



**Law Council**  
OF AUSTRALIA

# **Inquiry into missing and murdered First Nations women and children**

**Senate Legal and Constitutional Affairs Committee**

**11 January 2023**

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## About the Law Council of Australia

The Law Council of Australia represents the legal profession at the national level; speaks on behalf of its Constituent Bodies on federal, national, and international issues; and promotes the administration of justice, access to justice, and general improvement of the law.

The Law Council advises governments, courts, and federal agencies on ways in which the law and the justice system can be improved for the benefit of the community. The Law Council also represents the Australian legal profession internationally, and maintains close relationships with legal professional bodies throughout the world. The Law Council was established in 1933 and represents its Constituent Bodies: 16 Australian State and Territory law societies and bar associations, and Law Firms Australia. The Law Council's Constituent Bodies are:

- Australian Capital Territory Bar Association
- Law Society of the Australian Capital Territory
- New South Wales Bar Association
- Law Society of New South Wales
- Northern Territory Bar Association
- Law Society Northern Territory
- Bar Association of Queensland
- Queensland Law Society
- South Australian Bar Association
- Law Society of South Australia
- Tasmanian Bar
- Law Society of Tasmania
- The Victorian Bar Incorporated
- Law Institute of Victoria
- Western Australian Bar Association
- Law Society of Western Australia
- Law Firms Australia

Through this representation, the Law Council acts on behalf of more than 90,000 Australian lawyers.

The Law Council is governed by a Board of 23 Directors: one from each of the Constituent Bodies, and six elected Executive members. The Directors meet quarterly to set objectives, policy, and priorities for the Law Council. Between Directors' meetings, responsibility for the policies and governance of the Law Council is exercised by the Executive members, led by the President who normally serves a one-year term. The Board of Directors elects the Executive members.

The members of the Law Council Executive for 2023 are:

- Mr Luke Murphy, President
- Mr Greg McIntyre SC, President-elect
- Ms Juliana Warner, Treasurer
- Ms Elizabeth Carroll, Executive Member
- Ms Elizabeth Shearer, Executive Member
- Ms Tania Wolff, Executive Member

The Chief Executive Officer of the Law Council is Dr James Popple. The Secretariat serves the Law Council nationally, and is based in Canberra.

The Law Council's website is [www.lawcouncil.asn.au](http://www.lawcouncil.asn.au).

## Acknowledgements

The Law Council is grateful to its Indigenous Legal Issues Committee and National Human Rights Committee, and to the Law Society of South Australia, the Law Society of New South Wales and the New South Wales Bar Association for assistance in the preparation of this submission.

## Executive Summary

1. The Law Council of Australia (the **Law Council**) thanks the Senate Legal and Constitutional Affairs References Committee (the **Committee**) for the opportunity to make a submission to its inquiry into missing and murdered First Nations women and children (the **Inquiry**).
2. The Law Council's submission addresses the Inquiry's terms of reference, framed against Australia's obligations under international law to protect women and children from violence, and the principle of self-determination, as recognised under the United Nations Declaration on the Rights of Indigenous Peoples (**UNDRIP**).<sup>1</sup>
3. The Law Council emphasises that the principle of self-determination should underpin responses to violence experienced by First Nations women and children, including by long-term investment in First Nations community-controlled organisations and services empowered to self-design strategies for the safety of their communities. As a starting point for the Committee, listening to the voices, and hearing the truths of First Nations women and children in the current inquiry is fundamental to realising self-determination.
4. The Law Council's recommendations largely focus on measures to improve institutional responses to violence, particularly within the justice system and include:
  - Federal, State and Territory governments should support disaggregated national data collection and research with respect to missing First Nations women and children to address critical gaps.
  - Federal, State and Territory governments should commit to improvements across the justice system to ensure that First Nations women and children experiencing violence are empowered to access justice and, in turn, realise their rights to safety and to an effective remedy, including:
    - targeted, culturally safe legal information and education;
    - culturally safe legal assistance services to meet gaps in family violence and civil legal need, including in rural, regional, and remote (**RRR**) locations;
    - a National Justice Interpreter scheme that addresses the diverse communication needs of First Nations people;
    - identified best practice measures to increase the cultural competence and safety of courtrooms and tribunals;
    - measures to support greater cultural diversity across all arms of the justice system, including an emphasis on supporting the participation of First Nations women;
    - access to underlying critical support services, including family support, disability support, education and housing to underpin preventative, early intervention, and therapeutic jurisprudence outcomes; and

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<sup>1</sup> *United Nations Declaration on the Rights of Indigenous Peoples*, GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Agenda Item 68, Supp No 49, UN Doc A/RES/61/295 (2 October 2007) annex ('**UNDRIP**') article 3.

- reviewing police practices to ensure that the law is enforced fairly, equally and without discrimination with respect to First Nations women and children experiencing violence.
5. The Law Council also draws the Committee's attention to a range of Australian and international reports, recommendations and projects which may assist the Committee in its deliberations.

## Context of this Inquiry

6. The profoundly disturbing rates of violence and murder amongst First Nations women and children call for immediate and comprehensive solutions.
7. The Law Council refers to the statistics provided to this Inquiry by the Australian Institute of Criminology (**AIC**), which reveal that the:
- rates of murder of First Nations women are on average eight times higher than is the case with non-Indigenous women; and
  - rates of murder of First Nations children are on average three times higher than is the case with non-Indigenous children.<sup>2</sup>
8. While the Law Council has not undertaken a comprehensive jurisdictional analysis, it notes that a 2016 study examining the causes of early mortality in First Nations women who are mothers in Western Australia between 1983 and 2010, collating data from several sources, found that First Nations women who are mothers in that State were 17.5 times more likely than non-Indigenous mothers to die from homicide during that period.<sup>3</sup>
9. While the Law Council has not been able to identify Australian Bureau of Statistics (**ABS**) data that directly compares the rates of violence experienced by Aboriginal and Torres Strait Islander women to those of non-Indigenous women over the same period, in the most recent surveys of their kind, the ABS found:
- in its 2018–19 National Aboriginal and Torres Strait Islander Health Survey, that 14.2 per cent of Aboriginal and Torres Strait Islander females had experienced physical and/or threatened physical harm in the last twelve months;<sup>4</sup> and
  - in its 2016 Personal Safety report, that 4.7 per cent of all females had experienced assault or threat of violence in the last twelve months.<sup>5</sup>

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<sup>2</sup> Evidence to Senate Legal and Constitutional Affairs References Committee, Australian Institute of Criminology, Answers to Questions on Notice 29 September 2022 (received 30 September 2022).

<sup>3</sup> Fairthorne et al. 'Early mortality from external causes in Aboriginal mothers: a retrospective cohort study' *BMC Public Health*, (2016) 16:461.

<sup>4</sup> ABS, '4715.0 National Aboriginal and Torres Strait Islander Health Survey, Australia, 2018–19 – Table 22.3 Experiences of harm by sex, Aboriginal and Torres Strait Islander persons aged 15 years and over, 2018–19, Proportion of persons.

<sup>5</sup> ABS, 'Personal Safety, Australia – Experience of violence' < <https://www.abs.gov.au/statistics/people/crime-and-justice/personal-safety-australia/latest-release#experience-of-violence>> and ABS, 4906DO0001\_2016 Personal Safety, Australia, 2016 – Table 1.3 Experiences in the last 12 months, Type of experience by sex of respondent, Proportion of persons.

10. The statistics provided to this Inquiry by the Australian Institute of Health and Welfare (AIHW) demonstrate that First Nations women and children also face more extreme forms of violence. For example, the AIHW statistics provide that:

- First Nations women are 25 times more likely to be hospitalised for assault as non-Indigenous women;
- First Nations children aged 0–4 are seven times more likely to be hospitalised for assault as non-Indigenous children of the same age group; and
- First Nations children aged 5–14 are ten times more likely to be hospitalised for assault as non-Indigenous children of the same age group.<sup>6</sup>

11. These statistics regarding violence, injury and murder of First Nations women and children demonstrate the disparity in the experience of violence between First Nations women and children and that of non-Indigenous Australians.

12. The Law Council emphasises that care must be taken when describing violence against First Nations women and children, noting that, while family violence is often cited as a significant issue for First Nations women,<sup>7</sup> it is not the only type of violence experienced by them. As highlighted in the Law Council's submission on the National Plan to End Violence against Women and Children 2022–2032:

*Aboriginal and Torres Strait Islander women can also experience violence in a non-family and non-intimate context, such as from colleagues, classmates and strangers.<sup>8</sup> Furthermore, legal and policy responses must recognise that domestic and partner violence against Aboriginal and Torres Strait Islander women can be perpetrated by men from any cultural background.<sup>9</sup>*

13. The 2022 annual thematic report of the UN Special Rapporteur on violence against women and girls emphasises that:

*Indigenous women and girls experience violence both at the individual level and at the collective level. They also bear the gendered consequences of the violence against themselves and their communities disproportionately. However, there is still insufficient understanding of the specific ways in which indigenous women and girls experience human rights violations at the intersection of their individual and collective identities.<sup>10</sup>*

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<sup>6</sup> Australian Institute of Health and Welfare, *Response to Written Questions on Notice from the Senate Standing References Committee on Legal and Constitutional Affairs regarding the Inquiry into Missing and Murdered First Nations Women and Children* (29 September 2022).

<sup>7</sup> See, Australian Institute of Health and Welfare, *Family violence among Aboriginal and Torres Strait Islander peoples*, (November 2006) <<https://www.aihw.gov.au/getmedia/34fea687-d980-4e54-8826-256b6acfd0f/fvaatsip.pdf.aspx?inline=true>>, 2; Our Watch, *Changing the picture: A national resource to support the prevention of violence against Aboriginal and Torres Strait Islander women and their children* (Report, 2018) <<https://d2bb010tdzqaq7.cloudfront.net/wp-content/uploads/sites/2/2019/11/05233003/Changing-the-picture-AA-3.pdf>>.

<sup>8</sup> Our Watch, *Changing the picture* (Background paper, 2020) <<https://media-cdn.ourwatch.org.au/wp-content/uploads/sites/2/2020/09/20231756/Changing-the-picture-Part-1-AA.pdf>> 19.

<sup>9</sup> Law Council of Australia, Submission to the Department of Social Services, *National Plan to End Violence against Women and Children 2022-32* (28 February 2022) <<https://www.lawcouncil.asn.au/publicassets/f3d21b90-b699-ec11-944b-005056be13b5/4181%20-%20National%20Plan%20to%20End%20Violence%20against%20Women%20and%20Children.pdf>>

<sup>10</sup> Reem Alsalem, *Report of the Special Rapporteur on violence against women, its causes and consequences* UN Doc A/HRC/50/26 (21 April 2022) (2022 Report of the UN Special Rapporteur on violence against women and girls) <<https://documents-dds->

14. In 2017, the UN Special Rapporteur on the Rights of Indigenous Peoples visited Australia and found there is ‘a disturbing pattern of violence against Aboriginal and Torres Strait Islander women’.<sup>11</sup> This was said to be fostered by ‘discrimination on the grounds of gender, race and class [that] is structurally and institutionally entrenched’.<sup>12</sup> The Special Rapporteur also observed the ‘lack of culturally appropriate measures to address the issue’ and that, for First Nations women, ‘family violence is an intersectional concern that overlaps with homelessness, poverty, incarceration, health and removal of children’.<sup>13</sup>

## Insufficient data

15. The Law Council is concerned by the evident limitations in the available data about missing First Nations women and children. These limits are revealed by the responses to questions by the Committee.<sup>14</sup> In this regard, the Law Council notes that:

- the National Coronial Information System Unit (**NCIS**) ‘cannot provide information on persons who have been reported missing where a reportable death has not been notified to a coroner’<sup>15</sup>; and
- the AIC advises that South Australia is ‘the only jurisdiction which provides data [to the AIC] with respect to ... a ‘missing but likely murdered’ category’<sup>16</sup> for homicide victims. No First Nations women were recorded in this category between 2000 and 2020.<sup>17</sup>

16. The most substantial data before the Committee relating to missing First Nations women and children has been provided by the Australian Federal Police (**AFP**), collated by the National Missing Persons Coordination Centre (**NMPCC**). This includes information received from State and Territory police about missing First Nations women. Notably the data only covers 2019–2021, and ‘the AFP cannot attest to the data as a complete and accurate data source’.<sup>18</sup> The reasons provided for the unreliability of this data include:

- there are differences in approaches across jurisdictions which lead to inconsistent data reporting; and
- the way data was extracted in 2021 by one agency was different to what was done in previous years, leading to a disparity across the years.<sup>19</sup>

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ny.un.org/doc/UNDOC/GEN/G22/323/90/PDF/G2232390.pdf?OpenElement  
<https://www.ohchr.org/en/documents/thematic-reports/ahrc5026-violence-against-indigenous-women-and-girls-report-special> [9].

<sup>11</sup> Human Rights Council, Report of the Special Rapporteur on the rights of indigenous peoples on her visit to Australia, 36th sess, Agenda Item 3, UN Doc A/HRC/36/46/Add.2 (8 August 2017) 16.

<sup>12</sup> Ibid.

<sup>13</sup> Ibid.

<sup>14</sup> Senate Legal and Constitutional Affairs Committee, ‘Additional Documents’, (Web page) <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/First\\_Nationswomenchildren/Additional\\_Documents](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/First_Nationswomenchildren/Additional_Documents)>.

<sup>15</sup> National Coronial Information System, Inquiry into missing and murdered First Nations women and Children, Answers to written questions on notice, (received 4 October 2022) 26.

<sup>16</sup> Australian Institute of Criminology, Inquiry into missing and murdered First Nations women and Children, Answers to spoken questions on notice, (received 18 November 2022) 11.

<sup>17</sup> Ibid.

<sup>18</sup> Australian Federal Police, Inquiry into missing and murdered First Nations women and Children, Answers to spoken questions on notice, (received 21 October 2022) 2.

<sup>19</sup> Ibid.



17. The NMPCC website notes that ‘the need for research in the missing persons sector is huge, with only a handful of research reports dedicated to the issue in Australia’.<sup>20</sup> This need especially applies to research about First Nations peoples in Australia, and specifically to First Nations women and children.

18. The uncertainty in available data is emphasised in multiple studies on missing persons in Australia. For example, a 2016 Statistical Bulletin published by the AIC addresses data relating to missing First Nations peoples, stating:

*Data on the Indigenous status of missing persons was only available for New South Wales, Victoria, South Australia and the Northern Territory. However, in Victoria, South Australia and the Northern Territory, the Indigenous status of many missing persons was not known, and in New South Wales ‘unknown’ status was not reported. These findings should therefore be treated with caution.*<sup>21</sup>

19. A more recent study by Dr Kath McFarlane, commissioned by the NMPCC and published in 2021, focuses exclusively on children and youth who are reported missing from out-of-home care. This study reiterates the concerning lack of research regarding missing First Nations people. The paper states:

*Australian research into the Indigenous experience of going missing is very limited. Few studies appear to have utilised Indigenous researchers or explored community knowledge about Indigenous children who go missing. Predominantly white services and institutions have also not been as effective as they should be, including in conducting research into and responding to Indigenous people’s experiences of going missing.*<sup>22</sup>

20. Although the Royal Commission into Aboriginal Deaths in Custody brought to light the importance of accurate and mandatory recording of Indigenous status in the criminal justice system,<sup>23</sup> Dr McFarlane contends that:

*It is therefore concerning that data provided by the various police forces regarding identification of Indigenous status in the current study was unreliable. Much of the data had inconsistencies which saw individuals variously identified as Indigenous in one missing episode, and as non-Indigenous or Not Recorded in another just days later. It is also evident in the large number of ‘Not recorded’ entries relating to Indigeneity. For example, nationally, the status of over one-third of individual children and youth could not be identified.*<sup>24</sup>

21. While these concerns address the lack of data relating to First Nations peoples broadly, the issue also extends to the limited desegregated data, including data isolated based on age and gender. Such data assists intersectional analysis, which ‘can provide policymakers with a better understanding of the breadth and complexity of compounding challenges experienced by individuals’.<sup>25</sup>

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<sup>20</sup> Australian Federal Police, ‘Research’, (Web page) <<https://www.missingpersons.gov.au/about/research>>.

<sup>21</sup> Samantha Bricknell and Lauren Renshaw, *Missing persons in Australia, 2008-2015*, Statistical Bulletin 01 Australian Institute of Criminology, (November 2016) 8.

<sup>22</sup> Dr Kath McFarlane, ‘Children and Youth Reported Missing from Out-of-Home-Care in Australia: A review of the literature and analysis of Australian police data’ (Australian Federal Police Missing Persons Coordination Centre, 2021).

<sup>23</sup> *Ibid* 62.

<sup>24</sup> *Ibid*.

<sup>25</sup> Nous Group, ‘Intersectional analysis is not just good to have – it is essential for designing policy programs that deliver equitable outcomes’ (Web page) <<https://nousgroup.com/insights/intersectional-analysis-policy/>>

22. In October 2022, an investigatory report by the Australian Broadcasting Corporation titled 'How Many More?', found 49 First Nations women were reported missing since 1941.<sup>26</sup> However, the report also notes the significant gaps in the data and in the recording practices in relation to Indigenous status. Consequently, the report stated that, 'this [figure] is likely to be another vast underestimation because Australia has no reliable count of how many Aboriginal and Torres Strait Islander women have disappeared over the decades'.<sup>27</sup>
23. The Committee on the Elimination of Discrimination against Women emphasises the importance of data collection 'to understand the scope of the problem of gender-based violence against Indigenous Women and Girls'.<sup>28</sup> It recommends that:

*States must undertake efforts to collect data disaggregated by a range of factors including sex, age, indigenous origin, status, or identity, and disability, and collaborate with Indigenous Women and their organizations, as well as academic and non-profit institutions, in the achievement of this goal ... Indigenous Peoples must have control over data collection processes in their communities, and how this information is stored, interpreted, used, and shared.*<sup>29</sup>

#### Recommendation

- **Federal, State and Territory governments should support disaggregated national data collection and research with respect to missing First Nations women and children to address critical gaps.**

### International Human Rights Framework

24. Australia's international human rights obligations should form the foundation of Australia's response to violence against First Nations women and children.
25. The rights of First Nations women and girls to live their lives free from violence is reflected in the following international human rights treaties, which have been ratified by Australia and thus impose obligations upon it:
- the Convention on the Elimination of All Forms of Discrimination against Women (**CEDAW**),<sup>30</sup>
  - the Convention on the Rights of the Child (**CRC**);<sup>31</sup>
  - the International Convention on the Elimination of Race Discrimination (**ICERD**);<sup>32</sup>

<sup>26</sup> 'How Many More', *Four Corners*, (Australian Broadcasting Corporation, 2022), <<https://www.abc.net.au/news/2022-10-24/murdered-and-missing-indigenous-women-four-corners/101546186>>.

<sup>27</sup> *Ibid.*

<sup>28</sup> Committee on the Elimination of Discrimination against Women, *General recommendation No.39 (2022) on the rights of Indigenous Women and Girls*, CEDAW/C/GC/39 (26 October 2022), [35].

<sup>29</sup> *Ibid.*, [10].

<sup>30</sup> *Convention on the Elimination of All Forms of Discrimination Against Women*, opened for signature 20 November 1989, (entry into force 2 September 1990) ('**CRC**').

<sup>31</sup> *Convention on the Rights of the Child*, opened for signature 18 December 1979, (entry into force 3 September 1981) ('**CEDAW**').

<sup>32</sup> *International Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 1965, 660 UNTS 195 (entered into force 1965) ('**ICERD**').

- the International Covenant on Civil and Political Rights (**ICCPR**),<sup>33</sup> and
- the International Covenant on Economic, Social and Cultural Rights (**ICESCR**).<sup>34</sup>

26. The Appendix sets out various aspects of these treaties that may be most relevant to the Inquiry. The Law Council encourages the Committee to consider Australia's obligations under international law in assessing the adequacy of the responses to violence against First Nations women, and in formulating recommendations.
27. The Law Council particularly highlights that international human rights law imposes an obligation to provide remedies and reparation for the victims of human rights violations.<sup>35</sup>
28. For example, article 6 of the ICERD obliges States Parties to assure the availability of effective protection and remedies against any acts of racial discrimination which violate rights protected by that Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.<sup>36</sup> Further, article 2(3) of the ICCPR obliges State Parties to ensure that persons whose rights under the Covenant are violated shall have an effective remedy, determined by competent judicial, administrative or legislative authorities.<sup>37</sup>

### **UN Declaration on the Rights of Indigenous Peoples**

29. In addition to the treaties mentioned above, the UNDRIP provides a foundational framework for considering the rights of Indigenous peoples, including First Nations peoples.<sup>38</sup>
30. The UNDRIP is not a treaty and therefore it does not itself create legally binding obligations. However, its articles reflect many of the rights articulated in legally binding human rights treaties, with a specific focus on Indigenous peoples.<sup>39</sup> Insofar as the UNDRIP relies on, and elaborates upon, well-established human rights obligations in international treaty and customary law, it provides a useful and focused framework for identifying norms binding on Australia as they apply to the situations of First Nations peoples.<sup>40</sup>

<sup>33</sup> *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, (entry into force 23 March 1976) ('**ICCPR**').

<sup>34</sup> *International Covenant on Economic, Social and Cultural Rights*, opened for signature on 24 September 2009, (entry into force 5 May 2013) ('**ICESCR**').

<sup>35</sup> Attorney General's Department, 'Right to an effective remedy – Public sector guidance sheet' (Web page) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-effective-remedy>>.

<sup>36</sup> The UN Committee on the Elimination of Racial Discrimination has provided further commentary on the content of this article in *General Recommendation No 26 on article 6 of the Convention*, (24 March 2000).

<sup>37</sup> The UN Human Rights Committee has provided further commentary on the kinds of measures required by States to meet their obligations under Article 2: 'General Comment No. 31: The Nature of the General Legal Obligation Imposed on States Parties to the Covenant (2004)', adopted by the Human Rights Committee at the Eightieth Session, CCPR/C/21/Rev.1/Add.13, 29 March 2004.

<sup>38</sup> Australian Human Rights Commission, 'UN Declaration on the Rights of Indigenous People' (Web page) <<https://humanrights.gov.au/our-work/un-declaration-rights-indigenous-peoples-1>>.

<sup>39</sup> Attorney-General's Department, 'Right to Self-Determination: Public Sector Guidance Sheet' (website, undated) <<https://www.ag.gov.au/rights-and-protections/human-rights-and-anti-discrimination/human-rights-scrutiny/public-sector-guidance-sheets/right-self-determination>>.

<sup>40</sup> Law Council of Australia, Submissions to the National Indigenous Australians Agency, *Indigenous Voice Co-Design Process*, (Submission, 30 April 2021), <<https://www.lawcouncil.asn.au/publicassets/ad0ba076-01ae-eb11-943c-005056be13b5/3996%20-%20Indigenous%20Voice%20Co-Design%20Process.pdf>> [13].

31. The Australian Parliamentary Joint Committee on Human Rights (**PJCHR**) has drawn on the UNDRIP to inform its interpretation of the seven core human rights treaties to which Australia is party and which fall within that Committee's remit.<sup>41</sup>
32. In respect of the obligations for endorsing states to protect against violence, article 22(2) of UNDRIP specifies that 'States shall take measures, in conjunction with indigenous peoples, to ensure that indigenous women and children enjoy the full protection and guarantees against all forms of violence and discrimination'.
33. The Law Council also notes that, in considering the policy implications and institutional responses to protecting Indigenous rights, the following rights established under the UNDRIP are important to consider:
- the right to self-determination (article 3);<sup>42</sup>
  - the right of Indigenous peoples to participate in decision-making in matters which would affect their rights, through representatives chosen by themselves in accordance with their own procedures, as well as to maintain and develop their own Indigenous decision-making institutions (article 18); and
  - the right to have governments consult and cooperate in good faith with Indigenous peoples, through their own representative institutions, in order to obtain their free, prior and informed consent before adopting and implementing legislative or administrative measures that may affect them (article 19).
34. The right to self-determination has been articulated as involving and protecting, at a minimum, an 'ongoing process of choice' for Indigenous peoples,<sup>43</sup> who are entitled to have control over their destiny and be treated respectfully.<sup>44</sup> It is paramount that responses to violence against First Nations women and children are driven by a process that is consistent with these principles, as these principles assist to empower communities and create tangible change.<sup>45</sup>

### **Wiyi Yani U Thangani Report**

35. The 2020 report by the Aboriginal and Torres Strait Islander Social Justice Commissioner, Ms June Oscar AO (the *Wiyi Yani U Thangani Report*<sup>46</sup>—“Women's Voices” in the Bunuba language) outlines the rights of First Nations women and girls, grounded in international law, as the basis for establishing the impetus for governments to ensure their rights are upheld. The *Wiyi Yani U Thangani Report* discusses the

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<sup>41</sup> For example, in 2021 the PJCHR considered article 19 of the UNDRIP (which relates to ensuring free prior and informed consent), and confirmed UNDRIPs utility in clarifying human rights standards in the course of considering the *Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020* (Cth): PJCHR, 'Social Security (Administration) Amendment (Continuation of Cashless Welfare) Bill 2020 and related instruments', *Report 14 of 2020* [2021] AUPJCHR 10.

<sup>42</sup> Also contained as an obligation binding on Australia in article 1 of both the ICCPR and ICESCR.

<sup>43</sup> Australian Human Rights Commission, 'Right to Self-Determination' (website, accessed on 3 January 2023) <<https://www.humanrights.gov.au/our-work/rights-and-freedoms/right-self-determination>>.

<sup>44</sup> Law Council of Australia, Submission to the Department of Social Services, *National Plan to End Violence against Women and Children 2022-2023*, (Submission, 28 February 2022), <[www.lawcouncil.asn.au/publicassets/f3d21b90-b699-ec11-944b-005056be13b5/4181%20-%20National%20Plan%20to%20End%20Violence%20against%20Women%20and%20Children.pdf](http://www.lawcouncil.asn.au/publicassets/f3d21b90-b699-ec11-944b-005056be13b5/4181%20-%20National%20Plan%20to%20End%20Violence%20against%20Women%20and%20Children.pdf)> [60].

<sup>45</sup> *Ibid.*

<sup>46</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani Report* (9 December 2020) <<https://www.humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>>

overarching right to safety within the international rights framework and emphasises the need to support strong families and communities among First Nations peoples.<sup>47</sup>

36. The *Wiyi Yani U Thangani Report* reinforces that human rights are indivisible and interdependent, and that holistic policy responses are therefore needed. It suggests that the value of guaranteeing basic human rights, including the right to safe and secure housing, education, financial security, health and culture 'is critical in reducing community-wide harms and increasing the safety and protection of women and children'.<sup>48</sup> Further, 'in recognising these rights, and grounded in our right to culture and self-determination, we can advance the equal status of Aboriginal and Torres Strait Islander women and girls to all others in society'.<sup>49</sup>

## Violence against First Nations women and children

### Systemic causes of violence

37. Understanding the systemic causes of violence against First Nations women and children is critical to appreciating the distinctive underlying factors that contribute to the disproportionate rates of violence against First Nations women and children, and to formulating effective solutions.
38. Broadly, the Law Council notes that violence against First Nations women and children must be viewed within the historical context of colonisation, dispossession, intergenerational trauma, cycles of poverty, and systemic disadvantage and discrimination.<sup>50</sup>
39. The 2022 annual thematic report of the UN Special Rapporteur on violence against women and girls, addressing in global terms the causes of gender-based violence against Indigenous women and girls, notes:

*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. Historic and systemic patriarchal power structures, racism, exclusion and marginalization, maintained by the legacy of colonialization, have led to high levels of poverty, dire financial and social stress, and significant gaps in opportunities and well-being between indigenous and non-indigenous women. These structures and systems are both cause and consequence of the structural and institutional stereotyping, discrimination and violence that indigenous women and girls still face from all sectors of society today.*<sup>51</sup>

40. In considering the systemic causes of violence against First Nations women, it may be useful to consider aspects of the academic Deathscapes Project.<sup>52</sup> While its primary focus is to map custodial deaths in settler states, it includes a case study reflecting on Indigenous femicide in Australia, the United States and Canada.<sup>53</sup> This suggests that violence against First Nations women, the failures to respond to the issue by the settler

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<sup>47</sup> Ibid 24.

<sup>48</sup> Ibid 132.

<sup>49</sup> Ibid.

<sup>50</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018) <<https://www.lawcouncil.asn.au/justice-project/final-report>>, 4 and 10.

<sup>51</sup> Ibid [24].

<sup>52</sup> Deathscapes, *Deathscapes: Mapping Race and Violence in Settler States*, (Web page) <<https://www.deathscapes.org/about-project/>>.

<sup>53</sup> Deathscapes, *Indigenous Femicide and the Killing State*, (Web page) <<https://www.deathscapes.org/case-studies/indigenous-femicide-and-the-killing-state-in-progress/#parallaxcategory11>>.

colonial state, and its subsequent silencing of First Nations women are a result of colonialism.<sup>54</sup>

### Factors which contribute to the ongoing violence and particular vulnerabilities of First Nations women and children

41. The Law Council's Justice Project final report, overseen by a Steering Committee chaired by the Hon Robert French AC (the **Justice Project**), includes a chapter exploring the barriers faced by First Nations peoples within the justice system.<sup>55</sup> The report also contains a chapter dedicated to the 'endemic' problem of family violence in Australia, and highlights the disproportionate rates of family violence against First Nations women, their distinct experiences of family violence, and the causes of this violence.<sup>56</sup>
42. The Justice Project's findings demonstrate how various overlapping barriers faced by individuals, and broader shortcomings in the response of the justice system, mean that First Nations women and children are frequently unable to access justice when they need it. This undermines their ability to rely on the justice system as a tool to avert escalating violence, and leaves them vulnerable to the effects of violence. Ultimately, their right to an effective remedy as victims is impeded.

### Barriers to accessing justice

43. The interactions of First Nations women and children within the legal system are foundational to their trust in the justice system broadly and their access to justice services when they experience violence.<sup>57</sup> This is relevant to their right to an effective remedy and to perpetrators being held accountable.
44. The Justice Project findings suggest that relevant barriers to accessing justice for First Nations people are both systemic and personal. These barriers include:
  - *Limited cultural competence of the justice system*—First Nations women may be particularly dissuaded from seeking family violence assistance due to a lack of cultural competence across multiple justice services, including courts, lawyers, child-protection officers, the police and psychologists.<sup>58</sup> They may feel uncomfortable, fearful and alienated by an incomprehensible system which is established around Western legal concepts and cultural traditions, populated by largely non-Indigenous people and has frequently done little to bridge the gap between First Nations people and non-Indigenous Australians. For example, often there is not sufficient account taken of cultural differences, such as different cultural conceptions of family/kinship in Australian law and First Nations communities.<sup>59</sup> There may also be a cultural reluctance to discuss certain

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<sup>54</sup> Ibid.

<sup>55</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>>.

<sup>56</sup> Law Council of Australia, 'People who Experience Family Violence', Justice Project (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf>>.

<sup>57</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>>.

<sup>58</sup> Ibid 27.

<sup>59</sup> Ibid 28.

topics. For example, a reluctance by women to answer questions asked by a man about sexually-related matters.<sup>60</sup>

- *Discrimination and unconscious bias*—the Royal Commission into Aboriginal Deaths in custody outlined a long history of discrimination towards Aboriginal and Torres Strait Islander peoples through the justice system.<sup>61</sup> This continues to manifest in different ways—ranging from publicly reported instances of judges making racially discriminatory remarks to First Nations defendants,<sup>62</sup> to more implicit bias, which is likely prevalent across the justice system (alongside the general community).<sup>63</sup> The Justice Project also recognised strong concerns about ‘over-policing’ and ‘under-policing’ of First Nations people.<sup>64</sup> In particular, under-policing (that is, a lack of support to certain groups of victims of crime) specifically affects many First Nations women in the context of family violence, increasing the likelihood of ongoing violence.<sup>65</sup>
- *Mischaracterisation of perpetrators of violence*—research suggests that First Nations women who experience violence are more likely to engage in resistant behaviours and to use retaliatory violence as a survival method.<sup>66</sup> Consequently, when police respond to a single incident of violence, there may be a significant risk of police misidentifying the victim and the perpetrator.<sup>67</sup>
- *Distrust*—linked to the above, the experiences of First Nations women and children with the legal system—in particular, criminalisation of First Nations communities, deaths in custody, and the removal of First Nations children from their families—have created a profound and ongoing distrust in the Australian legal system.<sup>68</sup> This means, for example, that women in custody have often not told police, lawyers or the court about the violence they have experienced, including violence materially relevant to their charges and their defence.<sup>69</sup> The Law Council notes that ‘distrust is particularly apparent in the family law sphere, fuelled by policies relating to the forced removal of children and current patterns of engagement with the child protection system’.<sup>70</sup> This creates a major barrier

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<sup>60</sup> Ibid 27.

<sup>61</sup> Royal Commission into Aboriginal Deaths in Custody report, vol 2, 10.5.7, 10.5.16, 10.6.2, 10.6.4.

<sup>62</sup> See Law Council of Australia, Submission to the Australian Law Reform Commission, Inquiry into Judicial Impartiality, (8 July 2021), 26 citing eg, Emilia Terzon, ‘Complaint lodged against judge who made “offensive”, “discriminatory” comments to Aboriginal defendants’, ABC News (26 July 2019).

<sup>63</sup> Recent results from an Australian application of the Implicit Association Test, which examined 11,000 people over a 10-year period, suggest that around 75 per cent of Australians hold an implicit bias against Aboriginal and Torres Strait Islander Australians: Ibid, 26-27 citing Siddharth Shirodkar, ‘Bias against Aboriginal and Torres Strait Islander Australians: Implicit Association Test Results for Australia’ (2019) 22: 3-4 *Journal of Australian Aboriginal and Torres Strait Islander Issues* 3, 4.

<sup>64</sup> Law Council of Australia, ‘Aboriginal and Torres Strait Islander People’, Justice Project (August 2018) <<https://www.lawcouncil.asn.au/justice-project/final-report>>, 62.

<sup>65</sup> Ibid.

<sup>66</sup> Law Council of Australia, *Submission to the Department of Social Services, Developing the next National Plan to Reduce Violence Against Women and their Children*, (Submission, 13 August 2021), <<https://www.lawcouncil.asn.au/publicassets/d1fe54d0-bb0e-ec11-9440-005056be13b5/4063%20-%20National%20Plan%20to%20Reduce%20Violence%20against%20Women%20and%20their%20Children.pdf>> 28; citing Mandy Wilson et al, ‘Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia’, (2019) SAGE <<https://journals.sagepub.com/doi/pdf/10.1177/2158244016686814>>.

<sup>67</sup> Ibid.

<sup>68</sup> Law Council of Australia, ‘Aboriginal and Torres Strait Islander People’, Justice Project (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>> 29.

<sup>69</sup> Ibid 30.

<sup>70</sup> Ibid 30.

for women seeking help when experiencing family violence, and further creates intergenerational distrust and trauma, perpetuating further violence.<sup>71</sup>

- *Fear of retribution*—that is, the reticence amongst First Nations women to engage with the legal system may be exacerbated by community pressure and fear of retribution, which can lead to a reluctance to engage with the family law system in relation to violence.<sup>72</sup>
- *Failure to accommodate communication and language differences*—for many First Nations people, communication difficulties pose a fundamental barrier to understanding of the justice system at every level.<sup>73</sup> These difficulties include that First Nations people in remote communities may speak English as a second, third or fourth language and many First Nations people speak a form of ‘Aboriginal English’, which can be difficult for non-speakers to understand. Additional difficulties extend to different styles of linguistic and body communication, and diverse communication needs owing to higher rates of disability amongst First Nations people.<sup>74</sup> Some individuals have limited literacy skills and lower levels of education, which compound their difficulties interacting with a formal, paper-driven and complex legal system.
- *Limited awareness of the law and unrecognised need*—a lack of awareness about the operations of the justice system, including regarding victims’ rights and entitlements, means that there is a high level of unidentified legal need amongst First Nations people. This particularly impacts women who suffer from family violence and sexual assault. For example, compensation for victims of crime is a key area of unrecognised need for First Nations women.<sup>75</sup> This is, in part, due to a lack of knowledge about the benefits of legal solutions in these areas.<sup>76</sup>
- *Economic barriers*—First Nations Australians are more likely than non-Indigenous Australians to experience socio-economic disadvantage, which has been widely recognised as impacting statistics in relation to health and wellbeing and is demonstrative of their ongoing inequality.<sup>77</sup> This exacerbates poor outcomes with respect to the justice system in diverse ways. First Nations people are generally less able to afford lawyers, and extremely high demand for legal assistance services with limited funding leads to exclusion from the justice system. It also has more indirect impacts. For example, a lack of access to safe and stable accommodation contributes to and exacerbates poor justice outcomes.<sup>78</sup> Lack of housing is a ‘major factor contributing to the ... inability of

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<sup>71</sup> Ibid, citing Productivity Commission, *Access to Justice Arrangements*, Inquiry Report No 72 (5 September 2014), volume 2, 763.

<sup>72</sup> Ibid 28.

<sup>73</sup> Ibid 31.

<sup>74</sup> Ibid, citing Productivity Commission, *Access to Justice Inquiry*, vol 2, 763.

<sup>75</sup> Ibid 33.

<sup>76</sup> Ibid.

<sup>77</sup> See Australian Institute of Health and Welfare, *Indigenous Australians*, (Web page, 2017), <[aihw.gov.au/reports/australias-welfare/australias-welfare-2017-in-brief/contents/indigenous-australians](http://aihw.gov.au/reports/australias-welfare/australias-welfare-2017-in-brief/contents/indigenous-australians)>; Law Council of Australia, ‘Aboriginal and Torres Strait Islander People’, Justice Project (August 2018) <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%2028Part%201%29.pdf>> 34.

<sup>78</sup> Law Council of Australia, ‘People who are Homeless’, Final Report (2018), <<https://www.lawcouncil.asn.au/files/webpdf/Justice%20Project/Final%20Report/People%20who%20are%20Homeless%2028Part%201%29.pdf>> 4.



Aboriginal and Torres Strait Islander women being able to leave violent relationships'.<sup>79</sup>

## Responses to violence against First Nations women and children

### Overarching policy response

45. As a policy touchstone, the Law Council again refers to the 2020 *Wiyi Yani U Thangani Report*. The aim of the report is 'to elevate the voices of Aboriginal and Torres Strait Islander women and girls, and provide recommendations to improve the lives of women and girls across a broad range of subject areas'.<sup>80</sup> Relevantly, the report reflects consultation with thousands of First Nations women and children, and makes numerous recommendations addressing violence against First Nations women and girls and 'supporting strong families and communities'. These recommendations are particularly targeted at:

- urgently investing in prevention and early intervention supports;
- investing in diversionary pathways away from the criminal justice system and child protection;
- implementing mechanisms to keep women and children safe and families together; and
- developing a culturally safe and responsive service system.<sup>81</sup>

46. In terms of the overarching government policy response, the National Agreement on Closing the Gap (the **National Agreement**) was published in July 2020 in partnership between Australian governments and the Coalition of Aboriginal and Torres Strait Islander Peak Organisations.<sup>82</sup>

47. The Law Council notes in particular Target 13 of the National Agreement: 'by 2031, the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children is reduced at least by 50 per cent, as progress towards zero'.<sup>83</sup> The Law Council called for, and welcomed, this target.

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<sup>79</sup> Law Council of Australia, 'People who experience Family Violence' (August 2018)

<[www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf](http://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/People%20who%20Experience%20Family%20Violence%20%28Part%201%29.pdf)>, citing the National Family Violence Prevention Legal Service, *Submission No 105*.

<sup>80</sup> Australian Human Rights Commission, *Wiyi Yani U Thangani Report* (9 December 2020) <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani>>.

<sup>81</sup> *Ibid* 236-238.

<sup>82</sup> *Closing the Gap objective and outcomes*, (Web page) <<https://www.closingthegap.gov.au/national-agreement/national-agreement-closing-the-gap/3-objective-and-outcomes>>

<sup>83</sup> National Agreement on Closing the Gap, (July 2020), [www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf](http://www.closingthegap.gov.au/sites/default/files/files/national-agreement-ctg.pdf) 32.

48. The first Closing the Gap Implementation Plan<sup>84</sup> released on 5 August 2021, outlines several actions being taken to deliver this outcome, including:

- establishing a comprehensive data and reporting system on family, domestic and sexual violence;
- developing a National Strategy to Prevent and Respond to Child Sexual Abuse—this has since been published;<sup>85</sup>
- funding the Family Violence Prevention Legal Services (**FVPLS**) (\$17 million over 2021–22 and 2022–23, in addition to the core funding of \$75 million for 2020–23) to provide expanded family safety services to Aboriginal and Torres Strait Islander women and their families;<sup>86</sup>
- improving information sharing between the family law system and the family violence and child protection system; and
- developing a dedicated Aboriginal and Torres Strait Islander Action Plan.<sup>87</sup>

49. The Law Council welcomes the work being done through each of these measures to address violence against women and children, in particular through the development of the Aboriginal and Torres Strait Islander Action Plan.

50. The development of a dedicated Action Plan for Aboriginal and Torres Strait Islander peoples is intended ‘to address the unacceptably high rates of violence Aboriginal and Torres Strait Islander women and children experience’<sup>88</sup> and ‘will promote healing-informed, strength-based and trauma-aware approaches to addressing family violence that are culturally safe and community-led’.<sup>89</sup> This approach is consistent with that of an Action Plan dedicated to First Nations women and children, which the Law Council endorsed—provided that such a plan is truly self-determined.<sup>90</sup>

51. Notably, the November 2022 report of the Aboriginal and Torres Strait Islander Social Justice Commissioner, ‘First Nations Women’s Safety Policy Forum Outcomes Report’, expressly aims to inform the dedicated Aboriginal and Torres Strait Islander Action Plan, and includes several recommendations for designing an effective Action Plan.<sup>91</sup>

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<sup>84</sup> Australian Government, Closing the Gap Commonwealth Implementation Plan, (2021) <<https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf>>, 160-162.

<sup>85</sup> National Office for Child Safety, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030*, (Web page) <<https://www.childsafety.gov.au/resources/national-strategy-prevent-and-respond-child-sexual-abuse-2021-2030>>.

<sup>86</sup> The Law Council notes that in addition to this funding, the recent 2022 October budget included \$3.0 million over 3 years from 2022–23 for the National Family Violence Prevention Legal Services Forum.

<sup>87</sup> Australian Government, Closing the Gap Commonwealth Implementation Plan, (2021) <<https://www.niaa.gov.au/sites/default/files/publications/commonwealth-implementation-plan-130821.pdf>>, 160-162.

<sup>88</sup> Commonwealth of Australia *National Plan to End Violence against Women and Children 2022-2032*, (Report, 2021), (2022) 19.

<sup>89</sup> *Ibid* 94.

<sup>90</sup> Law Council of Australia, Submission to the Department of Social Services National Plan to End Violence against Women and Children 2022-32 (28 February 2022) <<https://www.lawcouncil.asn.au/publicassets/f3d21b90-b699-ec11-944b-005056be13b5/4181%20-%20National%20Plan%20to%20End%20Violence%20against%20Women%20and%20Children.pdf>>, 14.

<sup>91</sup> Australian Human Rights Commission, ‘First Nations Women’s Safety Policy Forum Outcomes Report’ (Report, November 2022), <<https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-social-justice/publications/wiyi-yani-u-thangani-6>>.

52. These recommendations include:

- emphasising the importance of First Nations women and children leading the development of the plan;<sup>92</sup>
- aligning all national First Nations plans to end violence with existing Commonwealth plans and principles;<sup>93</sup>
- ensuring the plan is underpinned by a commitment to long-term, sustained investment, that emphasises holistic and community-led preventative measures and models;<sup>94</sup>
- conducting a review of current data collection on family violence and violence against First Nations women and children and strategic approach to collecting data in the future;<sup>95</sup> and
- giving consideration to the interrelationship between State, Territory and Commonwealth governments to promote policy and legislative reforms where there are shared responsibilities.<sup>96</sup>

### Justice system responses

53. The Justice Project made numerous recommendations to addressing access to justice barriers. Several of these are particularly pertinent to the situation of First Nations women and children facing violence when interacting with the justice system. They emphasise that access to justice should be considered a preventative / early intervention tool to addressing violence, and include:

- community legal education and information (**CLEI**);
- legal assistance services;
- interpreters;
- court and tribunal responses;
- culturally safe support services; and
- policing.

### **Community legal education and information**

54. CLEI must be targeted, effective, accessible, responsive to diverse needs, and empower individuals to seek legal help. It must be delivered through modes of communication and language that are informed by the culture and experiences of diverse participants. For many First Nations women and children, the importance of its delivery by trusted people and services is critical.

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<sup>92</sup> Ibid Recommendations 1 and 2.

<sup>93</sup> Ibid Recommendation 5.

<sup>94</sup> Ibid Recommendation 6.

<sup>95</sup> Ibid Recommendation 8.

<sup>96</sup> Ibid Recommendation 9.

55. The Justice Project documented various forms of effective CLEI delivery, ranging from face-to-face to simple online tools.<sup>97</sup> These included alternatives to written communication such as video, music videos and live theatre which were delivered by First Nations legal services, designed to inform young people about their rights and respectful relationships, and delivered in a manner which was engaging incorporated elements of culture. 'Two-way learning' approaches, and incorporating the involvement of elders in CLEI design and delivery were likely to assist in addressing the distrust of the legal system.<sup>98</sup> CLEI should be clearly linked to the provision of legal assistance if required.

### **Legal assistance services**

56. The Justice Project recognised the fundamental importance for many First Nations women and children of accessing legal assistance services that they know and trust, in particular Aboriginal community-controlled legal services such as FVPLSs. These, and broader legal assistance services, including Legal Aid and community legal centres, should be resourced to deliver culturally safe, trauma-informed, and accessible services.<sup>99</sup> Approaches that are known to work well include outreach services to places that marginalised people frequent (including homelessness or youth services), as well as those designed to 'join-up' services seamlessly with other trusted non-legal services, such as health providers.

57. The Law Council welcomes the funding provided in the recent Federal Budget for First Nations legal services. This included \$13.5 million over 3 years from 2022–23 for Aboriginal and Torres Strait Islander Legal Services to ensure First Nations families can access culturally appropriate and timely legal assistance before, during and after coronial processes.<sup>100</sup>

58. However, the ongoing importance of responding to unmet First Nations legal need cannot be overstated. The Justice Project pointed out that many community-controlled legal assistance services are frequently overwhelmed by urgent criminal and family violence legal need.<sup>101</sup> Furthermore, victims of violence also have critical civil law demands, which frequently go unidentified and unmet. These include tenancy and housing problems, child protection, discrimination, social security and credit, debt and consumer issues, and victims of crime compensation.<sup>102</sup> High levels of unmet civil legal need in such scenarios can ultimately expose individuals to snowballing outcomes of crisis—such as homelessness, child removal or poverty—which may in turn exacerbate their marginalisation and vulnerability to violence.<sup>103</sup>

59. To inform effective and targeted funding responses, a stronger understanding of First Nations legal need is required. The Law Council therefore understands and welcomes

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<sup>97</sup> Law Council of Australia, 'People: building Legal Capability and Awareness', Justice Project (August 2018) <https://www.lawcouncil.asn.au/justice-project/final-report> 3, 13, 19, 21.

<sup>98</sup> Ibid.

<sup>99</sup> Law Council of Australia, 'Legal Services', Justice Project (August 2018), <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/18%20-%202018%2009%20-%20Final%20-%20Legal%20Services%20%28Part%20%29.pdf>> 4-6.

<sup>100</sup> Federal Budget 2022-23, 'Budget Measures: Budget Paper No.2' (25 October 2022) <[https://budget.gov.au/2022-23-october/content/bp2/download/bp2\\_2022-23.pdf](https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf)> 49.

<sup>101</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018), <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%20%29.pdf>> 12.

<sup>102</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018), <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%20%29.pdf>> 12-13, 20-25.

<sup>103</sup> Ibid 13.

the Australian Government's intention, as part of the Independent Review of the National Legal Assistance Partnership 2025, to conduct a holistic assessment of legal need, including unmet legal need, based on existing evidence.<sup>104</sup> However, additional investment is needed to modernise this evidence base. The last 'Legal Australia-Wide Survey' of legal need in Australia was conducted in 2012<sup>105</sup> and, to the Law Council's knowledge, more targeted and qualitative legal needs surveys of First Nations people have been lacking.<sup>106</sup>

60. Funding responses should address unmet legal need in terms of the kinds of need and its geographic location, including that specifically experienced by First Nations women and children. The Law Council has been acutely aware that individuals in RRR locations are often less well served than those in urban locations. It is also aware that there are few First Nations legal services that are specifically intended to assist children.
61. The Law Council recognises that the legal profession, not only legal assistance services, has a role in delivering more culturally competent services. It has previously suggested that Aboriginal and Torres Strait Islander cultural competence training should be an ongoing and long-term commitment for all members of the legal profession.<sup>107</sup> Its Indigenous Legal Issues Committee is currently considering broader proposals for the profession at large.

### **Interpreters**

62. The Justice Project highlighted an urgent need for high quality, accessible and culturally appropriate interpreter services to ensure participation across the justice process. This need included highly trained interpreters in numerous Aboriginal and Torres Strait Islander languages, interpreters of Aboriginal English, and interpreters for hearing impaired First Nations people.<sup>108</sup>
63. It recommended a National Justice Interpreter Scheme be implemented, which ensures that professional, appropriate, and skilled interpreters are readily available and free to people who cannot afford them, including First Nations people.<sup>109</sup>
64. The need for such a scheme has been recognised by the Productivity Commission, and the Australian Law Reform Commission.<sup>110</sup>

### **Court and tribunal responses**

65. The Justice Project canvassed multiple measures that may reduce the barriers to justice in courts and tribunals which are experienced by First Nations women and children

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<sup>104</sup> The National Legal Assistance Partnership 2020-25 (4 June 2020), <<https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2022-11/NLAP%20-%20Multilateral%20Agreement.pdf>> 20.

<sup>105</sup> Christine Coumarelos, et al, *Legal Australia-Wide Survey Legal Need in Australia*, (Report, August 2012), <[lawfoundation.net.au/ljf/site/templates/LAW\\_AUS/\\$file/LAW\\_Survey\\_Australia.pdf](http://lawfoundation.net.au/ljf/site/templates/LAW_AUS/$file/LAW_Survey_Australia.pdf)>.

<sup>106</sup> See, Chris Cunneen and Melanie Schwartz, University of NSW, 'The family and civil law needs of Aboriginal people in NSW: final report' (2008).

<sup>107</sup> Law Council of Australia, 'Policy Statement Indigenous Australians and the Legal Profession' (February 2010) <[www.lawcouncil.asn.au/publicassets/f56b7bd7-e1d6-e611-80d2-005056be66b1/1002-Policy-Statement-Indigenous-Australians-and-the-Legal-Profession.pdf](http://www.lawcouncil.asn.au/publicassets/f56b7bd7-e1d6-e611-80d2-005056be66b1/1002-Policy-Statement-Indigenous-Australians-and-the-Legal-Profession.pdf)>.

<sup>108</sup> Law Council of Australia, 'Aboriginal and Torres Strait Islander People', Justice Project (August 2018), <<https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Aboriginal%20and%20Torres%20Strait%20Islander%20People%20%28Part%201%29.pdf>> 35.

<sup>109</sup> Ibid 98.

<sup>110</sup> Productivity Commission, Access to Justice Arrangements, Inquiry Report No 72 (5 September 2014), 780; Recommendation 22.3, and Australian Law Reform Commission (ALRC), *Pathways to Justice Report* (2018), 31.

experiencing violence. These included increased cultural awareness and competency training (including through bench books and more active learning experiences delivered by elders); measures to increase the diversity of justice system personnel, including judicial officers; increased access to cultural liaison officers; expanded access to interpreters, and measures to accommodate complex communication needs; and increased adoption of therapeutic jurisprudence. The adoption of flexible court procedures for adducing evidence from vulnerable witnesses was also important. Specialist courts and court programs were also considered particularly valuable, having regard to the trauma experienced by many First Nations women, historically and contemporaneously, in the courtroom system.<sup>111</sup>

66. In its more recent submission to the Australian Law Reform Commission regarding judicial impartiality, the Law Council welcomed gradual shifts occurring on several of these proposed measures, while supporting further progress.<sup>112</sup>
67. As a recent measure, the Federal Circuit and Family Court of Australia has introduced a separate court list for First Nations families as an example of a policy response to assist First Nations people navigating family law disputes.<sup>113</sup> Proceedings listed under the 'Indigenous List' are conducted in a more informal and less adversarial way.<sup>114</sup> The Indigenous List includes the presence of Indigenous liaison officers to help parties to understand and engage with court processes, and connect parties to legal and other support services.<sup>115</sup> The Law Council understands that the procedures in place under this list also recognise that extended family are particularly important in resolving disputes: for example, recognising that grandmothers and aunts may need to be specifically consulted.
68. The Law Council adds that, in circumstances where First Nations women and children die from a 'reportable death',<sup>116</sup> the Coroners Court plays a particularly vital role. In New South Wales, the Coroners Court has a First Nations Protocol and Aboriginal Coronial Information and Support Programme with First Nations support workers who meet with families at an early stage and support them throughout the inquest process.<sup>117</sup> The protocol aims to ensure that First Nations families are provided with an opportunity to raise cultural considerations relevant to the conduct of the coronial investigation and inquest, such as appropriate naming conventions for deceased First Nations people or the opportunity to conduct ceremonies or hearings on country. The goal of the protocol is to ensure that the work of the coronial jurisdiction does not perpetuate cycles of grief and loss.<sup>118</sup>

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<sup>111</sup> Law Council of Australia, 'Courts and Tribunals', Justice Project (August 2018) <https://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Courts%20and%20Tribunals%20%28Part%20%29.pdf>.

<sup>112</sup> Law Council of Australia, *Judicial Impartiality: Consultation Paper*, Australian Law Reform Commission, 8 July 2021.

<sup>113</sup> Federal Circuit Court and Family Court of Australia, *Family Law – Indigenous List*, (Web page) <<https://www.fccoa.gov.au/fl/indigenous-list>>.

<sup>114</sup> *Ibid.*

<sup>115</sup> Federal Circuit Court and Family Court of Australia, *Reconciliation Action Plan 2019 – 2021: Federal Circuit Court of Australia*, (Web page, 2019) <<https://www.fccoa.gov.au/node/252>>.

<sup>116</sup> A reportable death is generally a death that is: unexpected or unexplained; the result of an accident or injury; in care or custody; healthcare related; or the person's identity is unknown. See, National Coronial Information System, 'Explanatory Notes' (Web page) <<https://www.ncis.org.au/about-the-data/explanatory-notes/>>.

<sup>117</sup> Local Court of New South Wales, 'Supplementary arrangements applicable to section 23 deaths involving First Nations Peoples' (State Coroner's Protocol, 9 March 2022).

<sup>118</sup> *Ibid* [1.6].

## Culturally safe support services

69. The Justice Project also recognised that non-legal services play an essential access-to-justice role, and contribute to the effective operation of the justice system—whether to deliver early intervention, diversionary or therapeutic justice responses. They include culturally safe family support, mental health and counselling services, drug and alcohol rehabilitation, education, financial services, accommodation support, and disability support.
70. In particular, the Justice Report recognised evidence regarding the effectiveness of justice reinvestment, which involves a redirection of money from policing and prisons to fund and rebuild human resources and physical infrastructure in areas most affected by high levels of incarceration.<sup>119</sup> The impact of justice reinvestment extends to helping to keep communities safer and reducing the incidence of family violence. Therefore, the Law Council welcomed the Federal Government’s provision of \$81.5 million for justice reinvestment initiatives to be delivered in partnership with First Nations communities in the recent Budget.<sup>120</sup>
71. In her 2022 annual thematic report, the UN Special Rapporteur on violence against women and girls notes that Indigenous-led victim support services are often preferred by Indigenous survivors of sexual assault. The UN Special Rapporteur identifies, as an example of a good-practice victims support service, the Sexual Assault Referral Centre Service, operating in the Northern Territory, which is staffed by First Nations and non-Indigenous staff, and provides counselling, training, clinical support services and legal assistance.<sup>121</sup>
72. The Justice Project also recognised the need for investment in tailored, evidence-based rehabilitative behaviour-change programs for perpetrators to break the cycle of violence in families, as well as evaluations to ensure the programs’ effectiveness. This should include expanded access to culturally competent programs.
73. In the context of prevention, the UN Special Rapporteur noted that the Office of the Children’s Commissioner in the Northern Territory supports the work of the Tangentyere Council in Central Australia, ‘an Aboriginal community-controlled organization dedicated to self-determination, service provision and community leadership’.<sup>122</sup> The report noted that ‘one of the Council’s projects, “Girls can, boys can”, works to debunk gender and social norms for Aboriginal children and communities’.<sup>123</sup>

## Policing

74. The Justice Project encouraged ongoing police education and training regarding appropriate practices in the context of investigations and prosecutions regarding situations involving family violence. While it recognised the important and difficult work undertaken by the police, it was also clear that, when individuals experience injustice or

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<sup>119</sup> ALRC, *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133), (28 March 2018) <<https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/4-justice-reinvestment/what-is-justice-reinvestment/>>.

<sup>120</sup> Federal Budget 2022-23, ‘Budget Measures: Budget Paper No.2’ (25 October 2022) [https://budget.gov.au/2022-23-october/content/bp2/download/bp2\\_2022-23.pdf](https://budget.gov.au/2022-23-october/content/bp2/download/bp2_2022-23.pdf) 49.

<sup>121</sup> 2022 Report of the UN Special Rapporteur on violence against women and girls [37].

<sup>122</sup> *Ibid* [39].

<sup>123</sup> *Ibid*.

poor responses in such contexts, this may feed their distrust of authorities and of the justice system generally.<sup>124</sup>

75. The Law Council notes that the Australian Law Reform Commission's *Pathways to Justice* report includes a dedicated chapter to the incarceration of First Nations women and their experiences within the justice system.<sup>125</sup> This report notes that '[p]revious research has highlighted that poor police responses can involve minimising or dismissing Aboriginal and Torres Strait Islander women's experiences of family violence, or reflects a focus on their perceived criminality rather than their victimisation'.<sup>126</sup> It identified the following 'poor responses': 'police charging Aboriginal and Torres Strait Islander women, who are the subject of family violence protection orders, with aid-and-abet provisions in relation to their breach';<sup>127</sup> and 'police failing to correctly identify the primary perpetrator of family violence'.<sup>128</sup>
76. The report goes on to state that 'these police responses help explain the distrust and fear that many Aboriginal and Torres Strait Islander women feel in relation to reporting family violence to police'.<sup>129</sup>
77. The Law Council refers to subsequent recommendations made in the *Pathways to Justice* report, that all levels of government should:
- review police procedures and practices so that the law is enforced fairly, equally and without discrimination with respect to Aboriginal and Torres Strait Islander peoples; and
  - review their police complaints-handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.<sup>130</sup>
78. To the Law Council's knowledge, progress remains to be achieved against these recommendations. Dr Hannah McGlade and Stella Tarrant provide case examples of violence committed against First Nations women and children, and address deficits in the response of the justice system in each example, in their article 'Say Her Name: Naming Aboriginal Women in the Justice System'.<sup>131</sup>

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<sup>124</sup> Law Council of Australia, 'Broader Players, Justice Project (August 2018), <[www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Broader%20Justice%20System%20Players%20%28Part%20%29.pdf](http://www.lawcouncil.asn.au/files/web-pdf/Justice%20Project/Final%20Report/Broader%20Justice%20System%20Players%20%28Part%20%29.pdf)>, 4.

<sup>125</sup> Australian Law Reform Commission, *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)*, (28 March 2018) <[https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)> 347-375.

<sup>126</sup> *Ibid*, [11.69].

<sup>127</sup> *Ibid* [11.70].

<sup>128</sup> *Ibid* [11.71].

<sup>129</sup> *Ibid* [11.72].

<sup>130</sup> *Ibid*, Recommendations 14-1 and 14-2.

<sup>131</sup> McGlade, H., Tarrant, S., 'Say her name, Naming Aboriginal women in the justice system' in Perera, S. Pugliese, J. (ed) *Mapping Deathscapes* (Routledge, London, 2021) 106.



## Recommendation

- **Federal, State and Territory governments should commit to improvements across the justice system to ensure that First Nations women and children experiencing violence are empowered to access justice and, in turn, realise their rights to safety and to an effective remedy, including:**
  - **targeted, culturally safe legal information and education;**
  - **culturally safe legal assistance services to meet gaps in family violence and civil legal need, including in RRR locations;**
  - **a National Justice Interpreter scheme which addresses the diverse communication needs of First Nations people;**
  - **identified best practice measures to increase the cultural competence and safety of courtrooms and tribunals;**
  - **measures to support greater cultural diversity across all arms of the justice system, including an emphasis on supporting the participation of First Nations women;**
  - **access to underlying critical support services, including family support, disability support, education, and housing to underpin preventative, early intervention and therapeutic jurisprudence outcomes; and**
  - **reviewing police practices to ensure that the law is enforced fairly, equally, and without discrimination with respect to First Nations women and children experiencing violence.**

## Broader projects, measures and reports of interest

79. Over the course of preparing this submission, a range of highly relevant broader projects, measures and reports have been brought to the Law Council's attention. The Committee may wish to have regard to these during its inquiry.

## **Australian projects, studies and recommendations**

80. The Law Council draws the Committee's attention to the current project being conducted by the Public Interest Advocacy Centre, in partnership with the Indigenous Law Centre UNSW, titled *Towards Truth*. This project includes a widespread and systematic review of all legislation and government policy that has impacted upon First Nations people since the start of colonisation.<sup>132</sup> This work may present policies and practices relevant to the issues being considered by the Committee.

81. The Committee may also wish to consider previous relevant historical recommendations that relate to the experience of First Nations women and children within the legal system, such as the Victorian Royal Commission into Family Violence,<sup>133</sup> the Australian Law

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<sup>132</sup> Public Interest Advocacy Centre, 'Supporting First Nations Truth-Telling and the Uluru Statement from the Heart' (Web page) <<https://piac.asn.au/project-highlight/towards-truth/>>.

<sup>133</sup> Victorian Royal Commission into Family Violence, *Report and Recommendations* (2016) Summary and Recommendations

Reform Commission's *Pathways to Justice Project*,<sup>134</sup> and the Commonwealth Royal Commission into Aboriginal Deaths in Custody.<sup>135</sup>

82. In this regard, the Law Society of South Australia suggests that the Committee consider a recent South Australian Coroner's report on the murder of an Aboriginal woman and her children.<sup>136</sup> The Coroner's report covers issues broadly relating to the experience of violence within First Nations families, and makes observations as to the critical responsibility of governments to respond to coronial and other recommendations, specifically in the context of child protection laws and policies.<sup>137</sup>

83. Relevantly, the Coroner states:

*What this inquest has highlighted, however, is the folly of governments ignoring coronial and other recommendations... In my opinion what is required is a broad review of all coronial and other recommendations, including recommendations of the Ombudsman and of the Royal Commission, relating to child protection.*<sup>138</sup>

### **International reports and experience of overseas jurisdictions**

84. The Committee may also wish to consider relevant commentary and recommendations from the UN Special Rapporteur on violence against women and girls, as well as the progress made in other comparable jurisdictions in relation to understanding and addressing the issue of missing and murdered First Nations women and children.

#### *Annual thematic report of the UN Special Rapporteur on violence against women and girls*

85. The 2022 annual thematic report of the UN Special Rapporteur on violence against women and girls provides a holistic analysis of the experience of violence against Indigenous women, its causes and consequences.<sup>139</sup>

86. In her report, the UN Special Rapporteur highlights that violence against Indigenous women is perpetrated by State and non-State actors in a systemic way, and that violence is experienced at an individual and a collective level.<sup>140</sup> This violence is said to 'affect their human rights to life, dignity, personal integrity and security, health, privacy and personal liberty, and their rights to a healthy environment and to be free from ill-treatment'.<sup>141</sup>

87. The Special Rapporteur makes several recommendations, including emphasising the obligations on States to protect Indigenous women to ensure their safety and to defend their human rights.<sup>142</sup> The Committee may wish to consider these recommendations during its Inquiry.

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<sup>134</sup> Australian Law Reform Commission, *Pathways to Justice: Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2018).

<sup>135</sup> Commonwealth Royal Commission into Aboriginal Deaths in Custody, National Report (1991).

<sup>136</sup> Coroner Anthony Schapel, *Finding of Inquest - Inquest into the deaths of Amber Rose Rigney and Corey Lee Mitchell*. (Inquest number 7/2021, 21 April 2022) <[www.courts.sa.gov.au/wp-content/uploads/download-manager-files/Rigney,%20Amber%20Rose%20and%20Mitchell,%20Corey%20Lee.pdf](http://www.courts.sa.gov.au/wp-content/uploads/download-manager-files/Rigney,%20Amber%20Rose%20and%20Mitchell,%20Corey%20Lee.pdf)>.

<sup>137</sup> *Ibid* [15.9].

<sup>138</sup> *Ibid*.

<sup>139</sup> 2022 Report of the UN Special Rapporteur on violence against women and girls 1.

<sup>140</sup> *Ibid* [70].

<sup>141</sup> *Ibid*.

<sup>142</sup> *Ibid* [70]-[91].

## United States of America

88. The Law Council understands that a Missing and Murdered Unit at the Bureau of Indian Affairs (**BIA**) has been created in the United States, hiring 17 officers in 2022 to track Indigenous cases.<sup>143</sup> This followed decades of campaigning by families of murdered and missing Indigenous women. This work is ongoing, and the BIA notes that there is no reliable count of how many First Nations women are missing or murdered in the United States, and that research is missing on rates of murder among ‘American Indian’ and ‘Alaska Native’ women living in urban areas.<sup>144</sup>
89. Noting the significant deficits in the collation of data and research discussed in this submission, the Committee may consider the value of introducing comparable units to investigate missing First Nations women and children in Australia (at State and Territory level), and to map what further research and data is required in Australia in order to properly understand the scope and nuances of the issue.
90. The Law Council also notes the passage of the *Not Invisible Act of 2019*<sup>145</sup> in the United States. That Act establishes a joint commission on violent crime on Indigenous lands and against Indigenous peoples.<sup>146</sup> The commission may develop recommendations on actions the U.S. Government can take to help combat violent crime against Indigenous peoples and on Indigenous lands, including for ‘identifying, reporting, and responding to instances of missing persons, murder, and human trafficking’.<sup>147</sup> A plain English description of the new Commission’s responsibilities is available on the U.S. Department of the Interior website.<sup>148</sup> The Committee may also consider engaging with the US Commission to learn from its approach.

## Canada

91. The Law Council notes the advocacy of First Nations women in Canada, which led to an inquiry of the United Nations Committee on the Elimination of Discrimination against Women—the body of independent experts which monitors the implementation of the CEDAW. This inquiry was initiated under article 8 of the Optional Protocol to the CEDAW in relation to ‘alleged grave and systematic violations by the State party of rights set forth in the Convention, namely that Aboriginal women and girls experience extremely high levels of violence in Canada, as shown by the high number of disappearances and murders of Aboriginal women’.<sup>149</sup>
92. The CEDAW inquiry made a number of recommendations, including to establish a national public inquiry into missing and murdered Aboriginal women.<sup>150</sup> Subsequently, a three-year inquiry into missing and murdered Indigenous women was conducted by the Truth and Reconciliation Commission of Canada. A report of that inquiry was

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<sup>143</sup> Shaun Griswold, ‘Families of missing and murdered Indigenous people call for help at Haaland event in Albuquerque’, *Source NM* (online, 23 September 2022) <<https://sourcencm.com/2022/09/23/families-of-missing-and-murdered-indigenous-people-call-for-help-at-haaaland-event-in-albuquerque/>>.

<sup>144</sup> ‘Missing and Murdered Indigenous People Crisis’, *US Department of the Interior Indian Affairs* (Web Page) <<https://www.bia.gov/service/mmu/missing-and-murdered-indigenous-people-crisis#:~:text=Statistics%20show%20us%20that%20approximately,the%20Federal%20Government's%20Unif orm%20Crime>>.

<sup>145</sup> *Not Invisible Act of 2019*, 25 USC 2801 (2020).

<sup>146</sup> *Ibid* section 4.

<sup>147</sup> *Ibid* s 4(c)(2)(A)(ii).

<sup>148</sup> US Department of the Interior, ‘What is the Not Invisible Commission?’ (Web page), <<https://www.bia.gov/service/not-invisible-act-commission/what-not-invisible-act-commission>>.

<sup>149</sup> 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, (30 March 2015).

<sup>150</sup> *Ibid*, 58.

published in 2019, titled '*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*'.<sup>151</sup>

93. The Truth and Reconciliation Commission conducted extensive public consultation. It had a mandate to report on the systemic causes of violence against indigenous women and girls, and to make recommendations for policy change and other reform.<sup>152</sup> In undertaking this task, the Commission sought to prioritise the needs and interest of the families of victims, to be trauma-informed, and to be 'decolonising' in its approach.<sup>153</sup> The report's recommendations are framed as legal imperatives rather than optional recommendations, which are 'anchored in human and Indigenous rights instruments, Indigenous laws, and principles'.<sup>154</sup>
94. The Committee might wish to consider the experiences and approach of the Canadian Truth and Reconciliation Commission.

### Truth-telling—Australian mechanisms

95. The Law Council suggests that the Committee consider local examples of effective and culturally sensitive truth-telling process during its inquiry. For example, the New South Wales Bar Association (**NSW Bar**) has suggested that the Committee should consider the work of the Yoorook Justice Commission in Victoria, which facilitates the 'truth telling process into historical and ongoing injustices experienced by First Peoples in Victoria'.<sup>155</sup> The Yoorook Commission has published several guidance documents that may be relevant, including in relation to:
- Wurrek Tyerrang (Public Hearings);<sup>156</sup>
  - Different ways to tell your truth;<sup>157</sup> and
  - Keeping you Safe and Strong—Supports.<sup>158</sup>
96. The NSW Bar also draws attention to the potential value of a future national Makarrata Commission in addressing some of the considerations of this Inquiry that may relate to truth telling. The establishment of a Makarrata Commission was called for in the Uluru Statement from the Heart.
97. The Law Council notes the suggestion of the NSW Bar and the Law Society of New South Wales that the Committee consider the inquiry of the NSW Legislative Council's

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<sup>151</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls '*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*', (Report 2019) <[www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)>.

<sup>152</sup> Ibid 52.

<sup>153</sup> Ibid 60.

<sup>154</sup> National Inquiry into Missing and Murdered Indigenous Women and Girls '*Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*', (Report 2019) <[www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final\\_Report\\_Vol\\_1a-1.pdf](http://www.mmiwg-ffada.ca/wp-content/uploads/2019/06/Final_Report_Vol_1a-1.pdf)> 84.

<sup>155</sup> Government of Victoria, *Truth and Justice in Victoria*, (Web page, 7 April 2022) <<https://www.firstpeoplesrelations.vic.gov.au/truth-and-justice>>.

<sup>156</sup> Yoorook Justice Commission, *Wurrek Tyerrang (Public Hearings)*, (Web page), <[https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/03/032322\\_Yoorrook\\_PracticeDirection1.pdf](https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/03/032322_Yoorrook_PracticeDirection1.pdf)>.

<sup>157</sup> Yoorook Justice Commission, *Different ways to tell your truth* (Web page), [https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/03/032822\\_Yoorrook\\_Waystotellyourtruth.pdf](https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/03/032822_Yoorrook_Waystotellyourtruth.pdf).

<sup>158</sup> Yoorook Justice Commission, *Keeping you Safe and Strong – Supports* (Web page), [https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/09/032322\\_Yoorrook\\_KeepingSafeStrong.pdf](https://yoorrookjusticecommission.org.au/wp-content/uploads/2022/09/032322_Yoorrook_KeepingSafeStrong.pdf).

Standing Committee on Law and Justice 2013–2014 into the family response to the murder of three Aboriginal children in Bowraville (the **Bowraville Inquiry**).<sup>159</sup>

98. The Bowraville Inquiry gave the families of victims the opportunity to appear before the Committee and to detail the impact the murders of three First Nations children between 1990 and 1991 had on them and their community.<sup>160</sup> The Inquiry stated that its recommendations would assist in ‘redressing some of the systemic flaws that were shown to have compounded the families’ experiences, particularly their interaction with the justice system and the need to build on the effective but limited support networks already in place’.<sup>161</sup>
99. The fifteen recommendations arising from Bowraville Inquiry included recommendations addressing cultural awareness training for the NSW Police Force and practising solicitors, judicial officers, and other court officers.<sup>162</sup> The Committee may wish to consider the relevance of these recommendations to the current Inquiry, as well as the process employed to allow the families of victims to share their experiences.

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<sup>159</sup> NSW Standing Committee on Law and Justice, *The family response to the murders in Bowraville*, (Report, 6 November 2014) <<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2131/Bowraville%20-%20Final%20report.pdf>>.

<sup>160</sup> Ibid 1.

<sup>161</sup> Ibid 119.

<sup>162</sup> Ibid 35 and 53.