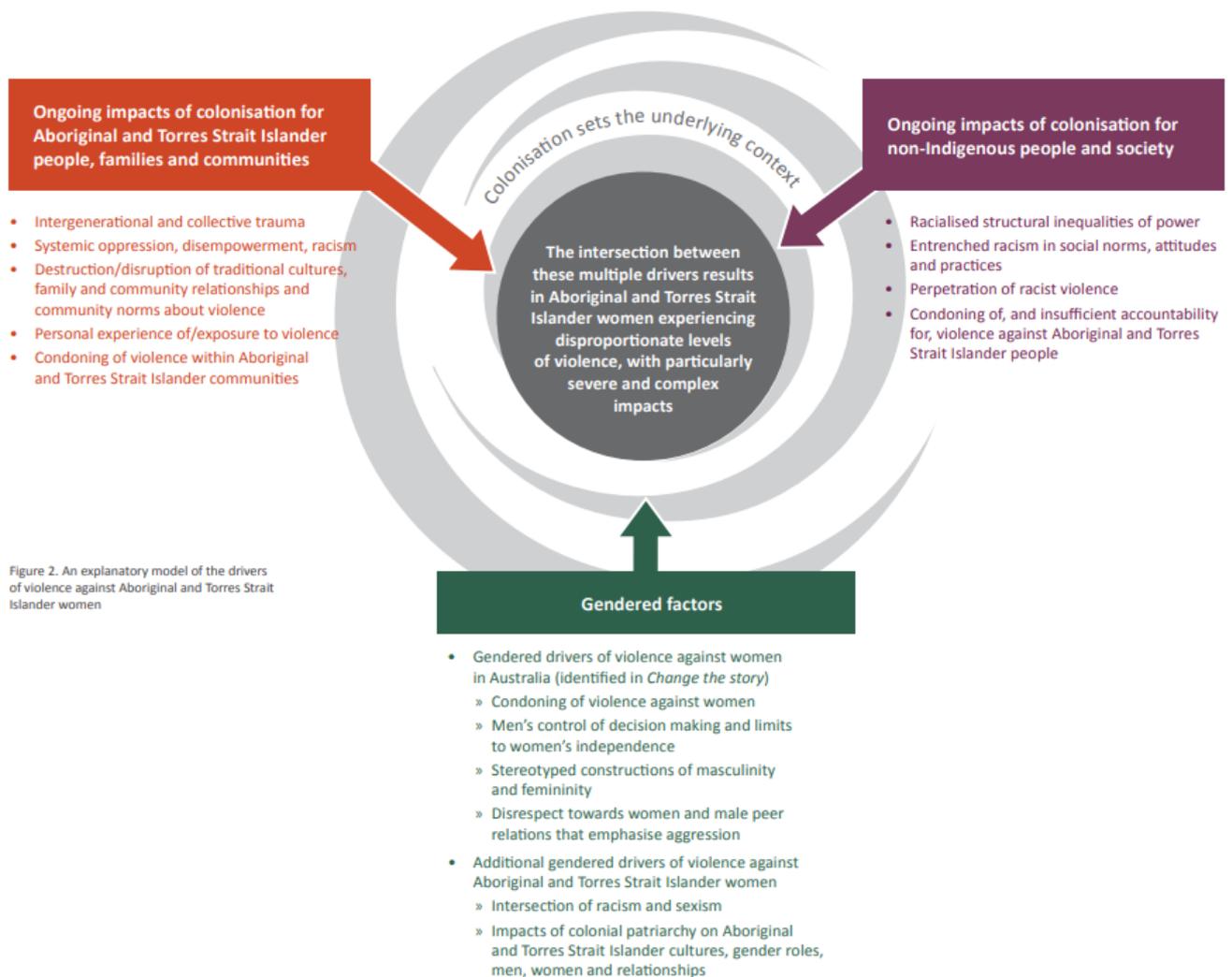
Sexual, domestic and family violence is generally under-reported in Australia with the majority of women not reporting their experiences of violence (AIHW, 2018). It is difficult to measure whether or not Aboriginal and/or Torres Strait Islander women report more or less than non-Aboriginal women, however it is likely underreporting occurs at higher rates due to the considerable barriers to reporting, including the fear of child removal, homelessness and potential isolation from their family and community (Langton, Smith, Eastman, O’Neill, Cheesman, & Rose, 2020). The Australian and Family Violence Death Review Network (2022) note the likelihood of under-reporting in their dataset, due to a reliance on service data that does not reliably identify Aboriginal and/or Torres Strait Islander status, meaning missing and murdered Aboriginal and/or Torres Strait Islander women are also likely underrepresented.

## Systemic causes of all forms of violence

This section investigates (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.

DVNSW considers the systemic causes of violence against Aboriginal and/or Torres Strait Islander women to be based in gender inequality and racial discrimination embedded across multiple systems which cause ongoing disadvantage resulting in disproportionate rates of violence. [Changing the Picture](#) is Australia’s national framework for the primary prevention of sexual, domestic and family violence against Aboriginal and/or Torres Strait Islander women and girls (Our Watch, 2018). The framework is built upon decades of scholarship and research by Aboriginal women, and explores the ways in which experiences of sexual, domestic and family violence are deeply interlinked with experiences of colonisation, genocide, and dispossession of land. It is imperative that the legacies and ongoing impacts of colonisation for Aboriginal and/or Torres Strait Islander people, families, and communities are addressed in order to prevent violence against Aboriginal and/or Torres Strait Islander women and their children (Our Watch, 2018).

The legacies of colonisation include child removal, disruption of families and traditional family structures, dispossession of land, disconnection from culture, genocide, state sanctioned violence, and intergenerational trauma. These consequences are directly connected to discriminatory policy and practice, and Aboriginal and/or Torres Strait Islander Peoples need meaningful acknowledgement and action by governments and community to address them. Governments and communities must undertake work on the intersections between domestic and family violence, homelessness, child protection, and out of home care if there is to be a reduction in the levels of violence in communities.



*Our Watch, 2018, p.14*

It is these levels of violence that this submission will focus on, with disproportionately high rates of violence experienced by Aboriginal women, families, and communities. These higher levels of DFV put Aboriginal women at a greater risk of homelessness, with DFV being the primary cause of homelessness for women. Unstable housing significantly increases the chance of removal by child protection services continuing the cycle of discriminatory policy and practice and the systemic disadvantage experienced by Aboriginal and/or Torres Strait Islander families.

*“As an Aboriginal woman, I experienced systemic racism, through government bodies like Department of Justice and Communities, the police and health system. There are other layers that add complexity to experiencing DV and seeking help and assistance for me and other Aboriginal women. Being an Aboriginal person and having an Aboriginal ex-partner, calling the police on him meant a high risk of him experiencing police brutality and Aboriginal deaths in custody.”*

**Kowana, DVNSW Voices for Change Advocate, DVNSW, 2020**

The primary drivers for the removal of Aboriginal and/or Torres Strait Islander children into out of home care are substance abuse and family violence, which are often inextricably intertwined (Delfabbro, 2018). The safety and wellbeing of Aboriginal and/or Torres Strait Islander children is vital. As such, the violence against Aboriginal and/or Torres Strait Islander women must be addressed as a matter of urgency and must be done so through a culturally sensitive lens. There is a correlation

between the lack of protection to victims by the justice and the health care systems, and the systems of violence and violence deterrence.

*'Aboriginal and Torres Strait Islander women face institutional, systemic, multiple, intersecting forms of discrimination. In addition to sexism and racism, many women also face class-based discrimination due to their low socio-economic status, as well as social exclusion arising from their regional or remote geographical location. These forms of discrimination and exclusion... manifest themselves in an alarmingly high prevalence of violence against Aboriginal and Torres Strait Islander women who continue to experience higher rates of domestic/family violence and more severe forms of such violence as compared to other women.'*

United Nations Special Rapporteur on Violence against Women (2017), p. 6

The systemic disadvantage experienced by Aboriginal and/or Torres Strait families is compounded by the wider society's lack of understanding and experience with remote Aboriginal communities. This lack of understanding is, in turn, politicised and it is claimed that domestic and family violence is "rife" in regional communities which leads to over criminalisation of Aboriginal people, failed interventions, and support for a conservative and colonial narrative (Squires, 2006).

### Addressing women's imprisonment rates and Black deaths in custody

It is estimated that between 79 and 90% of all women in custody are victim-survivors of sexual, domestic and family violence, and 80% of Aboriginal and/or Torres Strait Islander women are mothers (Walters & Longhurst, 2017). The heightened incarceration of Aboriginal and/or Torres Strait Islander women places children at further risk of being placed in out of home care, continuing the cycle of disadvantage and trauma. It is essential that alternative diversionary and early intervention options are explored, as this vulnerable cohort require support rather than punitive actions.

While still only comprising approximately 8% of the national prison population, between 2009 and 2019, Australia's female prison population increased by 64% (Meyer, 2021). The rate of imprisonment of Aboriginal and/or Torres Strait Islander women is increasing even more rapidly, with Aboriginal and/or Torres Strait Islander women incarcerated at 21 times the rate of their non-indigenous counterparts. Aboriginal and/or Torres Strait Islander women enter the justice system earlier than non- Aboriginal and/or Torres Strait Islander women, and the overall rate of incarceration of Aboriginal and/or Torres Strait Islander women has increased 148% since the Royal Commission into Deaths in Custody in 1991 (Walters & Longhurst, 2017).

The fear of black deaths in custody is an ongoing barrier for women reporting domestic and family violence and sexual violence. This fear of reporting means there is a lack of police intervention in many cases for Aboriginal and/or Torres Strait Islander women experiencing violence at risk of being murdered. The recommendations of the 1991 Royal Commission into Deaths in Custody require attention and action.

### Misinformation about Aboriginal and/or Torres Strait Islander women's experiences of domestic and family violence and sexual assault

There are many inaccurate assumptions made about Aboriginal women's experiences of violence and these detract focus from the underlying issues of disadvantage and inequity which must be addressed. Challenging these misconceptions can help direct attention, effort and resources to the actual underlying drivers of this violence (Our Watch, 2018). There are, for example, assumptions that if an

Aboriginal woman is abused, murdered or missing the perpetrator is an Aboriginal man. The Australian and Family Violence Death Review Network found that 10% of Aboriginal and/or Torres Strait Islander women killed between 2010-2018 were killed by a male partner who did not identify as Aboriginal and/or Torres Strait Islander (AFVDRN, 2022).

Gendered violence is not an inherent part of Aboriginal culture and has been brought to Australia through colonisation. As custodians of some of the longest surviving cultures in the world, Aboriginal and/or Torres Strait Islander people successfully managed interpersonal, family and community relationships for over 60,000 years prior to colonisation (Our Watch, 2018).

The unacceptable rates of violence against Aboriginal women have been enabled by widespread misconceptions, creating a lack of cultural safety amongst people and organisations designed to provide support. Cultural safety training is essential in all human services to ensure that Aboriginal and/or Torres Strait Islander women and girls receive fair and accessible, just supports as they need them.

## Practices to investigate the deaths and missing person reports of First Nations women and children

This section investigates (b.) 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.

DVNSW will focus primarily on the practices to investigate the deaths of Aboriginal and/or Torres Strait Islander women and their children due to domestic and/or family violence.

### Current practices

The DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee members wish to use this opportunity to elevate the fact that when Aboriginal women go missing it is the family backed by community who push for justice and their cases to be heard. They are the advocates.

The lack of concern shown to missing and murdered women was demonstrated in the matter of Lynette Daley, who was brutally raped and murdered in 2011 by her then partner and his friend. The matter took over six years to be prosecuted. Even after a coronial inquest referred the matter back to the Department of Public Prosecutions (DPP) to consider renewing charges (which had been dropped in 2012), the DPP declined to prosecute, citing lack of evidence. It was not until an episode of Four Corners exposed the details of the case that charges against the men were renewed and both were prosecuted for their part in Lynette's brutal murder. A significant amount of public criticism emphasised the difference between the response to Lynette's murder and cases where the offender/s were Aboriginal and the victim was white. Given the jury returned a verdict after only 32 minutes of deliberation and the DPP issued a public apology post-conviction, it is difficult to draw any other conclusion (Sainty, 2021; Tam, 2022). It is important to note that without the persistent advocacy of Lynette's family and community, the men that killed her would never have been held accountable for their actions.

Brennan et al. found that at least 315 Aboriginal and/or Torres Strait Islander women have either gone missing or been murdered since 2000 (2022). However, as the journalists state, this is an incomplete picture; and we will likely never know the true number of Aboriginal and Torres Strait Islander women

who have never been seen again. In NSW, the Domestic Violence Death Review Team is the key source of information regarding domestic and family violence deaths (Coroners Court NSW).

## Domestic Violence Death Review Team

Domestic Violence Death Review Teams were first established in the US during the 1990s. The first Australian team was established in the late 2000s in Victoria, with NSW, QLD and SA following in 2010. Tasmania is now the only jurisdiction that does not have a domestic violence death review function. The Australian Domestic and Family Violence Death Review Network (the Network) was established in 2011 and comprises members of each of the death review teams across Australia. The Network published its inaugural Data Report in May 2018, providing national data with respect to all intimate partner homicides that occurred in a domestic violence context between 2010 and 2014. In 2020 ANROWS and the Network commenced a partner project to update the 2018 report, extending the data capture to include all IPV homicide from July 2010 to June 2018 (ANROWS, 2022).

The NSW Domestic Violence Death Review Team (NSW DVDRT) released its first report in 2012, with six reports released to date and one due for imminent release. Like all death review mechanisms operating across Australia and internationally, the ideology of the NSW DVDRT is that the domestic violence deaths are predictable and preventable. The NSW DVDRT works to identify systemic issues and make recommendations to address these issues so as to prevent future loss of life. As such, the reports of the NSW DVDRT look at the response system more broadly, including which organisations were aware of the violence, what they do to help the victim and address the perpetrator and identify the systemic failings in specific cases, as well as more broad trends across cases (Coroners Court, 2021).

Whilst the work of the NSW DVDRT offers crucial insights, significant constraints in the process are also evident. There can be a substantial time lag between when the death occurs and reporting by the NSW DVDRT (as the establishing legislation requires cases to be finalised prior to review). Resourcing for the NSW DVDRT is extremely limited and is not commensurate to the scale of the problem, with the Secretariat (who undertake all the quantitative and qualitative review processes for the DVDRT) consisting of only two staff. Despite strong advocacy, there remains only four community representative members on the NSW DVDRT (Select Committee on the Coronial Jurisdiction in New South Wales, 2021). Whilst there is important representation from a community women's Aboriginal organisation, there remains insufficient cultural knowledge within the NSW DVDRT to specifically report on issues relating to Aboriginal and/or Torres Strait Islander women's experiences of violence in NSW.

Despite these limitations, the research performed by the NSW DVDRT is an invaluable source of information. In its 2017-19 report the NSW DVDRT continued to report overrepresentation of Aboriginal women killed in intimate partner homicides, accounting for 14% of the cases, whilst only being 2.9% of the NSW population (NSW DVDRT, 2020). Further, the report found that, even though Aboriginal women attempt to access many services, they may face many barriers in accessing appropriate services. The NSW DVDRT noted that the service system

*'Often fails as multiple services are unable to work collaboratively to secure victim safety, or there is a failure to follow-up or make referrals, as well as issues with intrinsic racism and a lack of cultural safety.'*  
(NSW DVDRT, 2020, p. 89)

In response to this issue, the NSW DVDRT made Recommendation 13, which was supported in principle by the NSW Government (subject to available funding):

*That the NSW Government, in partnership with Aboriginal communities and organisations, develop a framework to prevent and respond to violence in Aboriginal families and communities.*

*The objectives of the framework, subject to consultation with communities and organisations, should be to improve the quality, availability and cultural competency of services across the broad domestic and family violence service system for Aboriginal people.*

*The framework must include a governance structure that draws together the diverse domestic and family violence service system and has strong connections to NSW Aboriginal communities.* (NSW DVDRT, 2020, p.94)

The Coronial Inquest process itself is one that has attracted criticism from Aboriginal and/or Torres Strait Islander families. Coronial inquests are important tools for exposing truth and holding decision makers to account. However, Newhouse, Ghezelbash and Whittaker found, ‘some coroners are reluctant to directly apportion blame for a death to a particular individual or to address issues of systemic racism’ (Newhouse, Ghezelbash & Whittaker, 2020, p. 83). This is disappointing for family members in these matters, as they find these systemic issues to be core to the purpose of the coronial proceedings. Similarly, the National Justice Project (2022, p. 1) found the NSW Government response to the Parliamentary Inquiry on the reform of the coronial system to be “grossly inadequate”, lacking a commitment to systemic changes that would work to address these issues.

## Limitations to the data

While there is a range of publicly available qualitative and quantitative data regarding domestic and family violence, and sexual violence, there are also substantial gaps which impede intervention and prevention efforts in Australia (AIHW, 2019b). Information gaps on various aspects of domestic and family violence and sexual violence are primarily due to inconsistent identification, capturing and counting procedures between different datasets and jurisdictions, a lack of information about marginalised communities, and a lack of available data about pathways, impacts and outcomes for victim-survivors, perpetrators and their children (AIHW, 2019b).

Whilst the Network data errs on the side of identification where there is any information from data sources suggesting that a victim of crime is Aboriginal and/or Torres Strait Islander, there can be issues with the agencies accurately reporting the cultural identity of victims of crime. The Australian and Family Violence Death Review Network cites limitations in source data about Aboriginal and Torres Strait Islander status, explaining:

**‘Consistency and quality of this administrative data as a means of identifying Aboriginal and Torres Strait Islander status can be compromised by structural issues – such as the services not explicitly asking the client or making assumptions about their identity – and by a client’s choice not to self-identify as Aboriginal and/or Torres Strait Islander. Accordingly, there is the potential for underreporting of IPV homicides involving Aboriginal and Torres Strait Islander peoples.’** (Australian and Family Violence Death Review Network, 2022, p. 18)

The authors go on to explain that many clients may not self-identify due to the historical use of this data being for exclusion and producing structural barriers. Thus, it is the responsibility of services to ensure that this data is collected through consistent procedures and address any structural concerns

and barriers that may prevent a client from self-identifying (Australian and Family Violence Death Review Network, (ADVDRN), 2022).

All human services need to do more to respond to the needs of Aboriginal and/or Torres Strait Islander clients and ensure that they collect consistent and accurate data. To do so, it is important that they address the structural barriers faced by women and children including bias, racism and privacy concerns (Langton et al., 2020; NSW Aboriginal Affairs, 2015 in ADVDRN, 2022, p.57).

There can be issues limiting the data regarding the causation of a murderer, for example where there is co-occurrence of drug and alcohol usage. The NSW DVDRT don't add to the homicide figures in these situations, however they do review the cases for qualitative data so that the issues can be collated and shared.

The tracking of the Aboriginal and/or Torres Strait Islander identity of missing women is important to understand the scale of the issue and identify systemic patterns. However, there are also flaws in systems that do track Aboriginality with ease. For example, police are required to note Aboriginality in every event. However, the question is often not asked and thus not always recorded. When the question is asked, many Aboriginal families report police not taking the matter seriously, with problematic attitudes of Aboriginal women 'just going walkabout' persisting. The DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee wish to note that Aboriginal women do not just go missing and that this narrative is far more frequently used as an excuse for inaction rather than a legitimate reason.

### Defining "missing"

The NSW Police defines a missing person as:

***'Anyone who is reported to Police, whose whereabouts are unknown and there are fears for the safety or concerns for the welfare of that person. This includes anyone missing from institutions, excluding escapees. It is important to remember that going missing is NOT a crime. The NSW Police Force is here to ensure the safety of the public, including investigating the whereabouts of missing persons.'***  
(NSW Police, retrieved 2022)

This definition is succinct but broad, and while this may be appropriate for police operational purposes, however, should be reviewed in consultation with Aboriginal communities to ensure it is clear for community members. Further, in NSW it is difficult to determine what the required response from police is when a person is reported missing, given the standard operating procedures for investigating a missing person are not publicly available. It is important that Aboriginal families know how their reports of missing family members are going to be received and investigated.

As such, DVNSW recommend that an externally facing document is developed in collaboration with Aboriginal stakeholders, to identify deficits with the current operating procedures and determine the key questions police should ask when a person is reported missing. There is also a stark difference in the publicity surrounding missing Aboriginal and Torres Strait Islander women and non-Aboriginal and Torres Strait Islander women. When reporting someone missing, family members need to know what kind of public advocacy they can expect from police, the broader justice system and other stakeholders such as the media.

The lack of public understanding around what to expect when reporting a family member missing is one factor which has led to Aboriginal families feeling like they are not being listened to or their concerns not being taken seriously, and that there is no avenue for recourse if the response is lacking. For example, Colleen Walker, the first of the infamous Bowraville murders, was reported missing to

police in 1990 by her family. This report was not taken seriously, with no formal action such as inquiries or search parties. Her body has never been found (Clarke, 2021; Jubelin, 2021).

However, it is important that the NSW Police are examining missing Aboriginal women in a more focused, systemic way. For example, what does 'missing' look like for Aboriginal women and how is that different from non-Aboriginal women? Where are Aboriginal women and children going missing from? Is there human trafficking occurring?

In order to answer these questions, significant research needs to be undertaken using police data. All data on missing women who are indicated as Aboriginal and/or Torres Strait Islander need to be extracted to examine the patterns and systemic issues that are contributing to Aboriginal or Torres Strait Islander women going missing. This research needs to be co-designed and co-authored by female Aboriginal academics and must include engagement and consultation with Aboriginal women throughout, and in particular with Aboriginal women in rural and regional areas. The research also needs to examine what trafficking women looks like in NSW, and how systemic racism may render this issue invisible.

## Learning from the Canadian National Inquiry into Missing and Murdered Indigenous Women and Girls

Given the similarities between the two jurisdictions, including the strong First Nations populations, colonial history and geographic size, Australia may be able to derive important learnings from the Canadian *National Inquiry into Missing and Murdered Indigenous Women and Girls* (2015-2019).

Much like in Australia where murder rates for Aboriginal and Torres Strait Islander women are eight times higher than non-Aboriginal and Torres Strait Islander women (Cripps 2022), Canada statistics (2005; 2006; 2009) reveal that Aboriginal women in Canada are significantly overrepresented as victims of homicide. Between 1997 and 2000, homicide rates for Canadian Aboriginal females were almost seven times higher than those of non-Aboriginal females. The Native Women's Association of Canada (NWAC, 2010) found that, between 2000 and 2008, Aboriginal women and girls, who make up only 3% of the female population, represented approximately 10% of all female homicides in Canada.

Data from the Indian and Northern Affairs Canada found that Aboriginal women in Canada between 25 and 44 years of age with Indian status are five times more likely than other women to die due to violence than their non-Indigenous counterparts (Amnesty International Canada, 2004). These murders are also more likely to go unsolved, with only 53% of murder cases of Canadian Aboriginal women in the Native Women's Association of Canada's (NWAC, 2010) Sisters In Spirit database being solved. This is in contrast to 84% of murders across the country having been solved.

Moreover, Canadian Aboriginal women were found to be disproportionately vulnerable due to their overrepresentation in the sex trade, including being trafficked. Aboriginal women and girls are more likely to be forced into sex work in Canada due to the precarious social and economic conditions that colonial legacies have left them in (Roudometkina & Wakeford, 2018). As explored by Statistics Canada (2006), the extreme vulnerability of women in the sex trade is often ignored or goes unnoticed entirely. However, between 1991 and 2004, 171 women who were involved in the sex trade in Canada were killed, with 45% of these homicides remaining unsolved.

While government survey data is an important source of information, community-based research have found levels of violence against Aboriginal women in Canada to be higher than data from government surveys (NWAC, 2020). This is likely due to methodological reasons, such as the collection

method for government research. Statistics Canada collect their data from police databases, which will only capture the incidents of violence that are reported to police. However, it is estimated that only four out of ten incidents of violence crime against Aboriginal people are reported to police.

Additionally, there are no official national data sources that track the number of missing persons reported filed each year. This means that the size of the issue, including how many remain outstanding, is unknown. As such, it is not possible to compare the rate of Aboriginal missing women compared to non-Aboriginal missing women (NWAC, 2020). To date, NWAC holds the only database publicly available that tracks the number of missing and murdered Aboriginal women and girls in Canada, including the circumstances of their disappearance or murder.

The process of the Canadian inquiry took over 4 years, and was deeply centred in truth telling, with over 2380 people participating (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). The Inquiry involved First Nations leaders, women, and grandmothers. Notably, the National Inquiry's findings characterise violence against First Nations women, girls, and two spirit LGBTQQIA people as genocide (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019). The final report called for 10 immediate actions and centred the importance of respectful relationships education.

## Legislation, policies and practices in response to gendered violence

This section responds to (c.) the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children.

DVNSW is unable to respond to all legislative policies and practices that pertain to gendered violence experienced by First Nations women and children. However, in consultation with the [DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee](#), we would like to comment on the role of police, in particular concerns regarding systemic racism and the policing of DFV in Aboriginal and Torres Strait Islander communities in NSW.

In their review of Aboriginal and Torres Strait Islander experiences of law enforcement and justice services, the Finance and Public Administration References Committee (2016) found that structural biases and systemic discrimination results in Aboriginal and Torres Strait Islander people being dealt with more harshly for the same offending. As pointed out by Chief Justice Martin (2016, cited in Finance and Public Administration References Committee, 2016) in his submission to the ALRC, Aboriginal and Torres Strait Islander people are more likely to be questioned by police, arrested as opposed to be issued a summons, be remanded in custody, plead guilty, be found guilty if proceeding to trial, receive a custodial sentence, and be denied parole at the end of their sentence.

High rates of incarceration of First Nations people are consistently evidenced (Finance and Public Administration References Committee, 2016), and although little progress has been made since the Royal Commission into Black Deaths in Custody (1991) this is now indicated as a nation-wide priority to address under Australia's Closing the Gap targets. Inconsistent, poor and discriminatory police responses have significant flow on effects, including a lack of faith in police, resulting in not reporting to police in crisis situations. The following quotes are taken from the DVNSW submission on the policing of DFV in NSW (2021).

*“Women are not confident to call, not confident to get a good response, a humane response.”*

Dixie, DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee member, in DVNSW, 2021

*“Everyone knows they won't get any help from the Police.”*

Anonymous DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee member in DVNSW, 2021

*“When those who are there to protect don't come when you call women stop calling.”*

Anonymous, DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee member, 2021

## Misidentification

Misidentification of the primary aggressor is an issue of particular concern in Aboriginal communities. DVNSW Members describe frequent experiences of police racism and high levels of both conscious and unconscious bias. This was expressed as significantly worse in rural areas, compounded by concerning long response times that have resulted in deaths (NSW DVDRT, 2020).

Similar experiences have been found in other states, with the work of the Victorian Family Violence Reform Implementation Monitor (FVRIM, 2021) being most instructive in this area.

Victorian Family Violence Reform Implementation Monitor (FVRIM, 2021) found that Aboriginal women, along with migrant and refugee women, women with disabilities, criminalised women and LGBTIQ+ people, were found to be at greater risk of being misidentified as a perpetrator. This is further evidenced by 80% of Aboriginal women identified by police as the respondent (or perpetrator) in family violence incidents having been recorded as a victim of family violence in the past five years. This was compared to the overall 60% of all women.

There are a number of reasons cited for this. First, the FVRIM found a significant trend of non-Aboriginal men controlling their Aboriginal female partner through system manipulation. The non-Aboriginal male partner would weaponise systemic fears around police and child protection as a form of coercive control. This leads to further underreporting by the Aboriginal woman, as explored above. However, this is further compounded when the non-Aboriginal partner calls the police. Not only is there no record of violence by the non-Aboriginal partner on the Aboriginal woman due to her being too scared to report, but the Aboriginal woman is also less likely to look or behave how a 'real' victim-survivor should (FVRIM, 2021).

Aboriginal women rarely satisfactorily occupy the concept of the 'ideal victim', partially because the concept itself calls for a white woman (Long, 2021). However, Aboriginal women are also much more likely to have experiences of intergenerational trauma, racism, and criminalisation (FVRIM, 2021). This means that Aboriginal women are more likely to appear agitated or uncooperative, while the non-Aboriginal male displays none of these traits.

Compounding this, Aboriginal women often hold a deep mistrust of police due to previous experience, systemic racism including police believing she will 'just be back tomorrow', and the perceived (and often real) risk of child protection authorities becoming involved. It is also important to note the statistical likelihood that she has a traumatic brain injury (TBI) with Aboriginal women 69 times more likely to have experience a head injury during an assault (FVRIM, 2021). All of this hinders her ability to effectively communicate and cooperate with police.

As such, a key recommendation of the FVRIM is for solutions to be developed to adequately respond to Aboriginal victim-survivors through work between Aboriginal led organisations, services, and Government departments. This would span across members of the Aboriginal Community Controlled Organisation Family Violence Forum, Government run Aboriginal-led strategy Dhelk Dja Partnership Forum, and the Koori Justice Caucus. A similar approach in NSW is recommended.

Queensland has also recently moved to address the misidentification of the primary perpetrator, with the *Domestic and Family Violence Protection (Combating Coercive Control) and Other Legislation Amendment Bill 2022* introduced into Parliament on 14th October 2022. This bill proposes to assist in the area of misidentification by providing legislative guidance of identifying the person most in need of protection in a relationship and strongly discouraging cross-AVOs. The issues around the misidentification of the primary aggressor, particularly as it pertains to Aboriginal women, was also

explored in the recent Commission of Inquiry into the Queensland Police Service (2022). This led to recommendation 49:

*Within 12 months, the Queensland Police Service improve its training in relation to domestic and family violence by strengthening programs to address the need for police to take into account the unique experiences of First Nations peoples and communities when responding to domestic and family violence, including considerations relevant to misidentification of victims and how to communicate with First Nations peoples and communities to ensure that the conditions of Protection Orders are both appropriate to the circumstances and clearly understood by the parties. (Commission of Inquiry into the Queensland Police Service, 2022)*

This research and legislation should be examined closely and looked to for advice on addressing the issue of the misidentification of Aboriginal and/or Torres Strait Islander women as perpetrators.

Recommendation 9 from the Canadian Inquiry into Missing and Murdered Women was for the Federal Government to work collaboratively with Provinces and Territories to create a National Police Taskforce to which the National Inquiry could refer families and survivors to assess or reopen cases or review investigations (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p.70). A similar recommendation between the Australian Government and State and Territory Governments would be appropriate.

## Honouring and commemorating missing and murdered First Nations women and children

This section responds to section (g.) of the Terms of Reference, exploring the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated. It is essential that women's stories and those of their families are centred throughout the process of this Inquiry. With the permission of families, women and children's stories should be publicly told so they do not simply become numbers and can be remembered with dignity.

The DVNSW Aboriginal and Torres Strait Islander Women's Steering Committee calls for the introduction of an honour roll to acknowledge missing and murdered women and children, which should be developed with permission from the families. Further, the Steering Committee is supportive of introducing a specific day to remember, celebrate, and mourn missing women.

Further, DVNSW recommend introducing a community remembrance fund for individuals/families and First Nations Community organisations to enable community remembrance events. The fund should be simple to apply for, with simple accountability mechanisms to enable communities to remember the women and children who are missing and have been murdered.

Recommendation 5 of the Canadian Inquiry called for such a commemoration fund, and the Federal Government of Canada committed to a commemoration fund to provide \$10 million over two years, 'to honour the lives and legacies of Indigenous women, girls, and LGBTQ2S individuals' (National Inquiry into Missing and Murdered Indigenous Women and Girls, 2019, p. 68). The commemoration fund committed to supporting Indigenous communities in developing and implementing commemorative events.

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