



3 November 2023

Response to the question put to the NSW Aboriginal Women's Advisory Network by Senator Thorpe

The NSW Aboriginal Women's Advisory Network thanks Senator Thorpe for the questions asked during the hearing, and the below further question:

"The ongoing parliamentary inquiry into missing and murdered Indigenous women and children heard from the New South Wales Police Force who rejected that 'racism is rife' in the force and said they had learned their lessons. In your experience, how prevalent are human rights abuses by committed by government institutions who carry out state sanctioned violence, and what obligations for reform, defunding or justice reinvestment would the Federal Human rights framework need to impose on these state institutions to stop more deaths in custody?"

The Network's context in responding

We remind the Committee that the [NSW Aboriginal Women's Advisory Network](#) was established in 2022 and operates as a mechanism to drive Aboriginal-led policy solutions to the NSW Government Closing the Gap Target 13 initiative to reduce the rate of all forms of family violence and abuse against Aboriginal and Torres Strait Islander women and children by at least 50% by 2031 as progress towards zero.¹ AWAN's Executive Council is led by Co-Chairs from Wirringa Baiya Aboriginal Women's Legal Centre ('Wirringa Baiya') and the Aboriginal Legal Service (NSW/ACT) ('ALS').

AWAN works to reduce violence against Aboriginal women and children through the following multi-pronged approach of educating community around domestic, family and sexual violence; empowering Aboriginal and Torres Strait Islander women across NSW; representing the voices of Aboriginal women to governments and frontline services; and, advocating for better protections and supports in community for Aboriginal women and children.

AWAN's work and our submission to is informed by the insights shared with us by Aboriginal and Torres Strait Islander women with whom we have consulted with from communities across metropolitan to regional NSW. Whilst our consultations are ongoing, the communities that we have visited so far include Brewarrina, Campbelltown, Dubbo, La Perouse, Mt Druitt, Redfern, Walgett, Wellington and Yarramundi.

Both Wirringa Baiya and AWAN are gender-specific and sensitive to the culturally diverse needs of Aboriginal and Torres Strait Islander women and children who have been victim-survivors of domestic violence, family violence and sexual violence. Our response is submitted from this context.

¹ NSW Government, *2022-2024 NSW Implementation Plan for Closing the Gap*, 109.

The prevalence of human rights abuses committed by government institutions, as shown through racism within policing

We note the evidence referred to was provided by the Commander of the Crime Prevention Command of the NSW Police Force, Superintendent Nicholson on 28 July 2023. The NSW Aboriginal Women's Advisory Network and our auspicing body, Wirringa Baiya Aboriginal Women's Legal Centre also gave evidence just prior to the NSW Police Force to that inquiry.

The Network rejects the statements of the NSW Police Force representatives. The Network submits that those statements are offensive, gaslighting and a further form of violence against Aboriginal and Torres Strait Islander peoples. We concur with Senator Cox who correctly highlighted to the NSW Police Force representatives that racism is rife.

We strongly assert that experiences of Aboriginal and Torres Strait Islander women and children with the NSW Police Force do not reflect the statement that the force have learned their lessons. We note the context of that discussion was around the lessons learned by the police force from Bowraville.² For over two decades, justice has not been provided to the families and community of the three Aboriginal children who went missing from Bowraville on the mid-north coast of NSW. We note these murders are reflective of the human rights abuses committed by NSW police. For example, local police forces were delayed filing a missing person's report on one child, and suggested that another child had gone "walkabout". Moreover, the man charged with two of the murders was acquitted. Potential evidence in the case had been lost as a result of a delayed and flawed investigation.

Human rights abuses are committed by multiple government institutions, including within 'child protection' agencies. We note that as of 30 June 2022, for example the rate of Aboriginal and Torres Strait Islander children in out-of-home care was almost 12 times the rate of non-Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander peoples who survived the stolen generation are witnessing patterns of child removal continuing unabated today from government institutions.² For the purpose of responding to Senator Thorpe's question the focus of our discussion will be around policing.

Evidence provided by Aboriginal community women and services providers in NSW to the NSW Aboriginal Women's Advisory Network

Evidence shows that it remains the case within and beyond the NSW police force that racism is rife and that significant lessons need to be learned. The police force is a primary and leading example of human rights abuses committed by government institutions. The Network continually receives feedback from Aboriginal and Torres Strait Islander women from across NSW around human rights breaches inflicted by Australian police. Moreover, how these human rights breaches make it difficult for them to seek support from the police, and in some cases, increases the risks to their safety.

² Based on Australian Institute of Health and Welfare, Child protection Australia 2021-22 – web report (last updated 6 June 2023), 13.

We note for example in recent consultations with Aboriginal women from three rural towns in NSW, 58% of the women who had experienced domestic, family or sexual violence either 'didn't seek help' from the police or had a 'bad experience' when seeking help from police. Only 16% of Aboriginal women who had experienced domestic, family or sexual violence had a 'good' experience when engaging with the police. The rest reported only having an 'okay' experience with police.

We separately note our consultation with an Aboriginal woman who has a frontline service background. Her experience was that she would never send or advise an Aboriginal woman to attend the police without being accompanied by a professional support person for accountability and safety reasons. Her decades of frontline experience confirmed a lack of accountability or means to address accountability issues due to the siloed nature of police systems. After making a valid complaint about a domestic violence liaison officer to a NSW local police station, she could no longer attend that station with a client because the treatment that client would receive would be worse.

She also described many instances of racist and lazy 'first in, best dressed' policing styles. In many instances, her professional experience was that the NSW police would cause further distress and danger to Aboriginal and Torres Strait Islander women. She discussed the issue of underreporting and late reporting by Aboriginal and Torres Strait Islander women experiencing domestic, family and sexual violence due to fears of police. Often her experience was that an Aboriginal woman would not report until the situation was at a fatal stage. This reporting was significantly later than reporting by non-Aboriginal and Torres Strait Islander women.

The feedback we received is not isolated. This experience shared systemically by many Aboriginal and Torres Strait Islander women who are either seeking support personally, or assisting a woman who is seeking support.

Research undertaken by leading academic and Palawa woman, Professor Kyllie Cripps around the impunity of policing failures and the human rights breaches against Aboriginal and Torres Strait Islander women

Evidence shows that Aboriginal and Torres Strait Islander women and children who experience domestic, family and sexual violence are confronted with a system of policing across Australia is marked with systemic racism and sexism. This presents in frequent misidentification and incarceration or mental health sectioning of Aboriginal and Torres Strait Islander women, and deaths in custody of Aboriginal and Torres Strait Islander peoples. We draw upon the recent research of Professor Kyllie Cripps.³

This year Professor Cripps released a paper examining the impunity of policing failures in matters involving Aboriginal and Torres Strait Islander women and intimate partner homicide. Professor Cripps examined 151 Australian coronial court investigations and inquests from 2000 – 2020. Professor Cripps' findings supported

³ *Indigenous women and intimate partner homicide in Australia: confronting the impunity of policing failures* (2023, Routledge) Professor and Director Monash Indigenous Studies Centre, Monash University.

the statement of a coroner who labelled the actions and inactions of police in Australia as being akin to systemic racism, or at the very least, lazy policing.

The research by Professor Cripps demonstrates systemic human rights breaches widespread across police interactions with Aboriginal and Torres Strait Islander women experiencing intimate partner violence. Examples of such failures include the following:

- System failures to appropriately log details of, and respond quickly to, initial calls to 000;
- Racist initial assessments and decision making of police on scene; complacency;
- Lack of cultural awareness;
- Inability to recognise behaviours of minimising language by victims;
- Inaccurate and harmful advice to victims;
- Not acting on a victim's request and instead intentionally delaying investigations or actioning breaches in case the victim changed her mind;
- Failing to check or log details about the victim or alleged offender in the police data system;
- Not taking alerts from coroners or medical examiners around domestic violence patterns in the region seriously;
- Not enforcing domestic violence orders which had been imposed to protect Aboriginal women;
- Lack of police accountability, discipline or court processes for acts and omissions endangering the lives of Aboriginal and Torres Strait Islander women; and,
- Overall, systemic racism in policing intimate partner violence against Aboriginal and Torres Strait Islander women.

The above examples are all human rights breaches against Aboriginal and Torres Strait Islander women and children, which have fatal consequences. Professor Cripps makes the strong point that deaths of Aboriginal and Torres Strait Islander women often come after increasing violent and abusive incidents. The harrowing truth recognised by Professor Cripps is that: *"It is because of these indicators that these types of deaths are considered some of the most preventable. However, prevention is only possible if the systems designed to protect women are capable of doing so and heed the warnings through practices and processes focused on addressing women's safety."*⁴

Obligations for reform, defunding or justice reinvestment that the Federal Human rights framework would to impose on these state institutions – including to stop deaths in custody

We note the harrowing statistic that there have been 555 reported Aboriginal and Torres Strait Islander deaths in custody since the *Royal Commission into Aboriginal*

⁴ Ibid, 2.

Deaths in Custody. We also note that Aboriginal and Torres Strait Islander women are the fastest growing prison population in Australia, being incarcerated at more than 20 times the rate of non-Aboriginal and Torres Strait Islander women. A significant driver towards these high rates are the issues of police misidentification of Aboriginal and Torres Strait Islander women as perpetrators when they are in fact the primary person in need of protection. There is a national incarceration crisis that is disproportionately targeting the human rights of Aboriginal and Torres Strait Islander peoples. All these factors are major drivers towards underreporting and police system distrust by Aboriginal and Torres Strait Islander women.

AWAN supports the inclusion of a binding positive duty on public authorities to act compatibly with human rights and to give proper consideration to human rights when making decisions.⁵ AWAN notes that it must be a clear duty, and clear to the public, that public authorities have a duty to comply with the human rights protected under the Act, and that if those rights are not complied with, that the public has access to legal recourse and remedies. AWAN stresses in particular the importance of Australian police being held accountable to meeting the human rights obligations in the federal Human Rights Act for Aboriginal and Torres Strait Islander peoples and communities.

AWAN also supports the inclusion of an equal access to justice duty whereby access to legal representation is available

In addition to a binding positive duty, we make the following recommendations for a Federal Human Rights framework:

Conclusion

If the Committee has any further questions, please contact the NSW Aboriginal Women's Advisory Network's Policy and Advocacy Officer, Bianca Tini Brunozzi

Yours Sincerely,

✓ Dixie Link-Gordon. 
Program Coordinator
NSW Aboriginal Women's Advisory Network.

