



THE LAW SOCIETY  
OF NEW SOUTH WALES

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3 November 2022

Dr James Popple  
Chief Executive Officer  
Law Council of Australia  
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Dear Dr Popple,

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

Thank you for the opportunity to contribute to the Law Council's submission to this important inquiry. The Law Society's Indigenous Issues Committee has contributed to this submission.

The Law Society supports this inquiry as a means for starting and sustaining a long term national conversation on a complex and intersectional issue that has profound and lasting effects not only on individuals, but on families and communities. This inquiry should also take the opportunity to acknowledge and honour missing and murdered First Nations women and children, acknowledge the ongoing trauma for their families and communities associated with their loss, and make recommendations in respect of supporting the healing process.

At first instance, we note that the work in respect of understanding and addressing the issue of missing and murdered First Nations women and children has progressed further in other comparable jurisdictions. For example, we understand that a Missing and Murdered Unit at the Bureau of Indian Affairs (**BIA**) has been created in the USA, which has now hired 17 officers this year to track Indigenous cases.<sup>1</sup> Decades of campaigning by families preceded this outcome. However, that work is ongoing, where the BIA notes that there still appears to be no reliable count of how many First Nations women are missing or murdered in the US, and that research is missing on rates of murder and violence among 'American Indian' and 'Alaska Native' (terms used on the BIA website) women living in urban areas.<sup>2</sup> In our view, it would be worthwhile to consider the creation of similar dedicated units to investigate missing First Nations women and children in Australia (at state and territory level), and to map what

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<sup>1</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>2</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%20Uniform%20Crime>>.

further research and data is required in Australia in order to properly understand the scope and nuances of the issue.

In Canada, the National Inquiry into Missing and Murdered Indigenous Women and Girls has now published its final report, *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*,<sup>3</sup> which is forthright in its assessment that this issue must be viewed through the lens of settler colonial genocide, “in both legalistic and in social terms, and as it persists today.” The Report goes further to say:

Settler colonialist structures enabled this genocide, which takes into account both immediate policies and actions and “the intergenerational effects of genocide, whereby the progeny of survivors also endure the sufferings caused by mass violence which they did not directly experience.” Genocide is the sum of the social practices, assumptions, and actions detailed within this report; as many witnesses expressed, this country is at war, and Indigenous women, girls, and 2SLGBTQQIA people are under siege.

While the Canadian genocide targets all Indigenous Peoples, Indigenous women, girls and 2SLGBTQQIA people are particularly targeted. Statistics consistently show that rates of violence against Métis, Inuit, and First Nations women, girls, and 2SLGBTQQIA people are much higher than for non-Indigenous women in Canada, even when all over [sic] differentiating factors are accounted for. Perpetrators of violence include Indigenous and non-Indigenous family members and partners, casual acquaintances, and serial killers.

Our members note that in considering violence against First Nations women and children in Australia, the inquiry should consider these issues through a similar lens, and take into account the ongoing impacts of:

1. The role and impact of colonisation on Aboriginal communities and the ongoing disadvantage and vulnerability arising from the experiences of, for example, racism, poorer health and educational outcomes, and lower socio-economic status.
2. Dispossession from the traditional lands, noting that the ongoing unrest in Wadeye, NT is a very good example of the consequences of dispossessing people from their traditional lands and moving them, outside of their societal norms of law and order, onto the traditional lands of other nations.
3. The ongoing crisis in relation to the removal of Aboriginal children and young people from their families and communities, and the flow on effects for children, families and communities.
4. The effect of policies, laws and institutional cultures and practices (particularly in relation to police practices) which have converged to create the 'invisible' Aboriginal woman.

In this regard, we are heartened to see that in the recent Federal Budget, resources have been allocated towards supporting and implementing the National Plan to End Violence against Women and Children. We continue to advocate for and support a targeted plan to end violence against First Nations women and children, that takes into account in particular the impact of settler colonial violence on communities (eg in providing support specifically for First Nations men, as well as addressing those factors that increase the vulnerability of First Nations women and children to violence, including fear and distrust of institutions, fear of child removal in response to disclosing violence, lack of availability of culturally appropriate services and inappropriate or inadequate police responses).

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<sup>3</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*, 3 June 2019.

The yet unresolved matter of the missing and murdered First Nations children in Bowraville NSW provide a stark case study. The Law Society recommends to the Law Council the report of the NSW Parliamentary inquiry into the *Family response to the murders in Bowraville*.<sup>4</sup> We suggest that the inadequate initial police response and investigation is not an uncommon one in relation to reports of missing First Nations women and children by First Nations people, and the quality of police response has significant impacts on the outcomes of the investigation, as well as on inquest and trial outcomes for families and survivors. The inquiry report also considered the resulting trials and coronial inquests, including in respect of the impacts of serious failures of cultural competency within the justice system. In our view, the recommendations made in the Bowraville inquiry report (including in relation to the carriage of police investigations, cultural awareness training for police and throughout legal institutions) remain relevant. It is not clear to us how extensively these recommendations have been implemented in NSW.

We note that in NSW, the NSW Police Force (**NSWPF**) has developed a Domestic and Family Violence Code of Practice.<sup>5</sup> Our members submit that this inquiry should consider that Code, and the extent to which NSWPF officers are aware and acquainted with the document, and trained to comply effectively with it, particularly in relation to First Nations women and children affected by violence.

We also suggest the Law Council consider the research reports prepared by Professor Marcia Langton, *Improving family violence legal and support services for Aboriginal and Torres Strait Islander women*<sup>6</sup> and *Family violence policies, legislation and services: Improving access and suitability for Aboriginal and Torres Strait Islander men*<sup>7</sup>. A number of critical issues are identified in these reports, including an acute difference between police responses in metropolitan and rural, regional and remote areas, the need to build collaborative relationships between police and other service providers, and as well as the pivotal nature of housing availability for First Nations women seeking to leave violence and to access other services.<sup>8</sup> The latter report identifies practical and legal supports available to First Nations men who are perpetrators of family violence. Of course, this is an incomplete answer to the larger issue of violence against First Nations women and children, noting that perpetrators of violence against First Nations women and children are not confined to First Nations men, and include violence perpetrated by strangers.

Finally, we note that given the nature of the inquiry, it is critical that it be properly designed to ensure, among other things, that those who seek to give evidence consider the inquiry to be fair and impartial, are able to give evidence safely, and in a way that does not retraumatise them. In this regard, we suggest that this inquiry consider the design of similar inquiries in other jurisdictions, including the Canadian inquiry. In that process, the “truth gathering process” was divided into three parts. The first was gathering testimony from families and survivors. The second part sought information from institutions and the third part gathered testimony from “Knowledge Keepers” and “Experts” including government officials,

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<sup>4</sup> Standing Committee on Law and Justice, Parliament of New South Wales, *The family response to the murders in Bowraville* (Final Report, 6 November 2014).

<sup>5</sup> NSW Police Force, *Code of practice for the NSW Police Force response to Domestic and Family Violence* (1 June 2018).

<sup>6</sup> Marcia Langton et al, ‘Improving family violence legal and support services for Aboriginal and Torres Strait Islander women’ (Research Report No 25/2020, ANROWS, December 2020) <<https://www.anrows.org.au/project/improving-family-violence-legal-and-support-services-for-indigenous-women/>>.

<sup>7</sup> Marcia Langton et al, ‘Family violence policies, legislation and services: Improving access and suitability for Aboriginal and Torres Strait Islander men’ (Research Report No 26/2020, ANROWS, December 2020) <[https://anrowsdev.wpenginepowered.com/wp-content/uploads/2019/02/AT.19.03\\_Langton\\_RR-FVsupport-Men.pdf](https://anrowsdev.wpenginepowered.com/wp-content/uploads/2019/02/AT.19.03_Langton_RR-FVsupport-Men.pdf)>.

<sup>8</sup> Langton et al (n 6).

academics, legal experts and community leaders.<sup>9</sup> Importantly, after-care support (counselling, cultural support and transportation services) was made available.<sup>10</sup> We note that relevant learnings from the Royal Commission into Institutional Responses to Child Sexual Abuse include the lesson that survivor leadership and trauma-informed ways of working are critical to the truth telling process, as well as ensuring the environment is culturally competent and safe.

Thank you for the opportunity to provide comments. Questions at first instance may be directed to Vicky Kuek, Principal Policy Lawyer, at [victoria.kuek@lawsociety.com.au](mailto:victoria.kuek@lawsociety.com.au) or 02 99226 0354.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JvP', with a long horizontal flourish extending to the right.

*pp.* Joanne van der Plaat  
**President**

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<sup>9</sup> 'Truth Gathering Process', *National Inquiry into Missing and Murdered Indigenous Women and Girls* (Web Page) <<https://www.mmiwg-ffada.ca/how-to-participate/>>.

<sup>10</sup> 'Aftercare Services', *National Inquiry into Missing and Murdered Indigenous Women and Girls* (Web Page) <<https://www.mmiwg-ffada.ca/aftercare-services/>>.