Institute for Collaborative Race Research

Submission to the Consultation Draft of the National Principles to Address Coercive Control

27 October 2022

To the Standing Council of Attorneys General,

Thank you for the opportunity to make a submission to the Consultation Draft of the National Principles to Address Coercive Control.

We have elected to provide a longform submission rather than engage with the provided survey on the Draft National Principles. The Consultation Draft and associated survey seek to promote a "shared understanding of coercive control" yet in our view offer a limited imagining of possible responses to domestic and family violence (DFV). They also ignore the state's own responsibility for ongoing racial and gendered violence in the colony. In falling short in this way, both mechanisms have the effect of erasing the culpability of the state whilst simultaneously compounding that violence by advocating an extension of its powers through criminalising coercive control. These processes narrowly define the terms of the consultation, controlling the parameters within which Black communities can discuss violence committed against them. This dynamic is in itself a form of coercive control that we resist by presenting a body of work driven by the testimony of Black women and gender diverse people.

This submission represents two years of targeted expert research and lived-experience accounts in response to proposed carceral responses to DFV in Queensland. The attached reports demonstrate the racial and gendered violence of carceral responses to DFV by charting the fundamentally violent, coercive relationship that police and the state impose upon Indigenous communities. In particular, we outline the role of police in the mass incarceration of Indigenous people, violence against Indigenous women and gender diverse people, and the culture of impunity that allows perpetrators (including police) to harm Indigenous women and gender diverse people without consequences.

Importantly, these submissions present non-violent responses to DFV – approaches the state refuses to countenance. We agree that DFV is a "pressing issue that requires a coordinated approach" but argue that Aboriginal and Torres Strait Islander community controlled organisations and families are best placed in this regard as it is these who already coordinate non-violent action on DFV in the absence and violence of police responses. These best practice responses are just and accountable alternatives to police and state intervention.

This submission includes seven pieces of our work, some co-authored with Sisters Inside:

1. **Expert report:** commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence
2. **Transcript of expert evidence:** provided to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence
3. **Let's stop it at the start: defunding the Queensland Police Service as violent perpetrators.** Submission to the Independent Commission of Inquiry into Queensland Police Service responses to domestic and family violence
4. **It's time to talk about race, colonialism…and abolition.** Submission on Discussion Paper 2 of the Women's Safety and Justice Taskforce: Women and girls' experience of the criminal justice system – Proposed focus areas
5. **Carceral feminism and coercive control: when Indigenous women aren't seen as ideal victims, witnesses or women.**
6. **State as abuser: coercive control in the colony.** Submission on Discussion Paper 1 of the Women's Safety and Justice Taskforce
7. **'In no uncertain terms' the violence of criminalising coercive control.** Submission on the Terms of Reference for the Women's Safety and Justice Taskforce

We look forward to the Councils' response and meaningful engagement with these materials.

Sincerely,

The Institute for Collaborative Race Research

Expert report commissioned by the Independent Commission of Inquiry into Queensland Police Service responses to family and domestic violence

Prepared by the Institute for Collaborative Race Research

25 August 2022

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About ICRR

The Institute for Collaborative Race Research is led by scholars with extensive expertise in the structural and political dynamics that can impact judicial and other forms of official decision making. We research how race, racism, colonialism and Aboriginal sovereignty intersect in the areas of justice, health, social policy and media. ICRR expert researchers are:

- Professor Chelsea Watego (Munanjahli and South Sea Islander and a leading researcher in race, racism and Indigenist health humanities)
- Dr David Singh (expert in the sociology of race with experience working in government policy and scrutinising policing in the UK)
- Kevin Yow Yeh (Wakka Wakka and South Sea Islander man who has experience in the operation of racism in the social work system and is researching ways to best support First Nations peoples seeking justice and compensation from racial discrimination)
- Dr Elizabeth Strakosch (with expertise in the operation of the Australian public policy system and its links to colonial dynamics and Aboriginal sovereignty)
- Dr Alissa Macoun (with expertise in the public discourses which shape policy and official decision making in the area of Aboriginal affairs).
- Anna Cerreto (ICRR Research and Communications Manager, with experience advocating for systemic legal reform)

ICRR makes extensive contributions to public inquiries, coronial inquests and strategy development processes. Our submissions to this Inquiry and the QLD Women's Safety and Justice Taskforce[1] are particularly relevant to the Commission, as they concern the criminalisation of coercive control and QPS conduct toward Aboriginal women.[2] ICRR has also contributed to the development of the Australian Human Rights Commission's National Anti-Racism Strategy which concerned police and state violence.[3] We have previously prepared reports for the Queensland Sentencing Advisory Council which examined the nature of the relationship between the Queensland Police Service and Aboriginal and Torres Strait Islander peoples.[4] Our Directors have also been commissioned by The Lowitja Institute (Australia's national institute for Aboriginal and Torres Strait Islander Health Research) to provide a scoping paper that explains how race and racism operate within the Australian Health system. Directors Watego and Singh were also commissioned by the NSW Coroner's office to provide an expert report into the health needs of Aboriginal peoples in custody. We have attached a list of relevant publications and reports which demonstrate the research team's expertise at Appendix A.

Introduction

The Commission of Inquiry into Queensland Police Service (QPS) responses to domestic and family violence asked the Institute for Collaborative Race Research to provide a specialist report addressing the following questions:

1. What are the continuing effects of colonisation on First Nations people, including over representation in the justice system?
2. How do the effects of colonisation impact on the experiences of domestic and family violence (DFV) for First Nations people, and the ways in which First Nations people are policed regarding domestic and family violence?
3. What are the broad concerns/ issues with the current police response to domestic and family violence involving First Nations people?
4. What are the impacts of police responses on First Nations people?
5. What would a culturally appropriate/safe/respectful/intelligent police response to domestic and family violence look like?

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[1] Written collaboratively with Sisters Inside

[2] Sisters Inside and ICRR (2022) 'Let's Stop It At the Start' Defunding QPS as violent perpetrators, submission to the Commission of Inquiry into QPS Responses to Family and Domestic Violence (PDF online); Sisters Inside and the Institute for Collaborative Race Research (2021) 'State as Abuser: Coercive Control in the Colony. Joint submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 1 of the Women's Safety and Justice Taskforce', Women's Safety and Justice Taskforce, (PDF online); Sisters Inside and the Institute for Collaborative Race Research (2021) 'It's time to talk about race, colonialism...and abolition. Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 2 of the Women's Safety and Justice Taskforce: Women and girls' experience of the criminal justice system – Proposed focus areas.' Women's Safety and Justice Taskforce, (PDF online) <https://www.womenstaskforce.qld.gov.au/__data/assets/pdf_file/0005/692663/wsjt-submission-dp2-sisters-inside-and-institute-for-collaborative-race-research.pdf>; Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch, 'Carceral feminism and coercive control, when Indigenous women are not seen as ideal victims, witnesses or women', The Conversation, (online, 25 May, 2021) <https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091>

[3] ICRR and Sisters Inside (2022) 'We Demand A Ceasefire: Responding to Australia's Anti-Racism Framework' (PDF online)

[4] ICRR (2020) 'Not a One-Way Street: Understanding the Overrepresentation of Aboriginal and Torres Strait Islander People on Charges of Assaults Against Public Officers': report prepared for the Queensland Sentencing Advisory Council.

6. Can addressing/ focusing on police responses without addressing other continuing effects of colonisation on First Nations people adequately address domestic and family violence for First Nations people?
7. What is required to adequately and holistically address continuing effects of colonisation, including whether a community led justice reinvestment type model could work?

This report outlines our responses to all seven questions.

Our Approach

ICRR is a group of expert scholars who, individually and in collaboration, undertake research relating to race, racial violence, colonisation, Indigenous sovereignty and state approaches to Indigenous issues (health, legal and policy responses). In our joint work, we use a collaborative methodology in which all directors contribute their expertise via intensive discussions, collectively reviewing existing research and joint drafting of reports. This report therefore represents the joint opinion of all listed authors. ICRR also distils our expertise into publicly accessible statements, including submissions and advocacy. However, this report is based on our research work and therefore constitutes our considered expert responses to the questions posed by the Commission.

ICRR's methodology explores if and how intersecting racial and gender stereotypes, and long-standing colonial and racialised political relationships, operate to feed assumptions and shape systems at a deep level. We explore the ways this affects institutional cultures, policing behaviours, investigative models, approaches to treatment of individuals and the production of racial and gendered violence.

This means that our answers to the Commission's questions often go beyond the specific contemporary issue of QPS responses to DFV to consider the violent colonial history of policing in Queensland. This history directly shapes our present and assists in understanding the hostile relationship between First Nations communities and the QPS and other state agencies. The Commission itself, as concerned as it is with DFV, is not divorced from this violent history, from which it derives its current mandate. To counter the weight of history we centre the experiences and sovereignty of First Nations communities. From their perspectives, the state and the QPS look quite different from the ways they are understood in mainstream discussion and by those who are part of these institutions. ICRR therefore brings our expertise to bear to shift the existing terms of reference in relation to DFV and First Nations communities – moving away from the standard focus on Indigenous disadvantage/dysfunction to make visible the structurally violent and deeply racialised relationship between Indigenous people and state agencies in this place.

In order to identify some of the deeper structural issues shaping police actions in relation to domestic and family violence and First Nations communities, we have grouped the questions into three sections. In most sections we answer the questions together rather than individually. These sections are as follows:

- Section 1- Issues Relating to Colonisation and the Criminal Legal System (questions 1 and 2)
- Section 2- Issues Relating to Policing and First Nations Peoples (questions 3 and 4)
- Section 3- Pathways Beyond Justice Reinvestment (questions 5, 6 and 7).

Findings

We make the following overall finding:

In relation to Aboriginal and Torres Strait Islander women, girls and gender diverse people, the QPS are perpetrators rather than protectors. QPS directly and indirectly enact racial and gendered violence and are therefore not a potential solution to the current domestic and family violence (DFV) crisis. By overpolicing Indigenous women as perpetrators, and underpolicing them as victims, the QPS is directly responsible for creating the culture of impunity which produces the unacceptably high levels of DFV towards Indigenous women. The QPS must be defunded and deauthorised in relation to this issue.

This reality is the product of the structural relationship between police and First Nations people in Queensland, in which police have been key agents of colonisation and enforcers of racial order. They continue to be complicit in the particularly violent experiences of Aboriginal and Torres Strait Islander women, including in the long history of settler sexual violence and predation. In Queensland, the QPS does not police Indigenous and racialised communities through consent but through control. Their relationship with Aboriginal and Torres Strait Islander women, girls and gender diverse people is particularly coercive, hierarchical and racially violent.

Without fundamentally confronting this violent relationship, and returning authority and resources to Indigenous community control, attempts to retrain, diversify, culture-shift or 'feminise' policing will only legitimise and therefore intensify police violence.

We know that Aboriginal and Torres Strait Islander women, girls and gender diverse people face higher levels of domestic and family violence, and higher levels of violence overall. Nationally, Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised due to family violence than non-First Nations women, 10 times more likely to die due to assault, and 45 times more likely to experience any type of violence.[5] Indigenous females are five times more likely to be victims of homicide than non-Indigenous females, and are more likely to be killed by strangers.[6] Additionally, "[t]here is substantial evidence to date showing that Aboriginal women also suffer from levels of sexual violence many times higher than in the wider population."[7]

This statistical story can reproduce racialised imaginings of Indigenous people's communities and cultures as inherently violent. People know these statistics; governments and media recite them. There is an implicit assumption that these experiences of violence are, in one way or another, the result of Indigenous people's behaviour. This behaviour might be understood as the result of a violent/savage culture, or community dysfunction due to substance abuse and disadvantage, or even (in the most progressive formulation) as the 'reverberating intergenerational effects' of colonialism creating social trauma. However, these explanations all locate the violence, and the behaviour that leads to that violence, within Indigenous communities.

This is an unacceptable and racist explanation for these rates of violence. As the Canadian Interim Report from National Inquiry into Missing and Murdered Aboriginal Women, Girls and 2SLGBTQQIA+ people, 'Our Women and Girls Are Sacred' found:
"Even when faced with the depth and breadth of this violence, many people still believe that Indigenous Peoples are to blame, due to their so-called "high-risk" lifestyles. However, Statistics

[5] Ibid, p3.
[6] Change the Record, 'Pathways to Safety Report', Pathways to Safety - Report (2021), p3.; statistics on stranger violence are not adequately collected in Australia, but in the comparable jurisdiction of Canada rates are many times higher.
[7] Marcia Langton, 'Two Victims, No Justice'. *The Monthly* (July 2016).

Canada has found that even when all other differentiating factors are accounted for, Indigenous women are still at a significantly higher risk of violence than non-Indigenous women. This validates what many Indigenous women and girls already know: just being Indigenous and female makes you a target" (2017), p.56.)

The only way we can understand Indigenous rates of victimisation is by examining the structure of violence created by colonisation. Colonisation continues to be an extremely violent experience for Indigenous peoples, and police are on the frontline of that violence. As the Canadian Inquiry found, Indigenous women experience higher rates of violence as a direct result of the culture of impunity created by police and state actions. Violence against Aboriginal and Torres Strait Islander women in Australia, and Indigenous women in Canada, is not seen as sufficiently problematic to warrant proper investigation by the police. The Canadian Inquiry found that this creates a culture within which people can perpetrate violence, including domestic and family violence, against Indigenous women and know that they are safe from consequences. This the fundamental reason that Indigenous people experience domestic and family violence in the way that they do.

Therefore, in order to address the crisis of domestic and family violence we need to shift the focus from monitoring and changing Indigenous behaviour, to monitoring and changing state behaviour. In particular, the Commission must acknowledge and interrogate the structurally violent relationship between the QPS and Indigenous communities.

We make the following two overall recommendations (see full discussion in final section):

1. **Defund and deauthorise the QPS in relation to DFV**
    a. Assess all potential solutions against the criteria of whether they increase or decrease police and state powers.
    b. Urgently reform legislation and judicial practices that leads to the unacceptable rates of incarceration of Indigenous women, girls and gender diverse people who experience violence, especially public nuisance, contravening police order and bail violation custodial sentencing practices.
    c. Confront and acknowledge the extent of historical and contemporary violence in Queensland policing of First Nations communities.
2. **Fully fund and recognise the authority of the Aboriginal and Torres Strait Islander Community Controlled Sector (ACCS) in relation to DFV**
    a. Audit current state funding to ACCOs from all government departments.
    b. Systematically and securely fund all ACCOs offering DFV support, as well as those offering broader social programs such as housing, family and disability support.
    c. Break links between QPS DFV responses and child removals.

Section 1: Issues Relating to Colonisation and the Criminal Legal System

1. *What are the continuing effects of colonisation on First Nations people, including over representation in the justice system?*

We begin by outlining contemporary Australian colonialism and its connection to racism, which informs our position regarding the violent relationship between the QPS and First Nations peoples. Australia is a settler colony (one of the four English speaking settler colonies of Australia, New Zealand,

Canada and the US), which is a particular type of colonial environment.[8] A distinction is often made between settler colonies and extractive colonies. Extractive colonies such as those in India and Africa involve a minority of colonisers from Europe occupying a territory to exploit the resources and the labour of Indigenous people and their land, and most of these extractive colonies structurally decolonised after the Second World War. In settler colonisation, a majority of colonisers come to stay in a place, to replace Indigenous people on their land and to establish a new political society on that land.

Most settler colonies have not decolonised, and there has not been a moment of institutional break or reformation. Therefore, we can meaningfully say that settler colonialism is an ongoing relationship, where questions of jurisdiction, land ownership and resource control are very much live and unresolved.[9] This is the case in all the four English speaking settler colonies. However, Australia has a unique history which gives it a particular racial dynamic.

In the other settler colonies, colonists recognised the political sovereignty and/or landownership of Indigenous people. They continued to colonise, but used treaties, purchase and conquest to legitimise their political control given the presence of pre-existing nations. In Australia, based on a racial assessment of Indigenous people as so inferior that they did not possess either landownership or political sovereignty, Australia was colonised on the basis of settlement; that is, wholesale and immediate occupation given the alleged absence of political life here.[10] This remains the legal justification for the Australian State today. Even though landownership has been contested by the High Court and some changes have been made, the High Court has been very clear that it is not able to make decisions on the question of Indigenous sovereignty because that would potentially fracture the legal skeleton of the Australian State and would call into question its own authority.[11]

Therefore, colonialism and racism in Australia are ongoing and interconnected. As Professor Watego expressed, Aboriginal and Torres Strait Islander peoples in Australia are "both First Nations and first raced."[12] The Australian State itself still rests on a legal justification that is based on an assessment of the inferiority of Indigenous people as so savage that they do not have political institutions, and this is one of the reasons that it is difficult to talk about race in Australia.[13] This is the context within which we identify the Queensland Police Service as having a specific, violent relationship with Indigenous people.

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[8] Patrick Wolfe, *Traces of History: Elementary Structures of Race,* Verso 2016

[9] I Watson (2015). *Aboriginal peoples, colonialism and international law : raw law*. Routledge.; I Watson (2009).

[10] Aileen Moreton-Robinson (2015). *The White Possessive: Property, Power and Indigenous Sovereignty*. Minneapolis: University of Minnesota Press; I Watson (2015). *Aboriginal peoples, colonialism and international law : raw law*. Routledge.; I Watson (2009). "In the Northern Territory Intervention, What is Saved or Rescued and at What Cost?". *Cultural Studies Review* 15(2).

[11] As directly expressed by Justice Brennan in the Mabo v State of Queensland [No 2] (1992) 175 CLR 1, "Recognition by our common law of the rights and interests in land of the indigenous inhabitants of a settled colony would be precluded if the recognition were to fracture a skeletal principle of our legal system" – the principle of British sovereignty acquired through settlement rather than cessation or conquest of existing Indigenous sovereignty.

[12] Luke Pearson and Nat Cromb, 'Dr Chelsea Bond delivers a masterclass in Indigenous Excellence.' *Indigenous*, (online, 15 April 2019) Dr Chelsea Bond delivers a masterclass in Indigenous Excellence - Luke Pearson - IndigenousX

[13] Luke Pearson and Nat Cromb, 'Dr Chelsea Bond delivers a masterclass in Indigenous Excellence.' *Indigenous*, (online, 15 April 2019) Dr Chelsea Bond delivers a masterclass in Indigenous Excellence - Luke Pearson - IndigenousX

2. *How do the effects of colonisation impact on the experiences of domestic and family violence for First Nations people, and the ways in which First Nations people are policed regarding domestic and family violence?*

The violent structure of colonialism shapes contemporary interactions between police and First Nations community all over Australia. However, Queensland police have a specific, violent history which determines relations here. We briefly outline this history under the headings: Queensland Native Mounted Police, Police in the Protection Era, and Police and Sexual Violence Towards Aboriginal and Torres Strait Islander Women.

Queensland Native Mounted Police

The earliest police in Queensland were the Queensland Native Mounted Police, who began operating within the area of Queensland in 1848. Historian Henry Reynolds has called them the most violent organisation in Australian history. Their specific task was to 'disperse' Indigenous camps, and they were directly involved in mass murder, dispossession and securing land for occupation by white settlement. "Archival and historical records show that the reputation of the force as the single greatest killer of Aboriginal people in colonial Queensland is completely justified".[14] 'Dispersals' were widely acknowledged by colonial society at the time, as seen in the image from the *Picturesque Atlas of Australasia 1886* at Figure 1 below. The trooper in this image is wearing a uniform consistent with that of the Native Mounted Police in Queensland.

12. Native troopers dispersing an Aboriginal camp. From Andrew Garran, ed., *Picturesque Atlas of Australasia*, vol. 2 (Picturesque Atlas Publishing Co., Sydney, 1886).

This history has not been fully acknowledged or disavowed by the contemporary Queensland Police Service. In 1964 at the centenary of the establishment of the QPS a senior police officer said, "Walker [who was the original lieutenant of the Mounted Police] and his Force soon established themselves. He tamed the natives, saved the whites, and made the country comparatively safe… The Native Mounted Police had certain privileges. Its officers could, and frequently did, transfer to the [main] Queensland Police Force without loss of rank. Its officers were chosen from men whose qualifications were supposed to be education, breeding, knowledge of drill and firearms, and ability to handle natives."[15]

[14] Jonathon Richards, *The Secret War* p51

[15] Sergeant A Whittington (1965). *The Queensland native mounted police. Journal of the Royal Historical Society of Queensland* 7 (3) 508-520

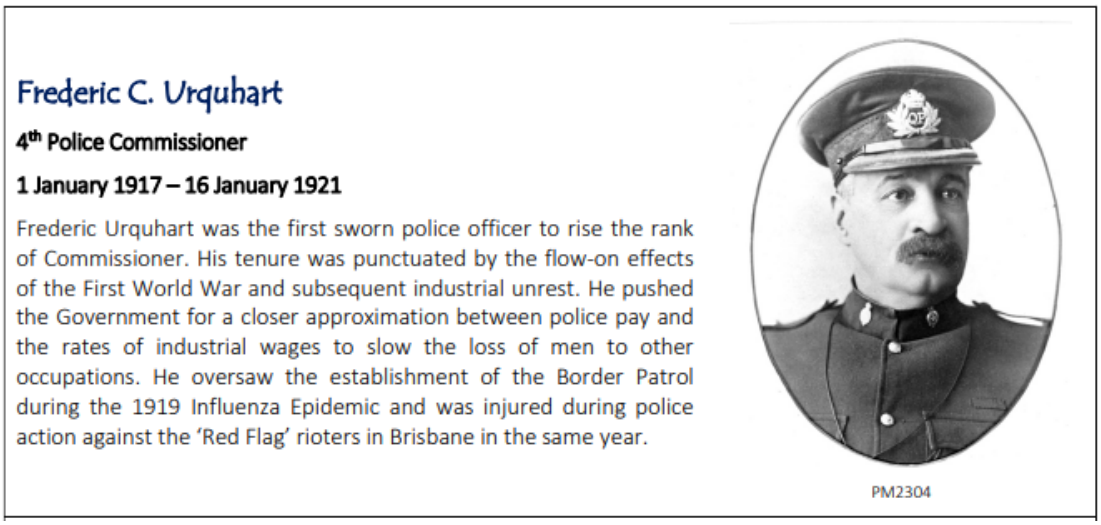
At the 150th Anniversary of the establishment of the QPS in 2014, the QPS museum established a historical website and display of the history of the force.[16] This does not explicitly acknowledge the existence of the Queensland Native Mounted Police. However, the first two documents showcased are the first Report of the Police Commissioner in 1863 and the first Queensland Police Gazette in 1864. They reveal the enmeshment of the QPS and the Native Police.[17]

In the first report of the first Police Commissioner, he stated:

With regard to the Native Police, the constantly increasing occupation of hitherto waste country renders it necessary that this force should he considerably augmented. As far back as the year 1857, a select committee of the Legislative Assembly of New South Wales recommended as "absolutely necessary" that in the Northern Districts it should consist of not less than one hundred and ten troopers; and I am constantly in receipt of applications for native police protection from districts that… were then unknown… Desertion from this force might be much lessened if some fine could he imposed upon persons harboring deserters or inducing troopers to desert.

The first Queensland Police Gazette, which lists all non-Indigenous police officers, shows that at the time of the establishment of the QPS, there were as many Native Mounted Police officers as regular officers. When Indigenous troopers (who are not listed) are taken into account, the size of the Native Mounted Police was much larger than the regular police force, and it remained so for some time. We note that the fourth Police Commissioner Frederic C Urquhart was recruited as a Native Police Officer and rose through the ranks to become Commissioner. He was involved in many infamous incidents ("in charge of detachment at Cloncurry (Kalkadoon) killings at 1883, at Mistake Creek killings 1884, at Mein killings 1889 and others; transferred to Queensland police 1889"[18]), however the QPS does not mention his Native Mounted Police background (see Figure 2 below, from the QPS Museum list of Police Commissioners 1864-2019).

Queensland Police Commissioners - 2



[16] Queensland Police Service, *Fascinating Historical Stories,* 2022 <https://www.police.qld.gov.au/museum/fascinating-historical-stories>

[17] Queensland Police Service, *Report of the Commissioner of Police* (1865) <https://www.police.qld.gov.au/sites/default/files/2018-07/ReportoftheCommissionerofPolicefor1863-1864.pdf>; Queensland Police Service (1864) *Queensland Police Gazette* <https://www.police.qld.gov.au/sites/default/files/2018-07/QueenslandPoliceGazette1864.pdf>

[18] Richards, *The Secret War* p256

This period of frontier violence was ending by the turn of the century, and the last Native Mounted Police camps operating in Queensland were closed in about 1915. They continued to operate in the Northern Territory Gulf Country under various names well into the twentieth century[19].

Police in the Protection Era (1897-1980s)

After the frontier violence period, Queensland pioneered another regime of racial control that was then modelled by other Australian colonies (there is also strong anecdotal evidence that it was used as a source of inspiration for South African apartheid legislation). *The Aboriginal Protection and Sale of Opium Act 1897* was an extremely draconian set of rules that governed every aspect of Indigenous people's lives. This included where they must live, if they could marry, if they could keep their children (all Aboriginal children were legally made wards of the state, meaning they could be removed from their families without justification), and where they must work (including children being sent to compulsory labour as station hands and domestics). The money from their work was taken by the government, with small amounts sometimes dispersed at Protector's discretion, and the majority of wages kept by the state. This money was used to fund mainstream infrastructure and still has not been returned (this is the subject of ongoing Stolen Wages legal action).

"When the *Aboriginals Protection Act* became law in December 1897, the leading police officer in each district was delegated as the local "protector of Aboriginals", most of whom now became wards of the state".[20] They were overseen by a government Chief Protector based in Brisbane. It is important to note that these were regular QPS officers, not Native Mounted Police officers. They were directly involved in catching escapees from missions, sending resistant Indigenous people to punishment camps such as Palm Island, removing children from their families, and policing forced labour in physically and sexually violent situations. Academic Rosalind Kidd has carefully documented the starvation conditions, exploitation, violence and systematic underfunding of the Protection Regime.[21] Police were widely involved in corruption, including individually stealing wages, protecting station owners who violated Indigenous work condition provisions, and directly threatening Indigenous workers to maintain productivity.[22] In the 1960s, a regular corp of Indigenous police 'trackers' were illegally "retained as menial workers for rural officers at less than half the basic wage". In 1972 the QPS agreed to pay these employees $22 per week (at the time minimum wage was $51.20).[23]

The Protection regime was not fully dismantled in Queensland until 1988, with Premier Joh Bjelke-Petersen reluctant to abolish it fully. As Australian anthropologist Charles Rowley observed at the time, in the 1970s it was 'still true that in Queensland one can be incarcerated either for crime or for being Aboriginal'.[24] We note the recent nature of this controlling 'protection' relationship between First Nations people and QPS; it is well within living memory and many Indigenous people living today were not citizens and were subject to 'the Act' when they were born.

Police and Sexual Violence Towards Aboriginal and Torres Strait Islander Women

Finally, we draw the Commission's attention to a specific aspect of the violent policing relationship that is particularly relevant to the subject of this inquiry. This is the distressing history of white mass sexual violence and predation in relation to Indigenous women all over Australia. It is particularly

[19] See for example Tony Roberts, *Frontier Justice,* UQP 2005.
[20] Rosalind Kidd, *The Way We Civilise,* 2005 p48.
[21] Kidd, The Way We Civilise 2005.
[22] See examples from the 1920s and 1930s in Kidd p131-133.
[23] Ibid, p307.
[24] Rowley *The Destruction of Aboriginal Society* 1972:123.

intense and well documented in Queensland.[25] Aboriginal and Torres Strait Islander women are regularly seen by mainstream society as victimised by Aboriginal men, but in fact historical research show that mass sexual violence by white men towards Aboriginal and Torres Strait Islander women has been a core part of colonisation, especially on frontiers and in remote regions.[26]

Sexual violence against Aboriginal women was brutal, widespread and often fatal, and a key driver of frontier conflict. In the 1883 diary of settler woman Emily Creaghe, she writes:

> *"20 February—… The usual method here of bringing in a new wild gin is to put a rope around her neck and drag her along from horseback, the gin on foot. 21 February—The new gin whom they call Bella is chained up to a tree a few yards from the house, and is not to be loosed until she is tamed."*[27]

"When Aboriginal women met untimely and violent deaths, their lost lives incited little more than a judicial shrug" as police did not act.[28] Often, police were directly involved. Historian Liz Conor gives details of several Queensland cases which were reported in newspapers at the time, where white men who directly shot Aboriginal women were not charged or acquitted as these were viewed as unfortunate accidents based on 'teasing' or 'firing in jest'. In other cases, men, including police officers, were acquitted after Aboriginal women died after being chained for days.[29] As the *Brisbane Courier* stated in relation to a particularly violent and public murder of an Aboriginal woman in central Queensland in 1875, "You will not get a jury, at least in Maryborough, to bring in a verdict of murder for the killing of a black".[30]

Conor carefully documents how white male sexual violence against Aboriginal women, and judicial indifference to or participation in this violence, was enabled by the dehumanisation of these women as 'gins' and 'lubras'. From first invasion, First Nations women were stereotyped as: automatically consenting to sexual contact, sexually voracious, in need of 'rescue' by white men, less desirable but more easily exploitable than white women, drunk or addicted, automatically involved in sexual trading for food, gifts and money, likely to disappear/'walk off into the bush', and objects to be owned by colonists.[31] As noted by the Canadian Inquiry into Missing and Murdered Indigenous Women, Girls and 2SLGBTQQIA+ people, these same stereotypes operate intensely today, and are directly responsible for police failure to investigate violence towards or disappearance of Indigenous women.[32]

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[25] We note the importance of the work of Indigenous female scholars in carefully and ethically documenting this history, especially that of Professor Jackie Huggins, Dr Fiona Foley and Professor Judy Atkinson. See for example Fiona Foley, *Biting the Clouds: A Badtjala perspective on the Aboriginals Protection and Restriction of the Sale of Opium Act, 1987*. (UQP, 2020).

[26] Libby Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier' In Robert Manson (eds): *Legacies of violence: rendering the unspeakable past in modern Australia* (Berghahn Books2017) pp. 33-52; Nicholas Clements, ***T**he Black War: Fear, Sex and Resistance in Tasmania,* University of Queensland Press, 2014; Raymond Evans, Rod Fisher, Libby Connors, John Mackenzie-Smith and Dennis Cryle, *Brisbane: the Aboriginal Presence 1824-1860.* Brisbane History Group Papers (2020).

[27] Liz Conor, *Skin Deep* (University of Western Australia Press, 2016); p147.

[28] Liz Conor, *Skin Deep* (University of Western Australia Press, 2016); p147

[29] Ibid, pp145-151.

[30] Ibid, p149.

[31] See for example Larissa Behrendt, 'Consent in a (neo)colonial society: Aboriginal woman as sexual and legal 'other''. *Australian Feminist Studies* 15:33 (2010); Andrea Smith and Luana Ross. "Introduction: Native Women and State Violence." *Social Justice*, vol. 31, no. 4 (98), Social Justice/Global Options.

[32] Reclaiming Power and Place: Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls Volume 1a (2019).

The current conflictual relationship between the QPS and Indigenous peoples is the direct result of this ongoing history. In Queensland, police have been on the frontline of colonisation and racism is foundational to their mandate. The way that the Queensland Police Service polices settlers is by consent, but the way it has policed Indigenous people has always been through control for political purposes. This different relationship between police and settlers is demonstrated, for example, by the fact that the original Native Mounted Police was funded by collections raised by white settlers without government authority (although government then assumed control of the force), and that white residents were always demanding more police presence, as demonstrated in the First Queensland Police Commissioner's Report quoted above. This ongoing cooperative relationship is reflected in current demands from white communities for more police powers and resources, in order to provide 'protection' from perceived Indigenous threats such as 'youth crime'[33]. It is also reflected in many non-Indigenous feminists calls for greater police powers relating to DFV, in ways that ignore the violence of these powers for Aboriginal and Torres Strait Islander women.[34]

Section 2: Issues Relating to Policing and First Nations Peoples

3. *What are the broad concerns/issues with the current police response to domestic and family violence involving First Nations people?*
4. *What are the impacts of police responses on First Nations people?*

QPS and broader state responses to DFV in Indigenous communities reproduce racialised assumptions about Indigenous dysfunction and criminality. DFV is primarily understood as a problem *within* Indigenous communities, even if it is seen as shaped by a broader experience of 'disadvantage' produced by colonisation. This framing of Indigenous people as responsible for their own suffering, and as more likely to engage in violent and criminal behaviour, is an unbroken, intensive form of racialised stereotyping that has been consistent since first occupation. It has always and continues to justify colonisation, the racialised production of harm and dispossession in this place. Most significantly, it serves to erase the settler perpetrators of this harm and leads to a refusal to accord Indigenous women the status of a legitimate victim. Instead, they are routinely ignored or mischaracterised as perpetrators. This leads to them being entrapped in a net of criminalisation which leads directly to incarceration, child removals and further DFV and state-based violence.

This is demonstrated with brutal clarity by the recent Queensland Sentencing Advisory Committee Report 'Engendering Justice', released during this Inquiry.[35] It found that the number of incarcerated women in Queensland increased by **339 percent** over the past 14 years. Of those, "Aboriginal and Torres Strait Islander women and girls were 7.7 times over-represented. Nearly half of all sentenced

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[33] Marina Trajkovich, *New taskforce to tackle youth crime in southeast Queensland,* 24 February 2022 <https://www.9news.com.au/national/new-task-force-to-tackle-youth-crime-in-southeast-queensland/3f513105-2328-40dd-a1f6-4f2c68a449e5> ; Stuart Layt, *LNP launches petition for youth bail laws to tackle north QLD crime,* May 31, 2021 <https://www.brisbanetimes.com.au/national/queensland/lnp-launches-petition-for-youth-bail-laws-to-tackle-north-qld-crime-20210530-p57wg6.html>

[34] Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch 'Carceral feminism and coercive control: When Indigenous women aren't seen as ideal victims, witnesses or women' The Conversation (online, 25 May 2021) <https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091>

[35] Queensland Sentencing Advisory Council, *Engendering justice: The sentencing of women and girls in Queensland,* August 2022, <https://www.sentencingcouncil.qld.gov.au/__data/assets/pdf_file/0008/735425/Sentencing-profile-on-womens-and-girls.pdf>

girls identified as Aboriginal and Torres Strait Islander (46.9%), compared to 29.9 per cent of sentenced women".

This carceral trend is intensifying as Queensland significantly maintains and expands its investment in police power and its pattern of low-level custodial sentencing. Key examples include:

- The introduction of the public nuisance charge in Queensland in 2004. Within a year of its introduction an Aboriginal man held on the charge died violently in custody.[36] Public order policing (which the CMC calls "policing 'the small stuff'") gives police and courts a significant degree of discretion; "it is police who make a judgment call about when to act and when not to act on the basis of the legislation [and] the courts to consider circumstances and apply the community standards of the day when determining whether particular behaviour constitutes an offence."[37]
    - Studies show that the proportion of Indigenous people charged in Queensland is between 25 and 30% of the total number of charges. The CMC found Indigenous people were 12.6 times more likely than non-Indigenous people to be charged with public nuisance[38]
    - Public nuisance sentencing was the leading cause of incarceration for Indigenous women in Queensland, with 23.4% of the total charges. In fact, public nuisance and 'justice and government' offenses such as contravening the directions of police officer account for **60.5 percent** of the huge number of incarcerated Indigenous women.

Table 6: Top 5 offences sentenced by age and Aboriginal and Torres Strait Islander status

Aboriginal and Torres Strait Islander women			Non-Indigenous women		
1	Public nuisance (Public order)	23.4%	19.2%	Possessing dangerous drugs (Drugs)	1
2	Contravene direction of police officer (Justice and government)	11.0%	17.3%	Possession of drug utensils (Drugs)	2
3	Breach of bail - failure to appear (Justice and government)	9.6%	12.5%	Shoplifting	3
4	Possession of liquor in restricted area (Public order)	8.5%	12.3%	Contravene direction of police officer (Justice and government)	4
5	Assault or obstruct police officer (Justice and government)	8.0%	10.3%	Stealing (Theft)	5

[36] Morreau, Paula --- "Policing Public Nuisance: The Legacy of Recent Events on Palm Island" [2007] IndigLawB 34; (2007) 6(28) Indigenous Law Bulletin 9
<http://www5.austlii.edu.au/au/journals/IndigLawB/2007/34.html>

[37] Crime and Misconduct Commission, *Policing Public Order,* 2008, <https://cabinet.qld.gov.au/documents/2008/jul/cmc%20review%20of%20public%20nuisance%20offence/attachments/36703001211161906459.pdf

[38] Ibid, p 38. See also: Walsh Submission to the Australian Law Reform Commission, "Aboriginal people are up to 12 times more likely to be charged with, or receive infringement notices for, public nuisance in Queensland. Often, these charges are based on allegations that the person said something that offended or insulted a police officer. In Queensland in 2014 alone, over 2000 infringement notices were issued for 'language offences directed at police officers'. Indeed, in the first ten years of the operation of the public nuisance offence in Queensland, approximately one quarter of all adults charged with public nuisance were Indigenous, and 40% of all children and young people charged with public nuisance were Indigenous. Therefore, young Indigenous people are up to 13 times more likely than their non-Indigenous counterparts to be charged with public nuisance in Queensland."
<https://www.alrc.gov.au/wpcontent/uploads/2019/08/51._assoc_prof_t_walsh.pdf>

- Almost 31-years after the Royal Commission into Aboriginal Deaths in Custody's (RCIADIC) final report, Queensland remains the only state or territory not to have adopted the report's recommendation to abolish public intoxication as a criminal offence.[39] It is the fourth most common reason that Aboriginal and Torres Strait Islander women are incarcerated, but does not make the top five reasons for non-Indigenous women.
- The Corrective Services Act 2006 (Qld) abolished a number of best-practice sentencing options which provided alternatives to full-time incarceration, including periodic detention, home detention, and gradual release.[40]
- In 2021 the Palaszczuk Labor government introduced 'tough new' Youth Justice reforms, which 'crack down on juvenile crime'. The Queensland Police Union was upfront that these reforms would specifically target Aboriginal and Torres Strait Islander children.[41]
    - "Queensland Police Assistant Commissioner Cheryl Scanlon said 738 children had been arrested, held in custody and brought before the court since April. "The legislation is taking effect the way we intended," Ms Scanlon told ABC Radio Brisbane"[42]
- Recently the state government, through the Women's Safety and Justice Taskforce, committed to criminalising coercive control despite the strong input from Indigenous women that this would disproportionately and negatively affect Indigenous women.[43] A DFV law which extends discretionary power to police to identify who is perpetrating DFV will lead to further criminalisation of Indigenous women, girls and gender diverse people. As we argued in a submission to this Taskforce, a "'Scottish style' broad offence with high conviction rates and a 'Queensland style' pipeline to incarceration would be a catastrophe for racialised and over policed communities."[44]

Finally, we observe that, since the formal end of the Protection regime in Queensland, police have become more rather than less central to colonial relations here. In an ongoing collaborative ARC funded project, Dr Strakosch is mapping Indigenous-settler governance practices over time. This map shows that when missions and reserves became self-governing Indigenous communities, that coincided with the year a police station began taking prisoners in those communities. That means that

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[39] Tony Keim, *QLS seeks reform of public intoxication laws,* 2022 <https://www.qlsproctor.com.au/2022/03/qls-seeks-reform-of-public-intoxication-laws/>

[40] Tamara Walsh (2019) *Submission to the Australian Law Reform Commission Inquiry into Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* <https://www.alrc.gov.au/wp-content/uploads/2019/08/51._assoc_prof_t_walsh.pdf>

[41] Kate McKenna and Chloe Chomicki, *Youth Justice review on Palaszczuk Government agenda,* 2 February 2021, <https://www.abc.net.au/news/2021-02-02/qld-police-union-calls-gps-tracking-repeat-juvenile-offenders/13108240>

[42] Lucy Stone and Rebecca Livingstone, *Queensland crackdown on serious youth crime 'working' police say,* 27 August 2021, <https://www.abc.net.au/news/2021-08-27/queensland-youth-crime-reform-data-revealed/100412328>

[43] Chelsea Watego, Alissa Macoun, David Singh and Elizabeth Strakosch 'Carceral feminism and coercive control: When Indigenous women aren't seen as ideal victims, witnesses or women' The Conversation (online, 25 May 2021) <https://theconversation.com/carceral-feminism-and-coercive-control-when-indigenous-women-arent-seen-as-ideal-victims-witnesses-or-women-161091>

[44]ICRR and Sisters Inside (2022) 'Let's Stop It At the Start' joint submission to the Commission of Inquiry into Queensland Police Service responses to domestic and family violence <https://static1.squarespace.com/static/5fd158df412849720ce27cbd/t/6216c78eea926d5b9209c926/1645660050321/The+State+as+Abuser.pdf

people who were effectively previously inmates of other types of carceral systems becoming incarcerated in prisons instead.[45]

QPS officers are aware of the conflictual nature of the relationship they have with First Nations peoples. Any Queensland police officer who has had an engagement with an Aboriginal or Torres Strait Islander community for any sustained period of time is aware of the term "triple C". They know what that means, and it reflects the reality of colonial and racialised policing in this state.

QPS and Indigenous women experiencing violence

Indigenous women experience the violent culture of misogyny that this Commission has heard about throughout this Inquiry through survivor statements and testimonies from Queensland police officers themselves. The QPS often do not believe and belittle women. However, because of the racialised nature of policing here there is a unique form of violence that Indigenous women experience as the result of the intersection of racial and gendered stereotypes.

We provided some stories from survivors themselves in our joint submission to the Inquiry with Sisters Inside.[46] Their stories demonstrate that Indigenous women not only are belittled or not believed, they are actively criminalised and cast as perpetrators. These are not isolated or aberrational cases. A 2017 review of domestic and family violence related deaths in Queensland found that almost half of the women killed had been identified as a respondent to a DFV protection order on at least one occasion. In the case of Aboriginal and Torres Strait Islander women, that number rose to 100% of deceased women recorded as "both respondent and aggrieved prior to their death."[47]

What this means is that, in the state of Queensland in that time period, not one Aboriginal and Torres Strait Islander women who died as a result of family violence was ever seen as an innocent victim.

There is a denial of the victimhood and testimony of Indigenous women, not just in their encounters with police but even the processes such as the Women's Safety Taskforce process. In order to counter this, here we reproduce two stories from our submission here.

Hannah, an Aboriginal woman also supported by Sisters Inside, was the victim of extensive domestic and family violence throughout her life, including sexual abuse by her father as a child and at the hands of two different intimate partners as an adult. She told us that in one instance where she had suffered serious physical violence at the hands of her ex-partner and his grandson, the police who attended the scene 'threw me down like I was some animal' with enough force that it 'broke my glasses'. She was then handcuffed before being transported to hospital. She was identified as the perpetrator: 'they took that side…they didn't even want to know what happened from me, my version'. Further, she told us that she wasn't allowed to have anyone see or talk to her in the watch house. She said this was just one of multiple occasions where she was 'abused by police': 'when you're black you got the bad ones; the officers that will treat you like nothing: throw you around, handcuff you tight, whisper in your ear…every chance they get with an Aboriginal person'. In the end, Hannah was incarcerated twice as a direct result of domestic violence relationships where she was the victim.*

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[45] Research paper under review with journal *Political Geography* as at 10 August 2022.

[46] ICRR and Sisters Inside (2022) 'Let's Stop It At the Start' joint submission to the Commission of Inquiry into Queensland Police Service responses to domestic and family violence <https://static1.squarespace.com/static/5fd158df412849720ce27cbd/t/6216c78eea926d5b9209c926/1645660050321/The+State+as+Abuser.pdf>

[47] Queensland Government, 'Domestic and Family Violence Death Review and Advisory Board - Annual Report 2016-2017 (courts.qld.gov.au)' (2017).

Samantha* – "*When the relationship broke down he came to collect his things and was physically violent towards me, he held me against a wall with one hand around my throat, and one arm across my body and arm. My sister was there and so was his friend. My sister called the police and they made me give him his property but did not provide any protection to me. The police told me that it was all sorted and that he was not pressing charges. I was shocked and told them that he had attacked me. They dismissed me and left. Two days later he was still sending my abusive texts and bruising had come up all over my neck and arms so I returned to the police to press charges and get a protection order. I showed the police woman the messages, and she advised there was little she could do as the officers who came after the assault had listed me as the aggressor as he had told them I had refused him access to my apartment to collect his things and that I had been to prison. As she looked at the extremely visible bruising across my neck she told me that it was his word against mine, and that I had been in prison and he had no criminal history. If he pressed charges also it may affect my suspended sentence. She advised that they could not do anything further. I will never go back to the police for help again. The police have shown that they do not believe me because of my criminal history.*"

We note the reality that, throughout the legal system, criminalised women are overwhelmingly the victims and survivors of abuse. For example:

- Up to 98% of women prisoners had experienced physical abuse;
- Over 70% have lived with domestic and family violence (DFV);
- Up to 90% have experienced sexual violence; and
- Up to 90% have survived childhood sexual assault.[48]

This perception that Indigenous women are complicit in the violence that they experience occurs not just in life but in death. We have done confidential work relating to cases of missing and murdered Indigenous women and found that even in death Indigenous women are not deemed worthy of proper investigation. This widespread policing practice has led to the current crisis of missing and murdered Indigenous women, girls and gender diverse people, resulting in the Senate's announcement of a national inquiry.[49]

The highly regarded Canadian Inquiry into Missing and Murdered Indigenous Women and Girls collected extensive evidence over several years.[50] It found that Indigenous women are more likely to go missing and remain missing, both because they are subject to higher levels of violence when all other factors are controlled for, and because the police are less likely to fully investigate their disappearance. Testimony collected from the families of missing Indigenous women in Canada show a devastating pattern of this police disregard and inaction, based on stereotypical assumptions about these women as wandering off, drunk, partying, engaged in sex work or otherwise to blame for their

[48] Human Rights Law Centre & Change the Record, *Over-represented and Overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (2017) 13,17; Stathopoulos, M. & Quadara, A., *Women as Offenders, Women as Victims: The role of corrections in supporting women with histories of sexual abuse*, (Women's Advisory Council of Corrective Services, 2014); D Kilroy, *Women in Prison in Australia* (Presentation to National Judicial College of Australia and ANU College of Law, 2016).

[49] Missing and Murdered First Nations Women and Children (2022) <https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Missingmurderedwomen

[50] *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*; Home Page - Final Report | MMIWG (mmiwg-ffada.ca).

own disappearance. Often, the families were left searching for their loved ones themselves, while police told them that their family members had probably just run away.

The National Inquiry found that stereotypes and victim blaming served to slow down or to impede investigations into Aboriginal women's disappearances or deaths. The assumption that these women were "drunks," "runaways out partying," or "prostitutes unworthy of follow-up" characterized many interactions, and contributed to an even greater loss of trust in the police and in related agencies."[51] There is an automatic assumption that Indigenous women are engaged in criminal behaviour, resulting in excessive use of force by police officers, higher contact, arrest, prosecution and conviction rates, sexual harassment and assault by police officers, and a reluctance to see these women as genuine victims.[52]

Overall, brutal police responses to Indigenous victims of DFV are the product of intersecting racial and gendered stereotypes. They create a uniquely violent reality for Indigenous women, girls and gender diverse people in this place. These women are positioned as unworthy of full victimhood, as sexually violable and as perpetrators rather than victims of violence. This means they bear the brunt of police violence, and of other forms of violence which police ignore or validate. The result is a **culture of fear** for Indigenous women, girls and gender diverse people, and a **culture of impunity** for those perpetrating violence against them. These cultures produce the distressing realities of DFV harms in First Nations communities, and only fundamentally shifting the structures that produce them will change DFV rates.

Section 3: Pathways Beyond Justice Reinvestment

5. *What would a culturally appropriate/safe/respectful/intelligent police response to domestic and family violence look like?*
6. *Can addressing/ focusing on police responses without addressing other continuing effects of colonisation on First Nations people adequately address domestic and family violence for First Nations people?*
7. *What is required to adequately and holistically address continuing effects of colonisation, including whether a community led justice reinvestment type model could work?*

Ineffectiveness of police training programs

Dr David Singh, an author of this report, has experience codesigning and implementing anti-racist training for the Metropolitan Police in London, and formally liaising with the force on behalf of municipal authorities. The Macpherson Report, produced after an inquiry into the racially motivated murder of a Black British teenager Stephen Lawrence[53], recommended a raft of changes with performance indicators to 'restore public confidence' in the Met. This included the use of co-responders – non-police family liaison officers who were connected to 'local ethnic communities'. It also introduced system wide 'racism awareness and valuing cultural diversity' training. Anti-racism training was later made mandatory as part of 'general training', but police racism remains a concern, not least within racialised communities.

The Macpherson Inquiry, and many others like it, introduce at their conclusion a raft of recommendations which seek to better professionalise the Police. However, especially in relation to anti-racism training, these recommendations are unevenly applied and implemented, and those that are implemented are not sustainably funded and rarely exist beyond a few years. Initiatives such as

[51] Ibid p649.
[52] Ibid p632-633.
[53] BBC News, Lawrence: Key recommendations, 24 March 1999 <http://news.bbc.co.uk/1/hi/uk/285537.stm>

training that encompass race and gender are normally the first to go in any cost-cutting exercise or austerity push, especially after the full scrutiny of a particular inquiry has passed.

Dr Singh's work with Metropolitan Police in developing joint training with local divisions had mixed results. On the one hand, senior police officers embraced the training as a measure of their anti-racist commitment. On the other hand, rank and file officers pushed back, and negative community encounters with the police continued unabated.

The Macpherson inquiry into the murder of Stephen Lawrence proposed a definition of institutional racism which public bodies accepted, including police forces throughout the country. Action plans to address institutional racism duly followed but these fell into abeyance some years after the inquiry. Remedial measures were felt to be no longer appropriate as 'lessons had been learnt'. Regardless of how the police felt about their continuous improvement, it should be stressed that the communities that Dr Singh worked with in West and East London were not looking for better professionalisation, but greater police accountability, and this was not delivered through the recommendations of the many inquiries they sat patiently through.

Additionally, while the Met is often regarded as 'best practice' in relation to community policing, having long engaged in anti-racism and gender-based training and reform process, it has recently been rocked by a series of scandals showing the extent of ongoing violent racism and sexism, including an incident where police officers photographed the bodies of two murdered black women and shared these on a social media group. [54] Senior officers have this year admitted racism remains a major problem in the Metropolitan Police. [55] Presently the force is 'on special measures' following concerns expressed by the Policing Inspectorate. The Commission will note parallels to social media based racism and sexism issues in the QPS.

Therefore, we suggest, there is a negligible impact in attempts to better professionalise the police. On the one hand, training is put in place, but on the other hand this accompanies an increase in police powers, and oversaturation of policing in marginal areas. This is seen in the increase in QPS powers that disproportionately target Indigenous and racialised communities, discussed in the previous section.

The reality is that you cannot 'retrain' or culture shift police out of racism in a context in which they are central to enforcing racial order. In Australia, the QPS is much more directly and recently involved in mass murder, dispossession, forced child removals and assault. Any attempts to soften policing through retraining, women's police stations, justice reinvestment within the state or codes of conduct will only legitimise the function of police in perpetrating violence towards First Nations communities.

Defunding police and funding communities

Given the reality of the violent relationship between the QPS and Indigenous people, they must be defunded and deauthorised in relation to DFV. This is not a radical solution, although some may find the language confronting. We share with others in this Inquiry a concern about finding a non-violent approach to addressing violence, and therefore reject policing-based solutions which only increase violence overall. The QPS have shown that they are not able to deliver this non-violent approach. Given that police are perpetrators rather than protectors of Indigenous women, girls and gender

[54] Vikram Dodd, Met officers joked about raping women, police watchdog reveals, The Guardian, 2 February 2022 <https://www.theguardian.com/uk-news/2022/feb/01/met-officers-joked-raping-women-police-watchdog-racist>

[55] Sima Kotecha, Met Police: Some officers are racist, professional standards chief admits, BBC News, 15 February 2022 <https://www.bbc.com/news/uk-60379131>

diverse people experiencing DFV, removing police removes a perpetrator from an abusive situation. We would not ask a DFV victim to stay in a relationship with their abuser, but offer that abuser better training and hope for improvement. Similarly, we must protect victims and survivors of DFV by protecting them from the ongoing abuse, violence, criminalisation and entrapment that they experience in interactions with the QPS.

There may appear to be a contradiction between those talking about the lack of police response to domestic violence and those talking about the over-policing and the criminalisation of Indigenous women. However, in our understanding this is not a contradiction but part of the same violent structure. **The under-policing and over-policing of particular types of experiences by Indigenous women all relate to the fact that their status as genuine victims is devalued. They are over-policed as perpetrators but under-policed as victims.** Therefore, when considering the problem of police disregard for DFV, more police powers, attention and resources will not address this. It will only intensify the problem.

Communities are looking for meaningful responses, and in the absence of those are finding their own. Given that police have long failed Indigenous peoples and communities, Indigenous communities and community-controlled organisations have had to find ways to respond to family violence. They recognise that a police response to what is effectively a social problem does not prevent or solve the issue of family violence. Survivors of family violence who we have spoken to indicate that there are very tangible things they are seeking to secure their safety. These things are not greater enforcement, criminalisation and incarceration, but instead focus on social support to build a safe future for themselves and their families, and finding security from and treatment options for those that have harmed them. Examples of such concrete supports include resources to for secure new rental properties when leaving a violent situation, getting paid leave when they have experienced a violent attack and have no leave at their job, and connecting with support services and others in their community in similar situations. Indigenous women who are survivors/victims of violence do not necessarily want perpetrators incarcerated for a short period of time, because they know these men return to neighbourhoods and communities more violent because of their experience of the violence of incarceration.

Critically, Indigenous women know that becoming involved with police in DFV situations often directly leads to their families being flagged with child protection authorities, and exposes them to the devastating prospect of having their children taken away.[56] This is a major reason that they do not call police. Therefore, giving increased authority to state social agencies is not a solution – these state agencies have long been part of colonial and racial control of Indigenous communities. Justice reinvestment which only moves resources *within the state* is perpetuating the problem. Instead, real change can only come from looking to the Aboriginal and Torres Strait Islander community controlled sector, which already deals with DFV in non-violent, supportive and culturally appropriate ways, without secure funding or recognition.

Our proposed solution aligns with some of the suggestions put by others to this inquiry, which focus on authorising community organisations to respond directly to DFV incidents. However, these

[56] Emma Buxton-Namisnyk, Domestic Violence Policing of First Nations Women in Australia: 'Settler' Frameworks, Consequential Harms and the Promise of Meaningful Self-Determination, *The British Journal of Criminology*, 2021;, azab103, https://doi.org/10.1093/bjc/azab103; Cunneen, C. and Libesman, T. (2000), Postcolonial trauma: the contemporary removal of Indigenous children and youth people from their families in Australia. Australian Journal of Social Issues, 35: 99-115. https://doi.org/10.1002/j.1839-4655.2000.tb01088.x

proposed solutions often do not take account of the structures of funding and authority that would prevent such a solution being rolled out in a systematic way.

Authorising non-violent community-based responses to DFV means going beyond pockets of best practice or appealing proposals without major structural reform. The shift to community responses must be considered in relation to two major factors:

- The massive expansion in police powers and authority over the past decades in Queensland, which has directly resulted in the unacceptable rates of incarceration of all Indigenous people, but especially women and girls (discussed in detail in the previous section).
- The chronic and worsening defunding of the Aboriginal and Torres Strait Islander community controlled sector over the past twenty years.

Funding and authorising community responses requires addressing and changing both these dynamics over the whole state of Queensland. ACCOs cannot be asked to respond to DFV without secure, systematic funding and recognition of their authority. Doing this ***is*** defunding and deauthorising police; our proposed solution therefore builds upon those suggested by others to the Inquiry.

We share the concern about solving the problem of violence in our community. The challenging part is getting the State to imagine what a non-violent response to violence might look like, as it struggles to see beyond solutions that involve increasing its own authority in terms of its relationship with Indigenous people.

The need to systematically fund Aboriginal and Torres Strait Islander community control

The Aboriginal and Torres Strait Islander community-controlled sector (ACCS) refers to those organisations who are run by Indigenous communities themselves, with majority Indigenous boards and accountability to specific local communities. We are not referring to Indigenous service delivery organisations such as Aboriginal & Torres Strait Islander medical services, legal services and kindergartens/pre-schools, or to mainstream services with Indigenous-specific service units.

Our current research project funded by the Australian Institute of Aboriginal and Torres Strait Islander Studies (AIATSIS)[57] focuses on the strength and sovereignty exercised by these organisations. They deliver for their communities in ways that are accountable and go far beyond the specific services they may hold grants to deliver. However, these organisations struggle in the context of systematic defunding over the past twenty years, and a heavy burden of government scrutiny and micromanagement.

Since the formal end of the self-determination policy era, and the abolition of the Aboriginal and Torres Strait Islander Commission (ATSIC) in 2004, federal and state Indigenous policy has been focused on 'mainstreaming' services to communities. This shift directly targeted and sought to undermine the role of the ACCS:

"The Prime Minister's first press conference [on the move to mainstreaming] was called to announce an audit of all organisations funded by ATSIC. After two terms in office they were still a clear target of Minister Vanstone's comments in a speech at the National Press Club, where she said: The history of these [Indigenous] services is that they've been provided through Indigenous organisations. Some do a tremendous job but there has been waste, there has been corruption and that means service

[57] Still Here — Institute for Collaborative Race Research (icrr.com.au)

provision hasn't been what it should be. If we continue to regard these organisations as untouchable and unaccountable we are failing our Indigenous citizens yet again. (Vanstone 2005)".[58]

Since then, the burden of government distrust and scrutiny has increased. "While the Indigenous sector which underpins Aboriginal and Torres Strait Islander development is largely unacknowledged, it is paradoxically over-regulated (see Dwyer et al. 2009, Sullivan 2009). Regulation takes two forms. There are rules imposed by the legislation that an organisation incorporates under, and there are conditions imposed by the various sources of an organisation's funding."[59] Grants are small, short terms, do not provide operational funding and involve onerous reporting requirements.[60]

> *New public management reforms have led to an increase in the number of small-scale, limited duration and narrowly targeted grants. A 2012 audit by the ANAO (2012a:32) on Capacity development for Indigenous services delivery underscored the sheer number of small, short-term grants awarded to Indigenous organisations. The 3 largest Commonwealth Government departments administered more than 2,000 funding agreements to more than 900 Indigenous organisations through 2010–11. The average duration of these grants was 15 months (ANAO 2012a). The 820 Indigenous organisations funded under just one grant system were required to submit 20,671 performance, financial and acquittal reports during this period (ANAO 2012a). FaHCSIA funded the largest number of organisations, and more than half of these grants were less than $55,000 in value, and many were for less than $1,000* (Funding Indigenous Organisations)

In 2014, the Abbott government introduced the Indigenous Advancement Strategy. This program centralised all Indigenous specific Federal grants within the Department of Prime Minister and Cabinet and required all organisations to competitively retender simultaneously. It also cut $534 million from the Indigenous budget. "Comprehensive Senate and ANAO reviews of the IAS process found it 'deeply flawed', with ad hoc decision making, unrealistic timelines, major shifts of funding to large non-Indigenous corporations, loss of many effective community programs and no community consultation (ANAO 2017, Senate 2016). In particular, the Senate review found that the IAS has had a significant negative effect on community capacity and… failed to 'give weighting to the contribution and effectiveness of Aboriginal and Torres Strait Islander organisations to provide to their community beyond the service they are directly contracted to provide' (Senate 2016, vii)."[61]

There was a sharp decrease in funding to ACCOs: "The Issues Paper demonstrates that mainstream organisations are being funded instead of ACCOs, stating that in 2015-16, 82% of government

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[58] Desert Knowledge CRC, (2010) Working paper 737, <http://www.nintione.com.au/resource/DKCRC-Working-paper-73_Indigenous-sector-oganisations.pdf>

[59] Ibid

[60] "Governments tend to over-emphasise 'risk and uncertainty' and respond by measures that reduce local discretion, centralising decision-making authority and accountability. Due in part to the application of contestability principles, public finances in remote Indigenous contexts have generally become fragmented and unstable, leading at times to considerable duplication and administrative burden. This can divert limited resources and talents available to Indigenous organisations away from delivery of outcomes to their constituency" Funding Indigenous organisations: improving governance performance through innovations in public finance management in remote Australia (full publication; 15 Oct 2014 edition) (AIHW Closing the Gap Clearinghouse)

[61] Strakosch, 'The Technical is Political' Australian Journal of Political Science

expenditure on Aboriginal and Torres Strait Islander people went to mainstream services, with the remaining 18% funding Indigenous specific services. This means that $4 of every $5 of Indigenous Expenditure is going to non-Indigenous organisations."[62]

Finding non-violent, community-based solutions to DFV requires securely funding and recognising the authority of the ACCS. Indigenous families and communities are already involved in responding to DFV in the absence and violence of current police responses. The Commission should examine existing successful Indigenous led models responding to DFV, and resource and authorise these in a formal structured way.

While the state asks for and receives more police officers and resources, Indigenous families and communities carry the burden of not only police failings but the subsequent violence that they experience in this process of engaging with police. *Strong Women Talking* is an excellent example of an Indigenous community-controlled organisation that is survivor led and victim centred. They identify the reality that when Indigenous women seek to leave an abusive relationship that they must counter the violence that they experience through seeking help from the state - from the police through to the social services sector with the risks of losing their children after having reported an experience of violence. Small pockets of Indigenous organisations are already navigating the various layers of violence that Indigenous women experience in the course of seeking safety for their families. These organisations are the true 'best practice' in DFV responses. In looking to these organisations, the Commission can find models for non-violent DFV support that will benefit all women, girls and gender diverse people.

Overall, more oversight, surveillance, training, information, statistics, laws, police powers, women officers, Indigenous liaisons, welfare quarantining – in short, more and better state authority – is always seen as the solution to harm experienced by Indigenous people. As noted above, the state generally positions Indigenous peoples as responsible for their own suffering. Even when the state identifies its own part in causing harm, its solution is still the extension of the very powers that precipitated that harm. There is never a questioning of the value of intrusive state ordering of Indigenous lives.

Recommendations

1. **Defund and deauthorise the QPS in relation to DFV**
    a) Evaluate all potential solutions and recommendations against the following criteria: *Does it expand the authority of the police and state over women's lives, especially over the lives of First Nations women and communities? Does it increase the resources allocated to police in the name of that authority?* If the answer is yes, the proposal will reproduce and increase violence.
    b) Reform legislation that leads directly to the incarceration of Indigenous women, girls and gender diverse people who experience violence. This must include changing or abolishing public nuisance laws, the use of the charge of 'contravening the direction of a police officer' or obstructing police (the most common reason that Indigenous women are

[62] NATSILS, Submission to the Productivity Commission Issues Paper – 2019: Indigenous Evaluation Strategy, <https://www.pc.gov.au/__data/assets/pdf_file/0006/245373/sub097-indigenous-evaluation.pdf>

incarcerated in Queensland) and the practice of incarceration for bail violations. These changes alone would prevent 52% of custodial sentences for Indigenous women.[63]

c) Examine in depth the historical and contemporary relationship between the QPS and First Nations communities in Queensland. Fundamental change can only come when this violent relationship is fully acknowledged and commitments are made to change the model of policing through control.

2. **Fully fund and recognise the authority of the Aboriginal and Torres Strait Islander Community Controlled Sector (ACCS) in relation to DFV**

a) Conduct a full audit of current State funding to the ACCS. This needs to cover social funding provided by the *Department of Communities, Housing and Digital Economy* and *Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships* to ACCOs, covering community support, housing funding, family support programs, disability support and other social programs. How much of this money is going to ACCOs, and how much to mainstream organisations such as sports clubs and church social service corporations? Funding for government programs, especially in the area of justice (for example, Murri Courts), are not an alternative to funding Indigenous community control. The criteria for assessing this funding level must be only counting funding to organisations that are Indigenous controlled and accountable to their community.

b) Securely and fully fund the sector, beginning with ACCOs that are specifically supporting victims of DFV.

c) Take action to break the links between QPS intervention into DFV and child removal practices, to ensure that Indigenous children stay with their families. Reporting DFV should never expose a victim to the trauma of forcible child removal. This is crucial to building any level of trust between Indigenous communities and the QPS in relation to DFV responses.

The issue is the fundamental role of police in Australia's settler colonial society. Until this can be changed, and a form of policing based on consent rather than coercion be developed, it is far better that police are defunded and deauthorised. They only increase racial and gendered violence for First Nations communities.

Even when animated by apparent concern for Black victims, the state's solution is always the extension of its own powers – the very powers that precipitated harm. We urge the Commission to reflect on this fundamentally violent dynamic, and to refuse its part in continuing to extend police authority in the name of better 'caring for' and controlling Indigenous lives. Instead, we point to the need to systematically refund the Aboriginal Community Controlled Sector (ACCS) and support existing Indigenous community responses to DFV. The ACCS is already providing alternative non-violent responses to DFV, and the Commission need only look to its work to find models for best practice DFV responses and prevention for all women.

[63] Lorena Allam, *Number of women sentenced to jail in QLD jumped 338% with a third being Indigenous,* The Guardian, 17 August 2022 <https://www.theguardian.com/australia-news/2022/aug/17/number-of-women-sentenced-to-jail-in-queensland-jumped-338-with-a-third-being-indigenous>

Appendix A: Expertise of ICRR

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TRANSCRIPT OF PROCEEDINGS

INDEPENDENT COMMISSION OF INQUIRY INTO QUEENSLAND POLICE SERVICE RESPONSES TO DOMESTIC AND FAMILY VIOLENCE

COMMISSIONER: HER HONOUR JUDGE DEBORAH RICHARDS

COUNSEL ASSISTING: RUTH O'GORMAN QC

ANNA CAPPELLANO

Land Court of Queensland, Brisbane Magistrates Court,
Level 8/362 George Street, Brisbane.

Friday, 5 August 2022

COMMISSIONER: Yes.

MS O'GORMAN: Good morning, Commissioner. I do have a tender bundle to tender, but I need to add a couple of documents into it. So I might do that at the end of the evidence this morning.

COMMISSIONER: Sure.

MS O'GORMAN: There are three witnesses giving evidence this morning from the Institute for Collaborative Race Research, and it's intended that they will all be giving evidence at the one time. Those witnesses are here, and we're ready to proceed. So I call Professor Watego, Dr Singh and Dr Strakosch.

<DAVID SINGH, affirmed:

<CHELSEA WATEGO, affirmed:

<ELIZABETH STRAKOSCH, affirmed:

<EXAMINATION BY MS O'GORMAN:

MS O'GORMAN: Professor Watego, Dr Singh and Dr Strakosch, each of you are directors and principal researchers at the Institute for Collaborative Race Research.

DR STRAKOSCH: That's right.

MS O'GORMAN: Your submission to the Commission, which was done in collaboration with Sisters Inside, was provided to us on 13 July 2022; that's correct, isn't it?

DR SINGH: Yes.

MS O'GORMAN: It sets out the purposes and focuses of the institute and the work that it does and that each of you contribute to?

DR STRAKOSCH: Yes.

MS O'GORMAN: All right. In terms of your own individual background, Dr Singh, you're a race scholar with qualifications in bachelor of arts, master of arts and PhD in literature.

DR SINGH: Yes.

MS O'GORMAN: Professor Watego, you are a researcher in the areas of race, racism and Indigenist health humanities; you have qualifications which include a bachelor of applied health science, honours in applied health science and a PhD in public health.

PROF. WATEGO: That is correct.

MS O'GORMAN: And, Dr Strakosch, you have conducted research over a long period of time which has focused on Indigenous policy, colonialism, political relationships, bureaucracy and new public management?

DR STRAKOSCH: That's right.

MS O'GORMAN: Your qualifications include a bachelor of arts, honours in political science and a PhD in political science?

DR STRAKOSCH: Yes.

MS O'GORMAN: Further to receiving the submission from your institute, we have asked that you provide us with an expert report further addressing some of the matters that you raise in your submission. We've also sent you ahead of this morning seven questions that we would ask that you are able to address this morning to help inform the Commission about some of the matters within your particular areas of interest. I'm going to move through those questions in turn, and it's totally a matter for the three of you as to which one of you would like to take the lead in answering any of those questions.

The first question that we have posed to you is: in what ways are the continuing effects of colonisation being experienced by First Nations people?

DR STRAKOSCH: I might respond to this. My area of research has covered comparative colonialisms. So we wanted to, with your indulgence, spend just a few minutes explaining our understanding of colonisation based on the political science and sociological literature because that really informs when we talk about the different relationships between the Queensland Police Service and non-Indigenous people and the Queensland Police Service and

Indigenous people. It's really based on our understanding of colonialism, how that connects to race and the ways in which it's ongoing today.

So what we want to highlight is and what I have looked at in my research is Australia as a settler colony. This is a particular type of colonial environment. There are four English-speaking settler colonies - Australia, New Zealand, Canada and the US - and there's a distinction that's often made between settler colonies and extractive or conventional colonies. So conventional colonies, we might think of India or Africa, where a minority of colonisers from Europe come to exploit the resources and the labour of Indigenous people and their land. Most of those extractive colonies have decolonised structurally after the Second World War.

But there is another type of colonisation that's known as settler colonisation, in which a majority of colonisers come to stay in a place. They come to stay to replace Indigenous people on their land and to establish a new political society and occupy that land. Now, most settler colonies have not decolonised. There has not been a moment of kind of institutional break or reformation so we can meaningfully say that settler colonialism is an ongoing relationship. The questions of jurisdiction, of land ownership are very much live and unresolved.

That is the case in all of the four settler colonies that I talked about. However, Australia has a particular history which gives it a particular inflection especially around race. In the other settler colonies, colonists recognised the political sovereignty and/or landownership of Indigenous people. That meant they proceeded through colonisation - they still colonised. They proceeded by treaties or conquest or other forms of kind of taking political - what they saw as taking political control.

In Australia, based on a racial assessment of Indigenous people as so inferior that they did not possess either landownership or political sovereignty, Australia was colonised on the basis of settlement; that is, just the wholesale occupation of this place. In the absence of political life here, that remains the legal justification for the Australian State today. Even though landownership has been contested by the High Court and some changes have been made, the High Court has been very clear that it is

not able to make decisions on the question of Indigenous sovereignty because that would potentially fracture the legal skeleton of the Australian State and would call into question its own authority.

So when we talk about colonialism and racism in Australia we mean this in a very real sense, that there is a structural conflict that's ongoing and that the Australian State itself still rests on a legal justification that is based on an assessment of the inferiority of Indigenous people as so savage that they do not have political institutions.

This, we would suggest, is one of the reasons that it's quite difficult to talk about race in Australia, because it's very much bound up with live political questions, but it's also one of the reasons we talk about the Queensland Police Service as having a particular relationship with Indigenous people, because it has been one of the instruments on the frontline of that process of colonisation and dispossession.

MS O'GORMAN: Can I ask you then --

COMMISSIONER: Sorry, can I just ask one thing from that. When you talk about Queensland Police I take it you mean really it's all police or is it particularly Queensland?

DR STRAKOSCH: I do intend to address that in the second question.

COMMISSIONER: Okay.

DR STRAKOSCH: It is all police, but it is also Queensland Police specifically.

MS O'GORMAN: And that leads me to that question. Are you able then to explain the role of policing more specifically in relation to colonisation?

DR STRAKOSCH: Yes, definitely. So Queensland has a particular colonial history. It's quite intense. It's quite violent. The pearling and the opium industries were particularly violent and caught up with Indigenous people and their exploitation.

The earliest police in Queensland were the Queensland

Native Mounted Police. They were established here in 1864. Henry Reynolds, who is an historian, has called them the most violent organisation in Australian history. Their specific task was to disperse native camps, including mass murder and including sort of the dispossession and moving on of Indigenous people from their land so that it could be occupied by white settlement.

This is not a history that's been disavowed by the contemporary Queensland Police Service. In 1964 at the centenary of the establishment of the QPS a senior police officer said, "Walker [who was the original lieutenant of the Mounted Police] and his Force soon established themselves. He tamed the natives, saved the whites, and made the country comparatively safe."

"The Native Mounted Police had certain privileges. Its officers could, and frequently did, transfer to the [main] Queensland Police Force without loss of rank. Its officers were chosen from men whose qualifications were supposed to be education, breeding, knowledge of drill and firearms, and ability to handle natives."

This period of frontier violence was burning itself out by about 1910, and native police camps were moving northwards. The native police then started operating much more intensely in the Northern Territory after 1910 where dispossession was still live.

But in Queensland we, if you like, pioneered another regime of racial control here that is very well known historically around the world and that is the protection legislation, the Aboriginal Protection and Sale of Opium Act 1897, which is an extremely draconian set of rules that govern every aspect of Indigenous people's lives, including if they could marry, where they could live, if they could keep their children, where they could work. The money from their work was taken by the government and often not given back. This is the stolen wages case that we talk about. They were overseen by a chief protector in Brisbane but by local protectors in regional areas, and the local protector was usually the police, the leading policeman in the area.

So that means right up until '50s, '60s in Queensland up until the '80s, because we did not dismantle protection legislation under Joh Bjelke-Petersen fully until the '80s, in fact there is a famous quote from Rowland, who is an

historian, who says in the '80s you could be arrested in Queensland either for committing a crime or for being Aboriginal and you could be removed to any mission.

So what that means is police were often directly involved in catching escapees from missions, they were directly involved in removing children from their families, and enforcing people to go to work in often very violent and sexually violent situations.

So one other thing we would just like to mention quite quickly is that there's a particularly history of sexual violence in relation to Indigenous women all over Australia. It's quite intense in Queensland and there's a lot of documentation from here about that. Mass sexual abuse of women, rape and murder was very common on the frontier, including capturing Aboriginal women and taking them to stations. The police were often complicit in that. The police didn't act. There's a great deal of evidence for that. In several cases police were accused and/or prosecuted for killing Aboriginal women but they were never convicted. It was seen as an accident or there was assumption of the good intent of these police officers.

So when we say that there is a particular relationship between the Queensland Police Service and Indigenous people we mean it in a very tangible sense. We mean it's ongoing, it's structural, and racism is foundational to it. The way that the Queensland Police Service polices for settlers is by content, but the way it has policed Indigenous people has always been through control, and that is for political purposes as we've outlined here.

MS O'GORMAN: Building on that then, can you explain for us the ways in which the continuing effects of colonisation contribute to one of the matters that we're tasked to look at, which is the over-representation of First Nations people in the criminal legal system today?

PROF. WATEGO: Yes, so I think if we look at the current context, particularly here in the state of Queensland, the violent relationship and the one of control over Indigenous peoples is evidenced in a range of legislative changes --

COMMISSIONER: Can I just interrupt you for a second. So this is Professor Watego speaking now.

PROF. WATEGO: Yes.

COMMISSIONER: If you can just identify yourself just for the record when you speak.

PROF. WATEGO: Sure. So if we look at, for instance, the introduction of the public nuisance charge here in the state of Queensland, which was directed at Aboriginal and Torres Strait Islander people in Far North Queensland quite explicitly so, it's no surprise that within one year of its introduction an Aboriginal man dies in custody.

We saw with the more recent youth justice reforms the Queensland Police Service Union were very clear that they were targeting Indigenous children. We've also seen with this conversation around criminalising coercive control we know that Indigenous women are going to be disproportionately affected, yet the State has continued on with the calls to criminalise coercive control. This is despite the evidence put before the Royal Commission into Aboriginal Deaths in Custody, where a recommendation was made to reduce the ways in which Indigenous peoples become incarcerated to prevent deaths in custody. What we've seen is an expansion of police powers despite the evidence base that Indigenous people are disproportionately affected and that relationship is still a very violent one in a very tangible sense.

Last year we were invited to give an expert report to the Queensland Sentencing Advisory Committee to explain the overrepresentation of Indigenous people, and particularly Indigenous women, on assaults against first responders. They didn't understand how that came about, and so we looked at the relationship between first responders, from police to ambulance officers, in its historical context, and we found cases of police-assisted leprosy raids, the nature of relationships of policing on Boundary Street here in the City of Brisbane, to contemporary examples that were on the public record where there had been allegations of assaults against public officers by Indigenous peoples, yet in those cases many were found to have been false claims and in fact the police were the instigators of violence. So we were able to conclude that the overrepresentation may be a result of this violent relationship that the police and Indigenous peoples have always experienced.

I think it's important to recognise that this is just

not some abstract theorising. Any Queensland police officer who has had an engagement with an Aboriginal or Torres Strait Islander community for any sustained period of time is aware of the term "triple C". They know what that means, and it's a very succinct articulation of the role of police today in this country, particularly in the state of Queensland.

DR STRAKOSCH: Yes, so I just wanted to follow up that too by just highlighting the fact that when we talk about colonisation as continuing this is really evidenced in the rising incarceration rates in the last 30 years. So not only since the Royal Commission have they not decreased, as the Commission recommended; they have actually increased. As part of an ARC-funded mapping project which maps Indigenous-settler colonial relationships in Australia what we saw was that at the end of the protection era, around the 60s, when missions and reserves became self-governing communities, that coincided with the establishment of a police station in those communities and we saw people who were effectively previously inmates of other types of carceral systems, of missions and reserves, more and more becoming incarcerated in prisons, so being moved to different types of incarceration, and the police becoming more central rather than less central to the violent relationship of colonisation.

MS O'GORMAN: Some of the evidence that the Commission has heard to date has included evidence of negative attitudes being held by members of the Queensland Police Service towards the issue of domestic and family violence generally. Are you in a position to offer your views about how those kinds of attitudes would impact upon Indigenous women and girls uniquely?

PROF. WATEGO: Certainly. I think most definitely Indigenous women experience the violent culture of misogyny that this Commission has heard in terms of survivor statements as well as the testimonies from Queensland police officers themselves about not being believed and being belittled. What we argue, though, because of the racialised nature of policing with Indigenous peoples and the intersection of being negatively racialised and gendered that there is a unique form of violence that Indigenous women experience, of which we provided some of those accounts in the joint submission to Sisters Inside.

So how this plays out for Indigenous women is not only are they not believed or they're belittled; what we're seeing is that Indigenous women are cast as perpetrators, as victims of violence, and there was - I think it was a 2017 study looking at deaths - family violence related deaths in the state of Queensland and found that up to 50 per cent of those who had died as a result of family violence had been named as a respondent on a domestic and family violence order.

When they looked specifically at Indigenous women, 100 per cent had been named as a respondent prior to their death. So, if you think about it, in the state of Queensland not one Aboriginal and Torres Strait Islander women who died as a result of family violence was ever seen as an innocent victim. So we see the denial of victimhood of Indigenous women, not just in their encounters with police but even sometimes through the processes, certainly through the Women's Safety Taskforce process, in terms of not believing their accounts and dismissing them. That's I guess - we really draw attention in our submission to the testimonies of Indigenous women as well as the statistical accounts that confirm what they're saying. The evidence is very clear that Indigenous women experience a unique form of violence.

I think the other thing we need think about also is if we look at some of those testimonies we have the perceived criminality of Indigenous women weaponised against them as a way to deny them victimhood, and certainly I think Hannah and Samantha's stories in our submission speak to that. What's troubling here is that, if you look at women in prison, over 90 per cent have experienced some form of abuse. If we look at Indigenous - look at children in detention, close to 100 per cent have experienced some sort of sexual assault. So at no point in their lifecycle are Indigenous women ever considered victims of violence, are always criminalised, and that's our concern about police responses particularly to Indigenous women as victims of violence, is they're never seen as a victim in need of care or protection, which is one thing, but they're framed as perpetrators and all complicit in the violence that they experience.

We see it not just in life but also in death. So work that we've undertaken in informing coronial inquiries about missing and murdered Indigenous women, and this is not just

unique to Queensland, though we have looked at Queensland Police Service cases, is that even in death Indigenous women are not deemed worthy enough for proper investigation, hence the Senate's announcement of an inquiry into missing and murdered Indigenous women in this country, because the failure of police to properly interrogate what has happened. So even in death Indigenous women are denied victimhood in this country.

DR STRAKOSCH: Just to add on to that quickly, in doing a lot of that research we engage quite extensively with the Canadian inquiry into missing and murdered Indigenous women, girls and gender diverse people, which is generally regarded as a very good inquiry. It spoke to 2,500 witnesses and Indigenous communities, and produced a very voluminous report. So some of the terminology that we use in our submission comes from the findings of that report, which found that the violence that Indigenous women experience firstly can't be reduced to their socioeconomic circumstances. Being Indigenous was enough if you controlled for all other factors. We submit to experience more violence not just in domestic and family situations but also stranger violence.

The reasoning that they gave for why this was the case was that there was a culture of impunity that existed in which violence against Aboriginal and Torres Strait Islander women or Indigenous women in Canada was not seen as sufficiently problematic that it warranted proper investigation by the police. There were many stories of families of Indigenous women going to police asking for help, to be told, "No, she's probably drunk. She's probably a sex worker. Come back in three weeks." So these families were left alone. That's not just a harm that's done to those particular families. What they found was this creates a culture within which people can perpetrate violence, including domestic and family violence, against Indigenous women and know that they're safe, and that is the fundamental reason that Indigenous people experience domestic and family violence in the way that they do.

MS O'GORMAN: From your point of view then is there scope for meaningful improvement in relation to police responses to domestic and family violence, particularly in First Nations communities, either by better training for police or some other measures?

DR SINGH: I'm Dr David Singh. I'll take that question, if I may. Inquiries such as this and many others often introduce at their conclusion a raft of recommendations. Most - they often are unevenly applied, implemented, and those that are implemented rarely exist beyond two, three years because there's not been sustainable funding for their continuance. Initiatives such as training that encompass race and gender are normally the first to go in any cost-cutting exercise. They're rarely ring-fenced in any kind of austerity push on the part of local councils and NGO sectors.

Training itself, I'm originally from London, I've worked with the Metropolitan Police in developing joint training with local divisions, and this has had mixed results. On the one hand, senior police officers embrace the training. On the other hand, rank and file push back, to the extent that the training didn't last beyond one or two years before it was called into question.

In the aftermath of the Macpherson inquiry into the murder of Stephen Lawrence we saw that the police throughout the country accepted the definition of institutional racism, accepted that they were institutionally racist, and set in place plans to address that institutional racism. Within about three years they declared themselves no longer to be institutionally racist and therefore in no need of remedial action.

From the point of view of community, certainly those that I worked with in West and East London, they didn't really want the promise of better professionalisation, they wanted more police accountability, and that's certainly not what they got through the various recommendations of the various inquiries that they all sat patiently through.

So I would argue that there is a kind of negligible impact that attempts to better professionalise the police. On the one hand, training is put in place, but on the other there has invariably been an increase in police powers, oversaturation of policing in marginal areas. We've had certainly here in Queensland Facebook groups where racist, homophobic and sexist comments are traded freely without censure. There is a particular canteen culture where this training simply doesn't permeate or kind of advance police understanding in any sustained way. So I would question

the value of training overall, having been personally involved in co-designing training for the largest police force in the world.

PROF. WATEGO: If I may add, I think if we look to the Royal Commission into Aboriginal Deaths in Custody, where things like cultural awareness training, the engagement of Indigenous police liaison officers and even recruitment of Indigenous police officers, they haven't been effective in reducing deaths in custody, and I think there is a concern that training accessorises the expanding authority of an institution that we know to be violent to Indigenous peoples. If we think about violent relationships, as this inquiry is concerned with, we wouldn't tell a woman to stay with her perpetrator who is abusing her and just give him some better training. So I think if we think about these violent relationships as taking place not just in homes but at the hands of the State, the logic doesn't stack up here.

MS O'GORMAN: You suggest in the draft summary report that you've provided to the Commission that the QPS ought to be defunded and de-authorised in relation to domestic and family violence. The Commission has heard from some individuals and communities about the need for a better policing response, including a greater police presence, in some communities and an increase in police responses in some communities. Would you explain for us how it is that your suggestion to defund and de-authorise the police in relation to domestic and family violence offers the safety that from your point of view Indigenous peoples and communities are seeking?

PROF. WATEGO: I think given we've explained the violent relationship that Indigenous people have with police our - we share a concern about a non-violent approach, a non-violent society. What de-authorising and defunding of police is is an appeal for a non-violent approach to addressing violence, and unfortunately the Queensland police have proven themselves incapable of doing that, as the Women's Safety and Justice Taskforce has heard, as this inquiry has heard.

It's also recognising that the police have long failed Indigenous peoples and communities, and Indigenous peoples and communities and Indigenous community-controlled organisations have had to find ways to respond to family violence in the absence of police who do not attend or

don't care without the necessary resourcing to do so. So I guess we would argue that this is not really a radical position but rather a responding to the reality of the violent relationship that Indigenous peoples have with police at this point.

DR STRAKOSCH: Just to build on that, while it might seem like there's a contradiction between people talking about the lack of police response to domestic violence and then talking about the over-policing and the criminalisation of Indigenous women, there's actually not a contradiction in our understanding. These under-policing and over-policing of particular types of experiences by Indigenous women all relate to the fact that their status as genuine victims is devalued. So they are over-policed as perpetrators but they're under-policed as victims, and that is part of the violent structure.

So it's not a question then of, well, where there's under-policing, more police will solve that. In fact, people are looking for a response, people are looking for meaningful responses, and in the absence of those are finding their own. When we talk about defunding and de-authorising police, it might sound kind of confronting, but what we're actually talking about is moving substantive resources and authority and power to community-controlled Aboriginal organisations in a systematic way over the whole state. So not in terms of pockets of best practice that kind of seem really appealing but don't actually change the distribution of authority or funding in relation to this, and the basic reality of making that change would require enormous and sustained refunding of the Aboriginal community-controlled sector, which has been systematically defunded over the last 20 years, since the end of ATSIC, and genuine resourcing for those organisations to be able to take control of these situations. So defunding and de-authorising police does align with some of the suggestions that others have put forward. However, it requires it to be done in a systematic, widespread way that involves large amounts of funding and a real shift in power.

PROF. WATEGO: If I can add, I think a lot of Indigenous communities recognise that a police response to what is effectively a social problem does not prevent or treat, solve the issue of family violence in our communities. When you speak to survivors of family violence there are

very tangible things they are seeking in terms of securing their safety, from having the resources to have better security on a rental property, to getting paid leave when they have experienced strangulation and have no leave at their job and are not entitled to crisis payments through Centrelink. Like, there are very practical tangible things that Indigenous women are seeking as victims of violence that extend beyond incarcerating somebody for a short period of time, because we know these men return to our neighbourhoods and our communities often more violent than what they were when they went in because of the violence of incarceration. It doesn't solve the problem. So we share the concern about solving the problem of violence in our community. The challenging part is getting the State to imagine what a non-violent response to violence might look like, and unfortunately it can't see beyond that in terms of its relationship with Indigenous people.

MS O'GORMAN: In explaining that answer then, you, Dr Strakosch, already have referred to Aboriginal community-controlled organisations and your view that there needs to be a far greater funding of them in a systemic way. My final question is whether there is merit in giving consideration to the development of a co-responder model which includes Aboriginal and Torres Strait Islander community-controlled organisations as part of the model.

DR STRAKOSCH: Yes, and I suppose I did address some of those core questions. Basically our experience, especially Professor Watego's experience, in organising in the community-controlled sector is that there are really important, accountable things happening but that is being done without a great deal of support or funding. So the practices are there, but the community-controlled sector has been - especially since 2014, when Tony Abbott brought in the Indigenous Advancement Strategy, we saw over 30 per cent decrease in funding to the community-controlled sector within a year, and most of that funding went to churches, Anglicare, their big kind of social service arms.

So, unbeknownst to many people, there has been a massive transformation and a kind of real attack on the community-controlled sector. It's holding on, but when talking about something like a co-responder model when you're talking about community-controlled organisations it has to take account of the situation they have been put in and the fact that many are operating on - they're running

60 different government grants, they're always short-term, there's no sustained funding. Those are the issues that actually need to be addressed to make a meaningful change in something like a co-responder model.

PROF. WATEGO: Our institute is working on a research project funded by the Australian Institute of Aboriginal and Torres Strait Islander Studies looking at the community-controlled sector here in the state of Queensland and have a strong sense of how structurally underresourced the sector is. I'm sure if you did an audit of community and social services funding here in the state of Queensland, a very small proportion of funding for community and social services goes to Aboriginal and Torres Strait Islander community-controlled organisations, and that has been by design, not because of poor Indigenous governance.

There has been a mainstreaming of services. So we no longer support Indigenous models of service delivery, despite the fact that we know in health the Indigenous model of primary health care is an exemplar of best practice in health globally. So it's not that Indigenous communities can't innovate, aren't providing services to our communities, but are structurally underresourced. So while the State seeks to get more police officers you've got Indigenous families and communities carrying the burden of not just their failings but also the subsequent violence that they experience in this process.

So, for instance, Strong Women Talking is one Indigenous community-controlled organisation that is survivor led, victim centred, and they talk about when Indigenous women seek to leave a relationship that they have to counter the violence that they experience through seeking help, from the police through to the social services sector, and the risks of child safety of losing their children having reported an experience of violence. So we've got these very small pockets of Indigenous organisations, not fully resourced, that are trying to navigate the various layers of violence that Indigenous women are experiencing in the course of seeking safety for their families. So when we say de-authorise and defund the police, there are clear ways in which that resourcing could be better spent that actually attends to reducing and addressing violence and safety.

MS O'GORMAN: Thank you for addressing our questions. There may be some further questions now.

COMMISSIONER: Can I just ask you about that reduction in funding to community organisations. That 30 per cent reduction, when's that from?

DR STRAKOSCH: So Tony Abbott introduced when he became Prime Minister the Indigenous Advancement Strategy, which moved all federal funding for all grants and programs related to Indigenous people into the Department of the Prime Minister and Cabinet and required all organisations to re-tender simultaneously for those. There have been Senate inquiries into that process. It wasn't handled very well. But what we saw at the other end of it without a great deal of transparency was this massive defunding. There have been efforts to kind of make some changes, but a lot of organisations have folded since then.

COMMISSIONER: That's my next question. Have organisations had to close as a result?

DR STRAKOSCH: A lot keep going because they have to. Like, they're accountable to their communities, and that's why they're doing what they're doing, and are piecing together funding from all kinds of different places creatively. But some simply have not been able to survive, because it's been attrition as well. That was the last body blow. But since mainstreaming, which became formal policy in 2004 with the end of the self-determination policy era and the end of ATSIC, there has been a steady decrease in the funding of the community-controlled sector.

PROF. WATEGO: And this has occurred at both federal and state level. So in terms of, you know, community and social services that are state funded, as a board member of an Indigenous community-controlled organisation in Inala, we were largely volunteer based and have 80 buckets of funding for discrete projects, of which creatively we have to support families but are not directly funded to support Indigenous women who are victims of violence, and this plays out in lots of communities.

COMMISSIONER: When you've got to apply for a lot of different grants, it takes a lot of time too.

PROF. WATEGO: Absolutely.

COMMISSIONER: Time you could spend doing other things, I'm sure.

DR STRAKOSCH: It's probably also worth saying that there is a specific regime of acquittal that requires a higher level of reporting from Indigenous corporations and organisations, ORIC, which has been challenged as racially discriminatory, but in - basically on the assumption that Indigenous organisations governance is not as adequate as others requires more intensive reporting from Indigenous organisations. So there are often 30 per cent of time and effort routinely put into reporting and acquitting to government to show that these organisations are functional while they're delivering over and above the money that they're funded for to their communities.

COMMISSIONER: All right. Thank you. Ms Hillard, do you have questions?

MS HILLARD: I have a few.

<EXAMINATION BY MS HILLARD:

MS HILLARD: Can I just say that Women's Legal Service Queensland have few Indigenous women clients because when they contact Women's Legal Service they choose to engage with Indigenous organisations. So can I just ask you to bear that in mind when I ask my questions.

One of the things about giving the voice to First Nations women is I think understanding that when we talk about statistics of the experience of women that that is not because their community is violent; is that right?

PROF. WATEGO: Yes.

MS HILLARD: When we have a look at page 6 of exhibit CO1053 at the bottom there you set out some statistics, and you talk about how a First Nations woman is 32 times more likely to be hospitalised due to domestic and family violence; 10 times more likely to die due to an assault; 45 times more likely to experience violence at all; and five times more likely to be killed because of domestic and family violence. In respect of those statistics is that a symptom of what you have described as under-policing a victim and over-policing the woman as a

perpetrator?

MS O'GORMAN: Can I just interrupt very briefly. Mr Operator, would you mind putting this document on the visualiser. The full number is [COI.053.0006].

MS HILLARD: The paragraph right down the bottom. Thank you.

MS O'GORMAN: Just in case you need the material in front of you.

PROF. WATEGO: Thank you for the question and I think it's an important point to make, is that a statistical story can be used to reproduce these racialised imaginings of Indigenous people's communities and cultures as inherently violent. I think as Liz pointed out what makes Indigenous women susceptible to violence is the culture of impunity that exists in a settlor colonial context in relation to the care and worth of Indigenous women's lives.

DR STRAKOSCH: So this is a really core issue. It's something that has come up in a number of our kind of expert reports in relation to violence experienced by Indigenous women. People know these statistics. In fact recitation of the statistics of violence that Indigenous women experience is something that the government and state agencies often do and that the media often does.

But there is an implicit assumption that those experiences of violence in one way or another attach to either the culture of Indigenous people, the behaviour of Indigenous people, even in the most progressive formulation the reverberating intergenerational effects of colonialism always locate the harm and the behaviour that leads to that harm in Indigenous people.

What we are talking about here, we say that's an unacceptable reason to justify those kind of statistics. It's a very racist reason to do that. In fact the only way we can understand those is when we understand the series of relationships that are taking place here within which Indigenous people since first colonisation have lived within a structure of violence. It has been an extremely violent experience. It continues to be an extremely violent experience.

Police - this is not a question of intention; this is a question of structure - have been on the frontline of that violence, and the interactions of all these different agencies have led to a situation in which Indigenous women live in a culture of fear because they know they can be subject to violence and they know they don't have redress, while perpetrators live in a culture of impunity.

PROF. WATEGO: And we also witnessed the contradiction of victimhood. So the statistical story tells the story of Indigenous women as agentless, as victims, yet we know when Indigenous women present as victims they're never treated as such. So we're conscious of the political function which those statistical stories are used to further justify more control over the lives of Indigenous women in this country.

DR STRAKOSCH: We won't sort of recite particular cases which are extremely violent, but there are many cases where Aboriginal women are violently assaulted in great distress in front of police officers and, even with the physical reality of their victimisation in front of them, are arrested or are treated as perpetrators or are ignored.

MS HILLARD: One of the things that you spoke about in your answer there as well as has emerged in evidence before the Commission is that there is often a fear of a First Nations woman about the interference by the State and the removal of her children and the involvement of the Department of Child Safety. I know the statistics say that a child is likely to be sexual abused or physically abused in a domestic relationship if they're a First Nations child. Do you want to say anything about that and how that can be addressed in order to prevent violence and to protect?

PROF. WATEGO: If I might, with the permission of my sister I would just like to share her experience. She was strangled by a former partner in Ipswich, one of the shitty suburbs I guess that police would refer to. She had the wherewithal to call Triple O in the midst of it so they were aware of what was happening and the severity of this, and her children also were on the phone to Triple O.

The police presented in the middle of the night. She passed out and managed to escape semi-naked down the street. When the police presented they did not press

charges, despite the severity of the offence, on the basis that in her state of distress she said she just wanted to go to sleep.

They removed the perpetrator but did not press charges. I had to advocate on her behalf. The police subsequently apologised for, I quote, dropping the ball on this one. Yet when she went to make her statement and with her children they asked her to clarify the spelling of her daughter's name for the reason that they couldn't find her on the system. There was a presumption that as a victim of violence that they would be clients of the system.

Then when she presented to her GP, who was a registrar that wasn't experienced in dealing with trauma, within hours of that assault made comments on her medical file about child safety and "mum's mental health", which raised concerns for her around contact with Child Safety.

Now, that matter was dealt with by the courts just last Friday. She spoke in her victim statement about the failings of police and all of those social services and that it was an additional form of violence because these were the agencies that were meant to care and protect, yet she felt even more threatened through their interactions. In fact it was her family who had to advocate for her. In her victim statement her concern in relation to the perpetrator, who has now since been released having served time, is for him to get better and for there to be a therapeutic response to what took place.

So these stories, yes, are very real for us in this region of working mothers who are presumed, even in the most severe cases, to not be legitimate victims and then cast under the eye of the State, whether it's Child Safety, at the local GP, and deemed unworthy of care by Queensland Police, who in that instance should have pressed charges regardless of what state she was in given the severity of the crime.

DR STRAKOSCH: If I could just follow that up because that does lead to something in our submission that we haven't discussed where we talk about the interconnection between violent care and violent control and that the way that care from the State, whether it goes right back to the protection era, the language of that, of missions caring for Indigenous people while they controlled them, right up

to child welfare services have also been an instrument that have interacted with those systems of control in the kind of colonial context. So some of our concern around particular types of justice re-investment that move services from carceral systems like the police to State social service systems is that in the experience of Indigenous people those systems are really interconnected, especially as it comes to family separation.

MS HILLARD: And just picking up on some aspects of your answer and something that Counsel Assisting asked you, I'm gathering from that example that you have just provided which you would see many, many similar kinds of examples that you're really saying that there needs to be a light shone on the perpetrator who is the actual offender and there needs to be preventive actions in place in a culturally appropriate, trauma-informed but also a race appropriate perspective; do you have anything you want to say about that?

PROF. WATEGO: I think it's thinking about how do we take a non-violent approach to dealing with domestic and family violence. Given we know the violence of the State via its various agencies, how do we de-authorise the power that they hold, the violent power that they continue to hold over Indigenous families, and it's witnessed in the incarceration rates, it's witnessed in increasing over-representation of Indigenous children under the Child Safety system, which has proven to be not very safe for our children. So the question is at what point do we start to look at the violent relationships the State has with Indigenous peoples and be as committed to the safety of Indigenous women when it comes to violence perpetrated by the State as well as those by intimate partners.

DR STRAKOSCH: And I suppose just to tie that back to the current process that's ongoing, inquiries have been a regular feature of the Queensland Police Service. So the Queensland Native Mounted Police were subject to four inquiries in the first 10 years of their operation. So what we've seen in Queensland is inquiries often tracking the violence of these organisations, perhaps making adjustments that make them seem more palatable, but not actually, for example in the case of native police, making any substantive changes to the mandate and the resources of those agencies.

So in the context of the current inquiry it's very critical and important work but it's taking place in the state in which there's a massive expansion of policing. Queensland is leading the way in terms of expansion of its police force and the expansion of bail and other laws which are sharply leading to increasing incarceration for Indigenous women specifically, many as a result of breaking domestic and family violence orders that the police have approved of issued in kind of domestic violence situations.

MS HILLARD: One of the things - and this is my last question - that has emerged from different First Nations communities, different First Nations representatives and the like is that they want to be proactively involved in helping the problem and they want to participate in working around whatever the infrastructure is that exists. You've spoken about funding. You've spoken about the need for funding. A witness yesterday spoke about intergenerational plans and funding. Did you want to say anything about that?

PROF. WATEGO: I would just point out that Indigenous families and communities are already involved in responding to domestic and family violence. It is a matter of resourcing and authorising that in a more formal structured way. So I think it's really important. I think there hasn't been an examination of the exemplars of success in terms of Indigenous led models responding to domestic and family violence, thus we can't imagine anything beyond a police response despite the evidence of its violence that we continue to hear about.

MS HILLARD: Thank you, Commissioner. That was my last question.

COMMISSIONER: Thank you. Ms Morris?

MS MORRIS: Thank you, Commissioner. I would like to, if I may, please, seek a short break to take some instructions.

COMMISSIONER: Yes. That's fine. We'll just adjourn for 15 minutes.

SHORT ADJOURNMENT

COMMISSIONER: Ms Morris?

MS MORRIS: Thank you, Commissioner. I have no questions.

MS O'CONNOR: No questions, thank you, Commissioner.

MS O'GORMAN: I don't have any further questions and, in the circumstances, might Professor Watego, Dr Singh and Dr Strakosch be excused.

COMMISSIONER: Dr Strakosch, Professor Watego and Dr Singh, thank you so much for coming in this morning. It's been very informative, and you're free to leave. Thank you very much.

<THE WITNESSES WITHDREW

MS O'GORMAN: Commissioner, there are two further witnesses that we will be able to get through between now and lunch. The first witness is Teressa Tapsell. I call Ms Tapsell.

<TERESSA TAPSELL, sworn:

<EXAMINATION BY MS O'GORMAN:

Q. Ms Tapsell, you have provided a statement to the Commission dated 12 July 2022?
A. Yes.

Q. All right. Thank you. As I understand it, you are presently the acting senior research officer for the First Nations and Multicultural Affairs Unit within the Communications, Culture and Engagement Division; is that right?
A. Yes.

Q. And your substantive position is as a police liaison officer training officer with recruit training at the Police Academy at Oxley within the People Capability Command?
A. That's correct, yes.

Q. Now, although you've been in the acting role with the FNMAU, is it the case that you have continued to also work as the police liaison officer in your substantive role as well?
A. That's correct, yes.

Let's stop it at the start:

defunding the Queensland Police Service as violent perpetrators

A Joint Submission from Sisters Inside and the Institute for Collaborative Race Research to the 2022 Commission of Inquiry into Queensland Police Service responses to domestic and family violence

Institute for Collaborative Race Research

SISTERS INSIDE

13 July 2022

Commission of Inquiry
PO Box 12264
George Street Qld 4003

Dear Commissioner,

Sisters Inside and the Institute for Collaborative Race Research welcome the opportunity to provide the following joint submission to the Commission of Inquiry into Queensland Police Service responses to domestic and family violence. Aspects of this submissions have been taken from our submissions to the Women's Safety and Justice Taskforce ('the Taskforce'). We direct the Commissioner's attention to these submissions, which deal with broader issues relating to women and girls' experiences within the criminal legal system but ask that this submission be considered independently. It provides greater detail about women and girls' experiences of the Queensland Police Service (QPS).

In this submission, we use personal quotes from interviews we conducted with women who have experienced DFV victimisation. They consent to their anonymised stories being used here.

About Sisters Inside and the Institute for Collaborative Race Research

Established in 1992, Sisters Inside is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither "good" nor "bad" but rather, one's environment and life circumstances play a major role in behaviour. Given complex factors lead to women and girls' entering and returning to prison, Sisters Inside believes that improved opportunities can lead to a major transformation in criminalised women's lives. Criminalisation is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively over-represented in prison due to the racism at the foundation of systems of social control.

The Institute for Collaborative Race Research (ICRR) is an independent organisation, not tied to the institutional interests of any university, association, or academic discipline. Their primary purpose is to support antiracist, anticolonial intellectual scholarship which directly serves Indigenous and racialised communities. ICRR seeks to create deeper engagement with crucial political questions in an institutional context not dominated by whiteness. Its members are invested in activist, community-based scholarship and communication on race, colonialism, and justice. ICCR provides specialised additional support for those engaged in disruptive interdisciplinary research, sustaining a network of established scholars, early career researchers, students, activists and community members who collaborate in the interests of justice.

Executive Summary

The police are perpetrators of racial and gendered violence. In this submission we demonstrate the role of the QPS in maintaining broader systems of violent abuse that include and facilitate domestic and family violence (DFV). In Queensland, the QPS does not police Indigenous and racialised communities through consent but through control. Their relationship with Aboriginal and Torres Strait Islander women is particularly coercive, hierarchical and racially violent.

In line with best practice approaches to domestic violence, we centre the truth of the victims of abuse: Black women. If the Commission also does this, it will see a very different picture of the QPS. The Commission can then begin to understand the growing crisis of Aboriginal and Torres Strait Islander incarceration and victimisation, and perceive the ways in which the QPS have exacerbated this crisis.

Like domestic violence itself, police violence covers a spectrum. It moves from symbolic harm such as racial stereotyping to direct, fatal physical violence. Together these forms of violence create a matrix that entraps Aboriginal and Torres Strait Islander women. Exactly as with DFV, the most foundational violence is the fracturing of trust and reality that takes place when you are harmed by those whose duty is to care for and protect you.

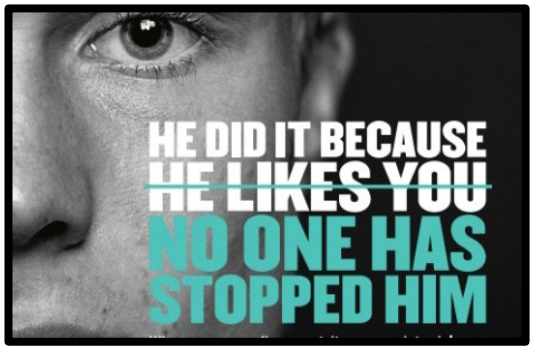
In this submission we outline police violence along this spectrum, starting from the stereotyping that positions Indigenous women as criminals. We then outline the way they are trapped by interlocking state systems of control including prisons and child removal agencies, and finally examine the direct physical violence they experience at the hands of the state, or which the state refuses to see.

The submission is structured in the following sections:

1. **Criminalisation: 'She was asking for it'**

Aboriginal and Torres Strait Islander women who experience domestic violence are overwhelmingly criminalised by police and treated as perpetrators rather than victims.

2. **Entrapment: 'He did it because he likes you'**



A superficial narrative of Black women's victimhood justifies police intervention, but the QPS brutalises these women in the name of their own protection. They experience the fracturing of reality that comes with not being believed.

3. **Murder: 'She's just overreacting'**

Even the most direct physical harm to women caused by the QPS and the state is minimised or denied entirely. Confronting the reality of QPS abuse is essential to validate victims and find new approaches to DV.

Because there is 'No Excuse for Abuse',[1] we urge the Commission to examine the outcomes of police action and inaction, rather than their intentions or the justifications they provide.

We already know that First Nations women are massively over-represented in the criminal legal system; they are more likely to be arrested, charged, detained and imprisoned on remand for the same offences, and are less likely to receive a non-custodial sentence or parole, than other women.[2] Over-policing is to blame – but the cause of this has to be named for what it is: racism. In the settler-colonial state, police have historically been the mechanism used to control, dispossess and harm Aboriginal and Torres Strait Islander peoples.[3] Racism in the QPS therefore represents a continuation

[1] 'No Excuse for Abuse' (2020) Our Watch, https://www.noexcuseforabuse.org.au/
[2] Australian Human Rights Commission (2020) Wiyi Yani U Thangani Report at https://humanrights.gov.au/our-work/aboriginal-and-torres-strait-islander-socialjustice/publications/wiyi-yani-u-thangani; Human Rights Law Centre & Change the Record (n 1) (2017).
[3] Wolfe, P, 'Settler colonialism and the elimination of the native' (2006) 8 *Journal of Genocide Research* 387; A Porter and C Cunneen, *Policing settler colonial societies* (2020).

of colonial values implicit in the organisation since its inception. The 1,700 current or former Queensland police officers who were revealed to be members of a private Facebook page which featured extensive racist, sexist and homophobic posts demonstrates that these values are alive and well.[4]

Conclusions

Therefore, **the police cannot be the solution to the crisis of domestic violence**. Addressing superficial issues of police 'culture' will not change their status as perpetrators of violence. Instead, as the Australian Government domestic violence campaign states, we must **'Stop It At The Start'**[5] and defund the police in relation to DFV. Any proposed solution must be evaluated against the following criteria:

Does this proposed solution expand the authority of the police and the state over women's lives, especially over the lives of First Nations women? Does it increase the resources allocated to police in the name of that authority?

If the answer is yes, then this proposal will reproduce and increase violence.

This Commission of Inquiry has the opportunity to break the following cycle: apparent concern for violence against Black women, extension of state authority in the name of protecting these women, increased surveillance and control over these women's lives, and a subsequent intensification of the violence that was ostensibly the subject of concern. It can do this if it centres the voices of Black women and recognises the racial violence they experience at the hands of the state. We must stop this violence where it begins and return control to women who experience DFV.

[4] Jenkins, Keira (2021) Racist police-run Facebook group under investigation, NITV News, 13 July at https://www.sbs.com.au/nitv/article/2021/07/13/racist-police-run-facebook-group-underinvestigation

[5] 'Violence Against Women. Let's Stop It At the Start' (2022) Australian Government https://www.respect.gov.au/?gclid=EAIaIQobChMIi9DqgoX1-AIV0CMrCh1UpgvVEAAYASAAEgJNFfD_BwE&gclsrc=aw.ds

1. Criminalisation: 'She was asking for it'

DFV and criminalised women

The evidence is overwhelming: criminalised women and girls are almost always survivors of violence.[6] In turn, victims of DFV are routinely criminalised.

The QPS is the most notable agent of this criminalisation. It is very common that the first encounter of DFV victims with police leads directly to the wrongful identification of these women as perpetrators, to assaults by officers, to the removal of children, to imprisonment and/or to further subjection to DFV. Cross-applications and DVOs have been shown to be often extensions of the abuse perpetrated by men against women; we consider the QPS is complicit in this abuse by wrongly supporting these cross-orders.[7]

The intersection of DFV victimisation and criminalisation is particularly clear when considering the most intensively criminalised women and girls – those currently incarcerated. Repeated studies have found that:

- Up to 98% of women prisoners had experienced physical abuse;
- Over 70% have lived with domestic and family violence (DFV);
- Up to 90% have experienced sexual violence; and
- Up to 90% have survived childhood sexual assault.[8]

[6] Human Rights Law Centre & Change the Record, *Over-represented and Overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (2017).
[7] J Wangmann, 'Gender and Intimate Partner Violence: A Case Study from NSW' (2010) 33 *University of New South Wales Law Journal* 945; H Douglas and R Fitzgerald, 'Legal process and gendered violence: Cross-applications for domestic violence protection orders' (2013) 36(1) *University of New South Wales Law Journal* 56.
[8] Human Rights Law Centre & Change the Record, *Over-represented and Overlooked: The crisis of Aboriginal and Torres Strait Islander women's growing over-imprisonment* (2017) 13,17; Stathopoulos, M. & Quadara, A., *Women as Offenders, Women as Victims: The role of*

In testimony to the Queensland Crime and Corruption Commission, the General Manager of the Brisbane Women's Correctional Centre (BWCC) recently acknowledged the very different profile of women prisoners compared to men and the central role of trauma in these women's lives:

> *… 80 per cent of women that come to gaol, or more, are victims before they're perpetrators. It's just a different environment…* (Darryll Fleming)[9]

Similarly, almost all girls in children's prisons have been sexually assaulted.[10] The vast majority of criminalised women have been routinely denied their most basic human rights – first in the wider community, then in prison.

QPS officers called to attend DFV situations often do not believe the allegations of these women and girls, and further criminalise and punish them because of this interaction with police. The legitimate fear that this will occur already prevents women from reporting violence to the police.

The following story was recounted to a Sisters Inside worker by a woman – Samantha* - who had a long history of sexual violence victimisation. She received a 5 year imprisonment sentence for fraud offences. Upon her release from prison, she experienced violence in a new relationship:

> *When the relationship broke down he came to collect his things and was physically violent towards me, he held me against a wall with one hand around my throat, and one arm across my body and arm. My sister was there and so was his friend. My sister called the police and they made me give him his property but did not provide any protection to me. The police told me that it was all sorted and that he was not pressing charges. I was shocked and told them that he had attacked me. They dismissed me and left. Two days later he was still sending my abusive texts and bruising had come up all over my neck and arms so I returned to the police to press charges and get a protection order. I showed the police woman the messages, and she advised there was little she could do as the officers who came after the assault had listed me as the aggressor as he had told them I had refused him access to my apartment to collect his things and that I had been to prison. As she looked at the extremely visible bruising across my neck, she told me that it was his word against mine, and that I had been in prison and he had no criminal history. If he pressed charges also it may affect my suspended sentence. She advised that they could not do anything further. I will never go back to the police for help again. The police have shown that they do not believe me because of my criminal history.*

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corrections in supporting women with histories of sexual abuse, (Women's Advisory Council of Corrective Services, 2014); D Kilroy, *Women in Prison in Australia* (Presentation to National Judicial College of Australia and ANU College of Law, 2016).

[9] Crime and Corruption Commission (2018) Evidence Given by Darryll Fleming: Transcript of Investigative Hearing: Operation Flaxton Hearing No: 18/0003.

[10] Department of Justice and Attorney General (n/d) Youth Detention Centre Demand Management

*Name has been changed to protect identity.

Strategy 2013-2023, unpublished (Released to the ABC under Right to Information laws) 4; Wordsworth, M. (2014) 'Qld youth detention centres operating "permanently over safe capacity" and system in crisis, draft report says', ABC News, 17 September at https://www.abc.net.au/news/2014-09-17/crime-boom-overwhelms-youth-detention-centres-inqueensland/5751540 .

Aboriginal and Torres Strait Islander Women and Girls

Aboriginal and Torres Strait Islander women "are victimised at alarmingly high rates compared with the wider community."[11] This fact should elicit particular care and concern from the QPS for these women's experiences.

Nationally, Aboriginal and Torres Strait Islander women are 32 times more likely to be hospitalised due to family violence than non-First Nations women, 10 times more likely to die due to assault, and 45 times more likely to experience violence.[12] Indigenous females are five times more likely to be victims of homicide than non-Indigenous females, and are more likely to be killed by strangers.[13] Additionally, "[t]here is substantial evidence to date showing that Aboriginal women also suffer from levels of sexual violence many times higher than in the wider population."[14]

Yet, rather than the QPS paying careful attention to Indigenous women's needs as victims in DFV situations, Aboriginal and Torres Strait Islander victims experience the QPS not as protector but perpetrator. The QPS routinely racially stereotypes these women as criminal and dysfunctional. Rather than being protected from existing violence, they are subjected to new forms of racial violence at the hands of the state – via police assault, charges, stereotyping, disregard, incarceration, and child removal. Naming victims as perpetrators is a form of violence in itself, which directly violates and delegitimises women already suffering harm from DFV.

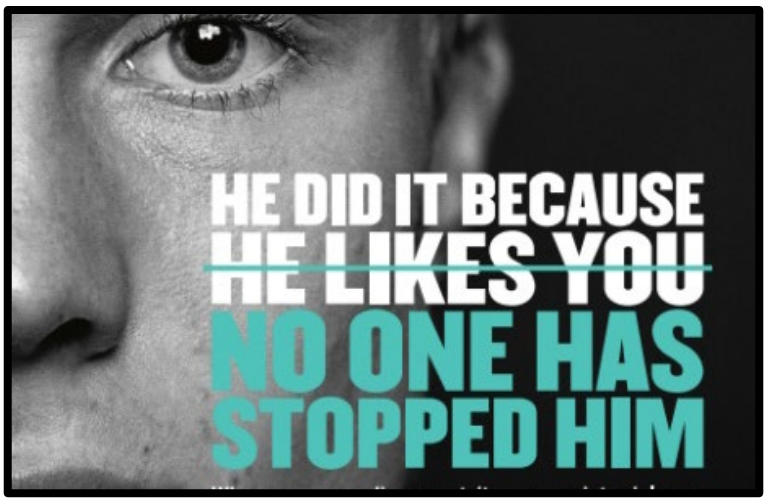
We agree with the statement by Nancarrow et al that 'racism, poor relationships with local communities, misogyny, and the patriarchal culture of the police service' are to blame for the routine misidentification and criminalisation of women and girls in these situations.[15] White women may sometimes be accorded the position of legitimate victim, but this position is not available to Black women. Blackness is sufficient condition for a woman to be viewed as a perpetrator, and as deserving of the violence she experiences. This is directly demonstrated by statistical evidence: a 2017 review of domestic and family violence related deaths in Queensland found that almost half of the women killed had been identified as a respondent to a DFV protection order on at least one occasion. In the case of Aboriginal and Torres Strait Islander women, that number rose to almost 100% of deceased women recorded as "both respondent and aggrieved prior to their death."[16]

Hannah*, an Aboriginal woman also supported by Sisters Inside, was the victim of extensive domestic and family violence throughout her life, including sexual abuse by her father as a child and at the hands of two different intimate partners as an adult. She told us that in one instance where she had suffered

[11] Marcia Langton, 'Two Victims, No Justice'. *The Monthly* (July 2016).
[12] Ibid, p3.
[13] Change the Record, 'Pathways to Safety Report', Pathways to Safety - Report (2021), p3.; statistics on stranger violence are not adequately collected in Australia, but in the comparable jurisdiction of Canada rates are many times higher. "Even when faced with the depth and breadth of this violence, many people still believe that Indigenous Peoples are to blame, due to their so-called "high-risk" lifestyles. However, Statistics Canada has found that even when all other differentiating factors are accounted for, Indigenous women are still at a significantly higher risk of violence than non-Indigenous women. This validates what many Indigenous women and girls already know: just being Indigenous and female makes you a target". National Inquiry into Missing and Murdered Aboriginal Women and Girls, 'Our Women and Girls Are Sacred, Interim Report' (2017), p.56.
[14] Marcia Langton, 'Two Victims, No Justice'. *The Monthly* (July 2016).
[15] Nancarrow et al (n 4) 79.
[16] Queensland Government, 'Domestic and Family Violence Death Review and Advisory Board - Annual Report 2016-2017 (courts.qld.gov.au)' (2017).

serious physical violence at the hands of her ex-partner and his grandson, the police who attended the scene "threw me down like I was some animal" with enough force that it "broke my glasses". She was then handcuffed before being transported to hospital. She was identified as the perpetrator: "they took that side…they didn't even want to know what happened from me, my version". Further, she told us that she wasn't allowed to have anyone see or talk to her in the watch house. She said this was just one of multiple occasions where she was abused by police: "when you're Black you got the bad ones; the officers that will treat you like nothing: throw you around, handcuff you tight, whisper in your ear…every chance they get with an Aboriginal person." In the end, police and courts incarcerated Hannah twice as a direct result of domestic violence relationships where she was the victim.

2. Entrapment: 'He did it because he likes you'



Once Aboriginal and Torres Strait Islander women and children encounter the QPS and the criminal legal system, this system ensnares them in a system of direct and indirect violence which is incredibly difficult to escape. This experience can be likened to that of coercive control - a focus of the Taskforce.[17]

In this context, we must pay very careful attention to the construction of notions of 'victimhood' in relation to Indigenous women and children. An abstract and racialized narrative encompassing Black women's victimhood justifies police and state intervention into their lives. Yet when confronted with actual individuals, the QPS and wider society rarely sees these women as legitimate victims who do not deserve their suffering. This is the result of the long-standing colonial practice of denying Black women's humanity in ways that legitimise their dispossession and violation.[18] Trapped by racialised constructions, Aboriginal women can never attain actual victimhood. Instead, they are brutalised by the police and criminal legal system in the name of their own protection. Indigenous women

[17] See our earlier joint submission to this Taskforce on coercive control specifically (2021).

[18] For a thoroughly documented history of this refusal to accord Black women victim status by the state, police and settlers, see for example Libby Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier' In Robert Manson (eds): *Legacies of violence: rendering the unspeakable past in modern Australia* (Berghahn Books, 2017); and Liz Conor, *Skin Deep* (University of Western Australia Press, 2016); Fiona Foley, *Biting the Clouds: A Badtjala perspective on the Aboriginals Protection and Restriction of the Sale of Opium Act, 1987*. (UQP, 2020); Jonathan Richards, *The Secret War* (University of Queensland Press 2008).

experience the fracturing of reality that comes from being harmed by those who are meant to protect you, and from the wider world refusing to believe that this harm is taking place.

This entrapment involves collusion between the individual perpetrators of DFV and the QPS. Survivors of DFV observe the performance of gender and racial sympathies and solidarities – they know that white male QPS officers will side with white male perpetrators. One woman that Sisters Inside supported, Wendy*, felt that police did not take her suffering seriously due to a masculine culture of 'mateship' between her partner and the male police officer that would attend the incidents. She felt that her distress was treated as a mere annoyance by this police officer:

> *The fighting got so bad that I started calling the police – in total 17 times. We both ended up taking out DVOs on each other. I would be the one who was taken away or ordered to leave every time the police came because it was his house. They would always chat to him like he was a mate and would always take his side of the story over mine. A Constable once said to me "if you don't stop making these calls, you'll end up in jail".*

Sarah*, another woman Sisters Inside supports, described police as having a 'patronising' response and taking no action at all when she reported that her partner had breached a DVO. Sarah said the police emphasised the financial costs of opening a domestic violence case. Further, she noted that when she reported being routinely strangled by her partner to a senior police officer, "he asked 'did that happen during sexual experiences?'…I thought what the hell does that have to do with anything…I don't know how that helped for him to ask that". Sarah said this experience made her realise "you're supposed to be able to trust authority and people in that position and it just doesn't go like that". QPS's tolerance of sexism is evidenced by their failure to sack any of the 84 front line police officers who are DVO respondents.[19]

Similar accounts have been recorded in the extensive research conducted on this topic. For example, an Aboriginal woman explained the racialised basis of policing to Nancarrow et al in the most comprehensive Australian research on this issue – the Australian National Research Organisation for Women's Safety (ANROWS) study: "I was already convicted in their eyes I know because that's how they treated me, and as a black woman against the white man too they—nobody wants to hear your story, they're going to believe the white man".[20]

Crucially, this solidarity is not the result of misguided police culture or ignorance, but a long-standing practice of complicity between the state and settlers in relation to violence towards Indigenous people. This complicity creates a culture of impunity that facilitates DFV towards Indigenous women and the crisis of missing and murdered Indigenous women more generally (see the following section).

There are several ways in which entrapment may manifest, for example, when Indigenous victims are arrested for outstanding warrants for minor offences or unpaid fines, are incorrectly identified as the perpetrator of violence, or when police escalate their interaction and the victim receives police-interaction charges (such as 'obstruct' or 'assault' police) as a result. As the Commissioner would no

[19] Smee, Ben (2020) 'Queensland police: 84 officers accused of domestic violence in past five years', The Guardian, 3 March at https://www.theguardian.com/society/2020/mar/03/queensland-police84-officers-accused-of-domestic-violence-in-past-five-years

[20] H Nancarrow et al, *Accurately identifying the "person most in need of protection" in domestic and family violence law* (Australian National Research Organisation for Women's Safety, 2020), 8.

doubt be aware, the latter scenario ended in tragedy for Tamica Mullaley. These interactions may also result in the woman being breached on a suspended sentence, bail, or community-based order and sent to prison. Aboriginal and Torres Strait Islander women report being afraid of going to the police following violent assault due to the fear of dying in custody if arrested.

Sisters Inside has worked alongside many First Nations women prisoners from remote communities who have called on police for assistance with a family violence situation and have instead been issued a domestic violence order (DVO). A significant number of women will then breach these orders, for example, when the order affects their ability to care for their children or leaves them homeless. Our direct experience and the available evidence both demonstrate that breach of DVOs is a leading cause for women's imprisonment in Queensland.[21]

Sisters Inside have first-hand experience of seeing girls and young women being forced into the child protection system and isolated from the support of their family and community when they report being a victim of violence, particularly sexual assault. This is viewed as punishment by the state for reporting violence. Further, mothers and carers are at risk of being put on notice to child protective services by inviting police into the home when reporting DFV incidents.[22] Mothers routinely tell Sisters Inside that they put up with violence for long period of time because of the very real fear of the state taking away their babies.

Tracey* also told us that the risk of criminalisation while she was on bail was used against her when she was a victim of rape by her former partner:

> *Even though I was ordered not to see my ex-partner, he came to the house I was living in…he came into the bedroom where I was sleeping and raped me. I was crying the whole time and couldn't believe what was happening. He just got up and left after he was done. I went to the police about what happened, and they told me that it probably wouldn't hold up in court, but nonetheless they went and arrested and interviewed him. He told them I'd been meeting him in secret in breach of my bail and had lied to the police. They believed him and told me that I had no case in court, so I just dropped it. I felt so helpless and hopeless. I was the one always getting punished and he got away with just everything*

It's Not a Bug, It's a Feature

The hostile and coercive relationship between the QPS and Indigenous communities is enduring. It is not the result of an unfortunate police culture or the individual ignorance of officers. Rather, it is fundamental to the origins of the QPS, which has always policed racialised communities differently to white communities. The QPS works *for* white communities, with their cooperation and consent, to offer them protection and facilitate their occupation of this place. In contrast, QPS' relationship with Indigenous communities has always been violent – these treating these communities as a threat to be violently managed. The police have been directly involved in dispossession, frontier killings and complicity with white crimes against Aboriginal women. This is why we say that QPS polices racialised communities through control rather than consent. Coercive racialized policing is as real in a DFV

[21] Queensland Sentencing and Advisory Council, *Baseline report: The sentencing of people in Queensland* (2021) 22.

[22] Davis, M. & Buxton-Namisnyk, E. (2021) Coercive Control law could harm the women its meant to protect. Sydney Morning Herald, 2 July 2021.

context as in every other context – in fact, DFV policing is freighted with the additional history of the race-based sexual violence that characterises Queensland history.

Historically, Queensland is characterised by an intense frontier culture, violent policing practices and a racialised sexual economy centred on the trade of opium in pearling and other industries.[23] Aboriginal women are subject to specific and distressing tropes of sexual availability that have rendered them always consenting and unable to be the worthy victims of sexual and other violence. Aboriginal women are regularly seen as victimised by Aboriginal men, but in fact research into historical and contemporary colonial relations show that mass sexual violence by white men toward Aboriginal and Torres Strait Islander women was central to colonisation. [24]

The police have been complicit in this, actively participating, refusing to prosecute white perpetrators and reproducing narratives about Indigenous women's alleged sexual availability and dysfunction: "[t]echnically, killing Indigenous people was unlawful, but the police, the courts and the government did not act." [25] Extreme sexual violence and murder were acceptable and un-prosecuted. Police were also direct perpetrators of racial violence; the earliest police in the Queensland area were Native police, specifically tasked with dispossession and violent 'dispersal'. [26] The Native Police in Queensland operated in "the context of lawful racial violence that pervaded the Australian colonies at that time...Native Police camps were opened, closed and shifted as the frontier of settlement moved northwards and westwards." [27]

There was a strong sense of solidarity amongst white policemen, and between police and colonial society; "[t]hey could expect hospitality, the sharing of information and protection by brother officers." [28] In contrast, police treatment of Aboriginal people was brutal, often undocumented and legitimised as a response to the violent threat these people allegedly posed. The colonial legal system took white men's accounts of their intentions and interactions as fact, often citing their 'high character' and good intentions and taking at face value claims they were responding to an Aboriginal threat. [29]

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[23] Fiona Foley, *Biting the Clouds: A Badtjala perspective on the Aboriginals Protection and Restriction of the Sale of Opium Act, 1987*. (UQP, 2020)

[24] Libby Connors, 'Uncovering the shameful: sexual violence on an Australian colonial frontier' In Robert Manson (eds): *Legacies of violence: rendering the unspeakable past in modern Australia* (Berghahn Books2017) pp. 33-52; Nicholas Clements, ***T**he Black War: Fear, Sex and Resistance in Tasmania,* University of Queensland Press, 2014Raymond Evans, Rod Fisher, Libby Connors, John Mackenzie-Smith and Dennis Cryle, *Brisbane: the Aboriginal Presence 1824-1860.* Brisbane History Group Papers (2020).

[25] Jonathan Richards, *The Secret War* (University of Queensland Press 2008) p.8.

[26]"In colonial Australia, the early police were modelled on the Royal Ulster Constabulary: the paramilitary police model, which oversaw the 19th century oppression of Ireland" and their 1837 founder Alexander Maconochie was influenced by the Sepoys (a paramilitary force in India financed by the East India Company) Paul Gregoire 'The Inherent Racism of Australian Police: An Interview With Policing Academic Amanda Porter' Sydney Criminal Lawyers (online, 11 June 2020) The Inherent Racism of Australian Police: An Interview With Policing Academic Amanda Porter (sydneycriminallawyers.com.au)

[27] Jonathan Richards, *The Secret War* (University of Queensland Press 2008) p.7.

[28] Ibid, p8.

[29] As examples: In 1933 Constable Scott was acquitted of chaining and beating to death "a lubra named Dolly" when bringing in fifteen 'blacks' for cattle spearing. The Coroner was 'unable to say if the assault had contributed to her death" and Scott was acquitted with 'sympathy' by the judge (*Canberra Times* 14 and 15 November 1933). In 1895 Western Australian settler Gurriere chained an Aboriginal woman to a verandah post for three days and she died immediately after release. He was fined 5 pounds and the court cited his good character and 'total absence of malicious intent'. Liz Conor, *Skin Deep* (University of Western Australia Press,2016) p.149.

It is essential that this Commission gives consideration is to the structural role of the QPS in policing racial hierarchies in the past and present. Queensland Police Service is shaped by colonialism, and has played a key role in implementing racist, violent policies from its inception as an institution. Its contemporary racist cultures and practices are well documented[30] including in the 2016 judgement in *Wotton vs Queensland (No 5)* that QPS officers contravened section 9(1) of the *Racial Discrimination Act* through discriminatory collusion, stereotyping and excessive use of force. [31]

3. Murder: 'She's just overreacting'

Even the most direct physical harm to women caused by the QPS and the state is minimised or denied entirely. Confronting the reality of QPS abuse is essential to validate victims and find new approaches to DV. Additionally, the QPS and Queensland criminal legal system facilitate a broader culture of impunity for perpetrators of violence towards racialised women. They do this by failing to properly investigate and prosecute perpetrators, especially when these perpetrators are white men.

Racism operates through dehumanisation. The suffering of dehumanised women is not seen as real or worthy of redress. In erasing Indigenous women's victimhood, the state also erases perpetrators – allowing abusers (including the state itself and QPS) to continue violent behaviours.

As the devastating case of baby Charlie and Ms Tamica Mullaney shows, this erasure of suffering can take place even when police are confronted with a battered, bloody and naked victim of DFV. In this case, the police arrested the woman for assault, with devastating consequences for her baby. An investigation also appeared to blame the woman for the failure of police to act upon 19 the threats to her baby, stating, "it is possible that officers became distracted by [the woman's] disorderly and

[30] Most recently by Veronica Gorrie, *Black and Blue: A Memoir of Racism and Resilience*. Scribe (2021).
[31] "The QPS officers with command and control of the investigation into Mulrunji's death between 19 and 24 November 2004 did not act impartially and independently… [Hurley] was never treated as a suspect, nor promptly removed from the island. The police officers discounted and ignored accounts from Aboriginal witnesses implicating Senior Sergeant Hurley. Incorrect and stereotypical information about Mulrunji and the circumstances of his death was passed to the coroner, while relevant information from Aboriginal witnesses was not passed on… An emergency declaration issued under the ***Public Safety Preservation Act 1986*** (Qld) after the police station was set on fire… was part of facilitating an excessive and disproportionate policing response, including the use of SERT officers"; Judgement in Wotton vs Queensland (No 5) [2016] FCA 1457 (5 December 2016)

obstructive behaviour and did not stop to examine why she came to be naked and injured".[32] Meanwhile, the woman was charged with assault against police and found guilty, though the court congratulated itself by acting 'mercifully' in refusing to send her to jail.

It is not that police 'misidentify' victims or do not know where to look for signs of DFV. The dehumanising racial stereotypes that police hold outweigh the physical reality of DFV harm they witness. This renders the violence unseeable to them, to the point that police deny victimhood even at its most confronting.

Missing and Murdered Indigenous Women

Australian police and criminal legal systems are reluctant to properly investigate and prosecute direct murders of Indigenous women. They are more likely to declare them missing of their own accord or somehow responsible for their own deaths.

Even in cases where extreme violence by a white male perpetrator undeniably caused the death of an Aboriginal woman, and a body is present, the Australian policing and criminal legal system positions these men as not fully responsible and/or guilty of lesser crimes. The threshold for viewing white male perpetrators as responsible for murder of Aboriginal women appears extremely high in Australia. The perception of the women as sexually consenting, criminal, dissolute, intoxicated or threatening is regularly used by perpetrators to legitimise their actions and is accepted by police and courts.

The stories of Ms Daley,[33] Ms Dann[34] and Ms Clubb[35] reveal key elements that together form a matrix of disregard for Aboriginal and Torres Strait Islander women's suffering. In their investigative practices and individual interactions, they position Indigenous victims as disposable and complicit in their own deaths, frame missing women as wandering off or as threats by perpetrators seeking to avoid culpability for their brutal actions, and the reluctance of authorities to prosecute for murder and/or appropriately sentence white perpetrators. Additionally, of course, police and prisons are directly responsible for killing women through deaths in custody.

The highly regarded Canadian Inquiry into Missing and Murdered Indigenous Women and Girls collected extensive evidence over several years.[36] It found that Indigenous women are more likely to go missing and remain missing, both because they are subject to higher levels of violence when all other factors are controlled for, and because the police are less likely to fully investigate their disappearance. Testimony collected from the families of missing Indigenous women in Canada show

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[32] Corruption and Crime Commission. (2016). Report on the Response of WA Police to a Particular Incident of Domestic Violence on 19-20 March 2013. Report on the Response of WA Police to a Particular Incident of Domestic Violence on 19-20 March 2013_0.pdf (ccc.wa.gov.au)

[33] Caro Meldrum-Hanna and Clay Hichens (2016) 'Lynette Daley's death: DPP under scrutiny after unprosecuted killing' ABC, 9 May https://www.abc.net.au/news/2016-05-09/nsw-dpp-under-scrutiny-over-lynette-daleys-unprosecuted-killing/7393368

[34] AAP (2020) 'Man sentenced for killing Aboriginal mother hours after meeting' NITV, 2 July https://www.sbs.com.au/nitv/nitv-news/article/2020/07/02/man-sentenced-killing-aboriginal-mother-hours-after-meeting

[35] Isabella Higgins and Sarah Collard (2019) 'Lost, missing or murdered?' ABC 8 December https://www.abc.net.au/news/2019-12-08/australian-indigenous-women-are-overrepresented-missing-persons/11699974?nw=0&r=HtmlFragment

[36] *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*; Home Page - Final Report | MMIWG (mmiwg-ffada.ca).

a devastating pattern of this police disregard and inaction, based on stereotypical assumptions about these women as wandering off, drunk, partying, engaged in sex work or otherwise to blame for their own disappearance. Often, the families were left searching for their loved ones themselves, while police told them that their family members had probably just run away.

The National Inquiry found that stereotypes and victim blaming served to slow down or to impede investigations into Aboriginal women's disappearances or deaths. The assumption that these women were "drunks," "runaways out partying," or "prostitutes unworthy of follow-up…characterized many interactions, and contributed to an even greater loss of trust in the police and in related agencies."[37] There is an automatic assumption that Indigenous women are engaged in criminal behaviour, resulting in excessive use of force by police officers, higher contact, arrest, prosecution and conviction rates, sexual harassment and assault by police officers, and a reluctance to see these women as genuine victims.[38]

As found in the Canadian Report on Missing and Murdered Indigenous Women, through their direct violence and their support for violence by others, police are directly responsible for the culture of impunity that facilitates DFV and other forms of violence towards racialised women. The QPS are the perpetrators not the protectors of these women – and always have been in this place.

4. Defunding: 'Let's stop it at the start'

Police powers and resourcing have continued to expand in Queensland in the last year, capping a trend that has been evident for two decades.[39] This expansion has been accompanied by a rapid escalation in the rates of incarceration of Aboriginal people, including women and girls. These are not unrelated trends.

[37] Ibid p649.
[38] Ibid p632-633.
[39] The Honourable Mark Ryan, *Record $2.86 billion police budget to boost community safety* (15 June 2021) https://statements.qld.gov.au/statements/92396

There is an assumption contained in the Taskforce's Discussion Papers, and in mainstream discourse about policing of DFV generally, that police operate as a protective force rather than a threat or source of violence. This assumption is not universal, but rather reflects only the particular interests and experiences of a narrow but powerful constituency: middle-class white people.[40] It is clear from the discussion above that for many women, reporting violent crimes does not keep them safe. Police do not prevent violence against women; rather, they become involved after the violence has happened, and then, too often, exacerbate its harmful effects.

Far from being a trauma-informed and evidence-based approach, interaction with police too often leads to imprisonment for women who have experienced DFV, childhood abuse, mental illness, and/or substance abuse. Imprisonment then creates further trauma by isolating the woman from her family and community, as well as routine practices such as strip searching, shackling, and solitary confinement that are known to acutely re-traumatise women and girls with lived experience of violence. Further, once imprisoned, whether sentenced or on remand, the evidence is clear that most women will return to prison, generating massive costs for the Queensland economy as well as an incalculable personal cost for that woman, her family and communtiy.

We do not believe that the role of the police in perpetrating systemic sexism, racism and violence against women and girls can be ameliorated through increasing the numbers of women and First Nations officers, or improving the 'cultural capability' of the QPS through greater training. These are 'band-aid' solutions that are unable to deal with the state (and therefore racial) violence at the core of policing in this colony and the demonstrable failure of criminalisation as a response to violence. Implementing a 'co-responder model' is not a solution we support either; this will primarily serve to reinforce and extend the existing ineffective and inefficient approach. Rather, we must ensure that sexual violence and DFV support services continue to be community-based, independent and 'on the side of the woman', rather than (an inevitably subordinate) part of the police response required to pressure women and girls to report violence.

We wish to raise to the Commissioner's attention two key points. Firstly, that certain women – criminalised and Aboriginal and Torres Strait Islander women – are not helped by police when they experience DFV victimisation, instead, they are often harmed as a result of this contact. Secondly, this issue cannot be ameliorated through mere 'cultural' changes within the QPS, such as further training or greater workforce diversity, because it is an inherent feature of an institution built on racism, sexism, and punishment. There is nothing 'unwitting' or 'unconscious' about the racialised nature of Queensland policing.

Therefore, decreasing the authority and resources of the QPS **in itself is a solution to the violence experienced by racialised and criminalised women.** Redirecting this power and resource to community based social programs is also ideal, but we reiterate that the most important factor is the net increase or decrease in police power. Therefore, all solutions considered by this Commission should be evaluated against the following questions:

[40] Watego et al, *Carceral feminism and coercive control: when Indigenous women aren't seen as ideal victims, witnesses or women*. The Conversation, 25 May 2021.

Does it expand the authority of the state and police over women's lives, especially over the lives of First Nations women? Does it increase the resources allocated to police in the name of that authority?

If the answer is yes, then this proposal will reproduce and increase violence.

This Commission of Inquiry has the opportunity to break the following cycle: apparent concern for violence against Black women, extension of state authority in the name of protecting these women, increased surveillance and control over these women's lives, and a subsequent intensification of the violence that was ostensibly the subject of concern. It can do this if it centres the voices of Black women and recognises the racial violence they experience at the hands of the state. We must stop this violence where it begins and return control to women who experience DFV.

It’s time to talk about race, colonialism…and abolition.

Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 2 of the Women’s Safety and Justice Taskforce: *Women and girls’ experience of the criminal justice system – Proposed focus areas*

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Introduction

Established in 1992, **Sisters Inside** is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither "good" nor "bad" but rather, one's environment and life circumstances play a major role in behaviour. Given complex factors lead to women and girls' entering and returning to prison, Sisters Inside believes that improved opportunities can lead to a major transformation in criminalised women's lives. Criminalisation is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively over-represented in prison due to the racism at the foundation of systems of social control.

The **Institute for Collaborative Race Research** is an independent organisation, not tied to the institutional interests of any university, association, or academic discipline. Their primary purpose is to support antiracist, anticolonial intellectual scholarship which directly serves Indigenous and racialised communities. ICRR seeks to create deeper engagement with crucial political questions in an institutional context not dominated by whiteness. Its members are invested in activist, community-based scholarship and communication on race, colonialism, and justice. ICCR provides specialised additional support for those engaged in disruptive interdisciplinary research, sustaining a network of established scholars, early career researchers, students, activists and community members who collaborate in the interests of justice.

We provide to the Women's Safety and Justice Taskforce this joint submission which responds to the **Discussion Paper 2 'Women and girls' experience of the criminal justice system'.** This Discussion Paper seeks input into the proposed focus areas for consultation.

Page 9 of this Paper asks "should we explore any other cross cutting issues" [in addition to diversity, disadvantage, trauma and Aboriginal and Torres Strait Islander overrepresentation]? Our answer is yes. We propose that the Taskforce introduces an explicit and consistent focus on race – and through this focus, addresses core issues of colonialism and carcerality. Only such an explicit focus can give the Taskforce the tools to understand the structural violence of policing and incarceration in the colony, including how it is intersects with patriarchal and heteronormative forms of coercion.

As in our previous submissions, we reiterate our concerns about the framework within which the Taskforce conducts its work. In particular, we are concerned with the construction of false binaries that inhibit attempts to gain a full understanding of 'women and girls' experience of the criminal justice system'.

As in the previous Discussion Paper and in the Terms of Reference, the Taskforce still understands women in only two ways – as victims or as perpetrators (referred to as offenders or accused persons). This has particular implications for Aboriginal and Torres Strait Islander women; it means the Taskforce refuses to hear them. By definition, victims are powerless and require saving, while perpetrators are morally illegitimate and require control. In the Discussion paper and throughout its work to date, the Taskforce, the state and white feminists presume to speak for these 'victims' and about these 'perpetrators'. While deploying this authority to speak, they do not speak about the racial and colonial violence that they themselves are implicated in and/or complicit with. As Nayuka Gorrie has pointed out, the victim/offender framing has significant implications for the way Aboriginal and Torres Strait Islander women and girls are addressed and engaged; 'in our refusal to

be victims here we must surely be the perpetrators of violence for having the audacity to speak back to white women (who are very nice and mean well)'.

In addition, while the Taskforce recognises the 'particular problems experienced by…LGBTQIA+' we have concerns that the unique experiences of trans, gender diverse and non-binary people are erased and excluded from this process. The Taskforce continue to work with a list of categories of all 'women' who deviate from the norm of white, cis, straight, middle-class, middle age, city-dwelling woman. This bullet point grouping positions them as other, and their identities as marginal or secondary considerations in the question of DSFV. However, it is precisely these people who find themselves over-represented as victims and offenders in the system that the Taskforce claims to be interrogating. They are, in fact, at the centre of these questions and should be at the centre of discussion about them.

How is it possible that the Taskforce itself and the Terms of Reference continue to under-represent those people who are over-represented in the system? This contradiction represents a core limitation that remains unaddressed by the Taskforce and which cannot be attributed to a scarcity of time or resources; the point has been made many times in many different ways. Instead the Taskforce's continued marginalisation of these groups reflects the violence of the state's imagining – specifically its refusal to see or address fully the experiences of women, girls, and non-binary peoples' experiences of the criminal legal system.

This issue of overrepresentation in the criminal legal system, and underrepresentation in the Taskforce and public discussion, is not an intellectual one. It has distressingly real consequences.

We remember with respect the tragic death of Ms Veronnica Baxter, a Queensland born Aboriginal woman who died in custody in an all male correctional facility in New South Wales. She was refused bail and denied access to hormone medication prescribed to her. We highlight the tragic story of Ms Veronnica Baxter to demonstrate the severity of the consequences of failing to attend to and centre the voices of those who are most affected by the criminal legal system and the proposed changes to it. At present, there is no possibility for adequately considering the experiences of Aboriginal and Torres Strait Islander women, girls, trans, non-binary and gender diverse people in the criminal legal system let alone ensuring any prospects for their safety and justice. This is because the Taskforce proposes and pre-empts the prospect of only considering 'women and girls' experiences *as victims* in relation to sexual violence while continuing to ignore their experiences as victims of state-sanctioned violence. It is hard to take seriously the Queensland government's claimed commitment to 'women and girls' safety' when it erases so many of the forms of violence they experience.

Separating out 'women as victims' and 'women as offenders' is a clear example of how the Paper and Taskforce approach erases racial and colonial violence. In the Queensland context, almost every woman and girl who is incarcerated has also been a victim of abuse or violence. In the case of Aboriginal and Torres Strait Islander women, non-binary people and girls, incarcerated 'offenders' are also 'victims' of abuse by the settler state, which has a long history of deploying police and prisons as mechanisms to control, dispossess and harm Aboriginal and Torres Strait Islander peoples. This is not a past practice. Race based hyper incarceration of Aboriginal women in Queensland has escalated sharply over the past ten years, and continues to rise with the constant introduction of new laws (see ABS Prisoner numbers and prisoner rates by Indigenous Status and sex, States and territories, 2006-2020).

We draw your attention to the comments we have made previously about the Taskforce's inability to address these experiences of Aboriginal and Torres Strait Islander women and girls due to a

persistent refusal to consider the critical impact of state supported racial and colonial violence. These concerns are outlined in depth in our previous submissions (see our joint statement on the Taskforce's terms of reference '*In No Uncertain Terms: the violence of criminalising coercive control*' and our Submission in response to Discussion Paper 1 entitled *'The State as Abuser: Coercive Control in the Colony'*). We again reiterate this vital and fundamental point.

Currently, the state is a primary abuser of racialised women and their communities – and especially an abuser of Indigenous peoples in the context of ongoing colonialism. The taskforce to date has centred its work on acknowledging and addressing violence perpetrated by individual men. It treats systemic racial and gendered violence conducted by and through white patriarchal institutions such as courts, the judiciary, parliaments and police as aberrational or historic rather than foundational and escalating. The state is rarely understood as a violent actor in its own right and is predominantly framed as the solution to violence – the saviour of women – despite overwhelming evidence to the contrary. The framing and proposed focus areas canvassed in Discussion Paper 2 makes it clear that the Taskforce intends to continue failing in this regard.

Cross-cutting issues

The discussion paper presents a list of 'cross cutting issues' which includes:, diversity, intersecting disadvantage, recognising and responding to trauma, over-representation of Aboriginal and Torres Strait Islander women and girls as victims of crime and as accused persons, the nature and culture of the criminal justice system and alternative justice models, protecting and promoting human rights and the need to achieve just outcomes by balancing the interests of victims and accused persons. We are advised by the Taskforce that each 'issue' cuts across the themes presented in the paper. However, it is clear that almost all of the issues identified operate as a means by which the state can displace and avoid attending to race within the criminal legal system.

Indigenous women and girls are routinely identified statistically as a racial category - as the most subject to forms of violence and abuse - as well as those most often criminalised and incarcerated by the state. Despite this, rather than centring the experiences and authority of Indigenous women and using this knowledge to understand the actual operations of the criminal legal system and inform systemic changes to benefit all women the taskforce persists in characterising Aboriginal and Torres Strait Islander women as exceptions to a white norm. In their supposed 'diversity', 'trauma' and 'disadvantage' they are framed as bearers of high risks or vulnerabilities, which the justice system struggles to adequately service despite its best efforts.

However, the reality is that in the settler colonial state, race is ever present, in all engagements with the criminal legal system. We argue that Indigenous women, girls and non-binary people are not 'marginalised by the justice system' but actively targeted and brutalised by it. They are not at its edges, poorly serviced by it, but at its centre, suffocatingly subject to its control. The refusal of the Taskforce to attend to race explicitly while noting 'diversity', 'trauma', 'disadvantage' and the racialized category of Indigeneity and 'human rights' is as disingenuous as it is violent.

Discussion Paper 2 continues to erase and evade the continuing operation and impacts of racism and colonialism in Queensland's criminal legal system. Colonialism is repeatedly framed as an inherited trauma that Aboriginal and Torres Strait Islander people bear; the impact of past and present colonialism on Queensland's criminal legal system and other non-Indigenous people and structures is entirely erased. Aboriginal people are described as bearers of 'complex' disadvantage and trauma, without reflection on the structures of continuing racism and colonialism that entrench and sustain

this. Where racism is mentioned in the Discussion paper, it is described as historical or as a perception or a fear held by Culturally and Linguistically Diverse communities, rather than as a continuing reality. Racism is rarely considered as a factor shaping Aboriginal women, girls', trans, non binary or gender diverse peoples experiences; they are rarely even described as 'perceiving' or 'fearing' racism. Instead their 'complexity' and disadvantage are emphasised, as if these characteristics themselves account for their brutal and intensive treatment by the criminal justice system.

We further note that Discussion Paper 2's proposals to consider reforms that extend or expand current policing and carceral systems are always made in solid terms. Specific feedback is sought about how these already proposed reforms might be better discussed and achieved.

However, proposals to consider issues that are not as positively endorsed by police and state agents - such as the impact of community 'fears' of racism, post incarceration support and experiences - are included tentatively. Feedback is sought about whether these items should be considered at all. This is surprising given that in the foreword to the Paper, the Taskforce Chair acknowledges that the criminal legal system is often unable to recognise or accommodate trauma-based responses. And, while the Chair raises the broad question as to whether alternative justice models be considered, the discussion paper reduces such 'alternatives' to increased victim participation with what it knows to be a violent system.

Consequently, we argue for a broadening of what the Taskforce understands as 'the nature and culture of the criminal justice system and alternative justice models' which includes understanding how the so-called justice system operates as an apparatus of colonial control. By centring race and colonialism as a focus area, the Taskforce can finally take seriously the calls from Indigenous scholars, advocacy groups and activists abolitionist alternatives. These include defunding of police, justice reinvestment and the decriminalisation of health, social and economic problems such as mental illness, poverty and homelessness.

We reiterate in the strongest possible terms: it is not possible to deliver safety and justice for women in Queensland without addressing racism, colonialism and the violence perpetrated by the carceral state.

Part 1: Women and girls' experience of the criminal justice system as victims-survivors

The taskforce proposes to focus on sexual offending against women. It makes the false claim that 'system reforms that respond to the needs of women and girls as victims of sexual offences will also benefit women and girls' experiences of the criminal justice system in other matters'. When considering the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people, we know that they have not been well-served by system reforms. Only those operating from the most privileged position could make the automatic claim that all attempts to address sexual violence will improve women's experiences of the criminal legal system.

Since first colonisation, the colonial state has positioned Aboriginal women as victims of sexual violence in order to legitimise the extension of its authority over them, and to subject them to further abuse. For instance, indifference to sexual abuse on the frontier was enabled by beliefs that Aboriginal women were treated worse by their own men. Queensland's brutal and micromanaging protection legislation used the language of 'protecting' Aboriginal women from predation in order to economically and sexually exploit them. Aboriginal children and women were used as labour under government sanctioned work arrangements justified as 'civilising and protecting', but which actually subjected many to sexual abuse sanctioned by the state.

This is far from a historical practice. In the contemporary context child removal results in greater risk of sexual violence, yet is often justified using the language of 'protecting' vulnerable Aboriginal children. The Northern Territory Emergency Response, now acknowledged as a hierarchical, coercive and unsuccessful policy intervention, which required the suspension of the *Racial Discrimination Act* was similarly justified using white moral panic regarding sexual offending in Indigenous contexts. In short, attempts to 'protect' racialized women from sexual violence are regularly weaponised against whole communities. For Aboriginal and Torres Strait Islander women, non-binary people and girls, sexual violence and state intervention are deeply enmeshed.

The Taskforce needs to broaden its understanding of violence and attend to violence beyond that perpetrated by 'bad individuals'. The refusal to even acknowledge state sanctioned and enacted violence makes us question the legitimacy of the Taskforce's commitment to safety and justice for all women.

The Discussion paper proposes that the Taskforce consider the impact of 'rape myths' in attending to cultural and attitudinal chance across all sectors of society. However, it makes no suggestion that it should attend to racial myths and stereotypes. In its refusal to name race as a cross cutting issue it fails to recognize how spotlighting sexual violence in Indigenous communities reproduces myths which extend the authority of the state over Indigenous lives. This includes the story of the violent black male perpetrator – again deployed to specific political effect in the NTER.

The Taskforce demonstrates its inability to understand intersectionality (which is named as a cross cutting issue), in its narrow attention to cultural and attitudinal change about rape myths. It presumes these myths can be remedied by a media and a state who are in fact responsible for these violent representations of racialized and gender diverse sexual assault victims. It also presumes that such attitudes can be remedied via a more diverse police, legal profession and judicious officers – by populating structures with more diverse people - rather than changing those structures themselves.

We do not support limiting the focus on women and girl's experience of the criminal justice system to their (here separated) experiences as victims and survivors of sexual violence. We urge the Taskforce to understand both the enmeshment of victimization and criminalization, and the sovereign authority of Aboriginal and Torres Strait Islander women, non-binary people and girls to speak on their own experience of these issues.

Further we have concerns about the presuppositions of the discussion paper regarding women's under-reporting, and consideration of the role of police. Trying to find ways to increase reporting and force more Aboriginal women into contact with the criminal legal system is not always the improvement that the Taskforce imagines. We have concerns that the voices and experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people will be marginalized in favour of the authorative claims of police and other stakeholder groups, which the Taskforce has deemed most relevant in its own ToR. They assume that they are best placed to address sexual violence, but the experiences and voices of Aboriginal and Torres Strait Islander advocates, experts and survivors tells us otherwise.

We observe in the narrow scope of this discussion paper and its questions, the future investment in the white welfare industrial complex. Again, in this arm of the state long complicit with policing and incarceration, the violence experienced by Aboriginal and Torres Strait Islander women, girls and non-binary people continues unabated. By divorcing sexual offences from other forms of violence the Taskforce is reproducing the narrow silo approach to women's safety and justice that continues to fail. The discussion appears to preempt a state driven service provision response to a very narrow conceptualization of violence as experienced by women, girls and non-binary people. This service provision industry does not mitigate carceral violence, but instead too often works in tandem with it - for example by removing children of those women who report abuse while the women themselves are criminalized.

Part 2: Women and girls' experience of the criminal justice system as accused persons

We support an examination of the underlying factors that contribute to the increasing levels of women and girls coming into contact with the criminal legal system. This is an issue of pressing concern, particularly for Aboriginal and Torres Strait Islander women, girls and non-binary people. However, at present the 'cross-cutting issues' as they are identified cannot allow this examination to occur. Unless the Taskforce directly attends to race and colonialism, the story it tells will further pathologise and margainlise Aboriginal and Torres Strait Islander women, girls and non-binary people. If the Taskforce wishes to genuinely examine of the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people it must commission Indigenous expertise in this area to undertake the work.

Further, the discussion paper is restrictive in the way that it exclusively examines the role of police. It refuses to recognize the problem created when the state uses the violence of police to police violence. It therefore also refuses to consider alternative interventions including abolition, defunding police and/or decarceration strategies.

Given Aboriginal and Torres Strait Islander women, girls and non-binary people are over-represented in low level offences, the Taskforce could instead be using its resources to undertake an audit of the criminal code and review the criminalization of acts that relate to women's survival and safety. These include homelessness, public nuisance, and poverty related offences. If the taskforce is committed to women's safety and justice in its fullest sense, acknowledging that the criminal legal system retraumatizes and recrimialises, it should be concerned with minimizing incarceration as well as social gendered violence exclusively.

We are concerned by the causal pathways established by this Discussion Paper in its reference to the trauma and 'high rate of disadvantage and maltreatment in childhood for Aboriginal and Torres Strait Islander people'. This approach focuses on the Aboriginal and Torres Strait Islander mother and child as the site of intervention, not the state or the systems that brutalise and impoverish them. The discussion paper claims that over representation in custody is matter of 'over-policing' and yet again refuses to name race as the mechanism by which such overpolicing operates.

We are troubled by the following discussion paper claim: 'Research shows that when police treat women fairly and provide them an opportunity to have a voice in the encounter, they are more likely to comply with police, even when the encounter results in a criminal justice response'. The desire for compliance is telling. The refusal to recognise the reality of state violence in the lives of Aboriginal and Torres Strait Islander women, girls and non-binary people suggests that the Taskforce does not have the capacity to ensure their safety, and in fact is willfully indifferent to it. In such circumstances, it should not seek to increase these women's reporting to and compliance with police.

Finally, we note that the Discussion Paper asks whether the Women in Prison 2019 recommendations should be reviewed. However, it fails to mention the Royal Commission into Aboriginal Deaths In Custody recommendations that relate to Aboriginal and Torres Strait Islander women, girls and non-binary people. In contrast to the approach of the Taskforce, the RCIADIC recommendations focus on decreasing rather than increasing the enmeshment of Aboriginal and Torres Strait Islander lives and the criminal legal system.

Recommendations/Conclusion

1) Race and colonialism be named explicitly as cross cutting issues. Cultural diversity, disadvantage or trauma should not be used as a surrogate for attending to the racial and colonial violence that Aboriginal and Torres Strait Islander women, girls and non-binary people experience.
2) Given the Taskforce recognizes the inability of the legal system to provide a trauma-informed response, it should broaden its engagement with alternative justice models that include, abolition, defunding police, justice reinvestment, and other methods of decarceration and decriminalisation.
3) The Taskforce should conduct an audit of the criminal code and offences committed by Aboriginal and Torres Strait Islander women, girls and non-binary people and consider repealing low level offences which subject them to state-sanctioned violence.
4) It should engage Indigenous experts to lead the examination into the underlying causes that cause the over-representation of Aboriginal and Torres Strait Islander women, girls and non-binary people in the criminal legal system.
5) It should include an examination of the Royal Commission into Aboriginal Deaths in Custody Report recommendations as they relate to the experiences of Aboriginal and Torres Strait Islander women, girls and non-binary people, as well as considering the recommendations of Women in Prison 2019.
6) Moving forward the Taskforce consider:
    a) Engaging with Aboriginal and Torres Strait Islander women, girls and non-binary peoples beyond the narrow parameters of victim-offender and male-female violence, and in doing so
    b) Address the under-representation of Indigenous women, girls and non-binary peoples on the Taskforce, in its Terms of Reference and throughout all consultation processes, as a means by which to more effectively addressing the issue of over-representation of this population in the criminal legal system.

THE CONVERSATION

Academic rigour, journalistic flair

Carceral feminism and coercive control: when Indigenous women aren't seen as ideal victims, witnesses or women

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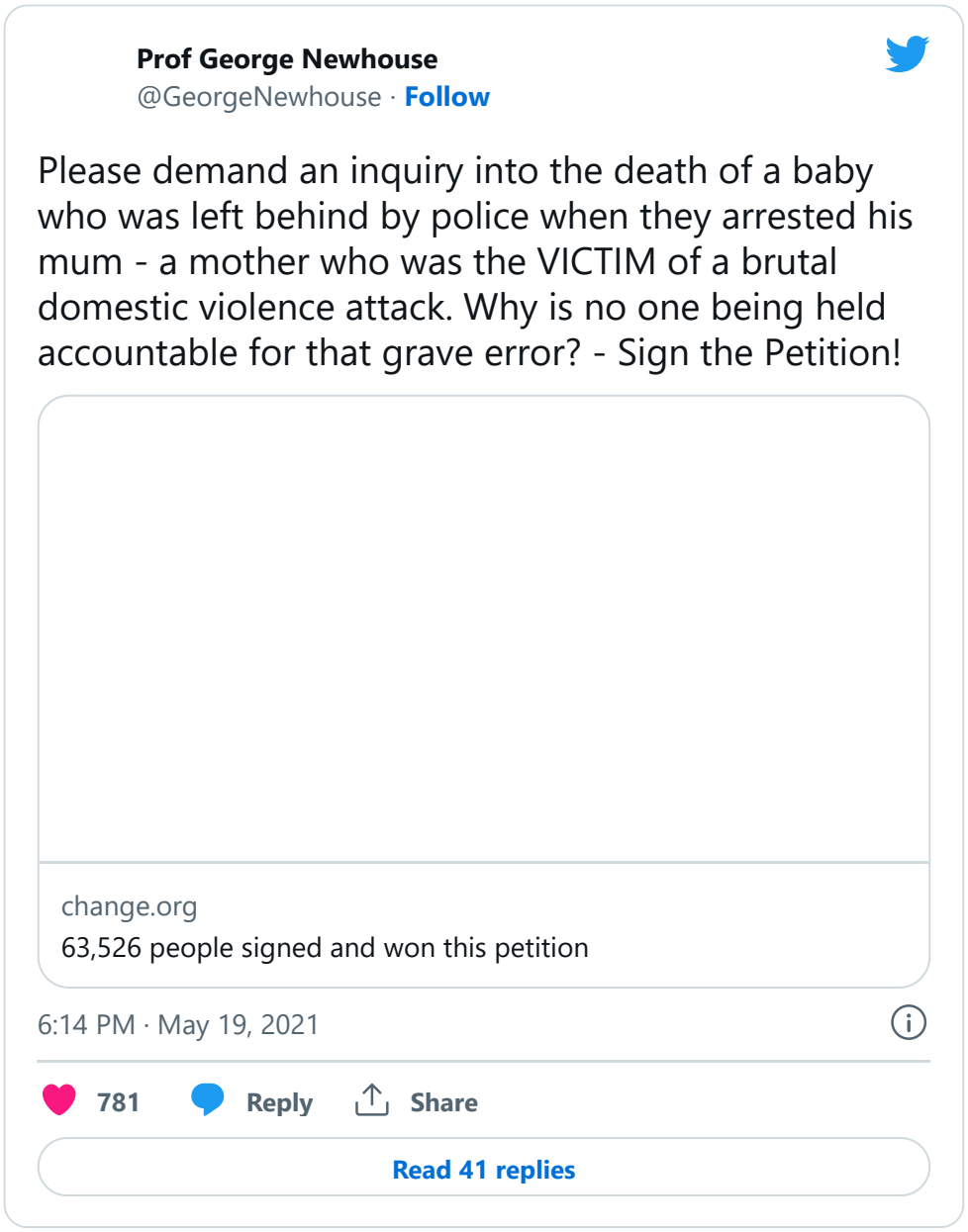
Indigenous women are insisting upon a broadening of policies that facilitate safety and justice for all women. James Ross/AAP

The SBS documentary series See What You Made Me Do aimed to spark a national conversation about criminalising coercive control. Instead it highlighted the stark power imbalances in conversations between Indigenous and non-Indigenous women.

> *She wasn't being a good victim, she wasn't standing there in the sheet dripping in blood and trying to control all this emotion that was going on with her [...] she said I want my Dad, I want my Dad and they decided she couldn't have her Dad. The two policeman, one woman and one man, they said that Tamica spat and they said, 'That's assault and you're getting arrested.'*

These were the words of Kathleen Pinkerton, a Widi woman from the Yamatji nation. Kathleen was describing the police treatment of her niece, Tamica Mullaley, who was a victim of domestic violence. Rather than being treated as a victim, the police treated her as an offender, which resulted in the most tragic of consequences for her baby Charlie.



The good victim

Tamica's story was at the centre of episode two of the documentary series *See What You Made Me Do*, which is based on journalist Jess Hill's book of the same name. SBS claims the documentary "is not just about making TV content, it's about making change".

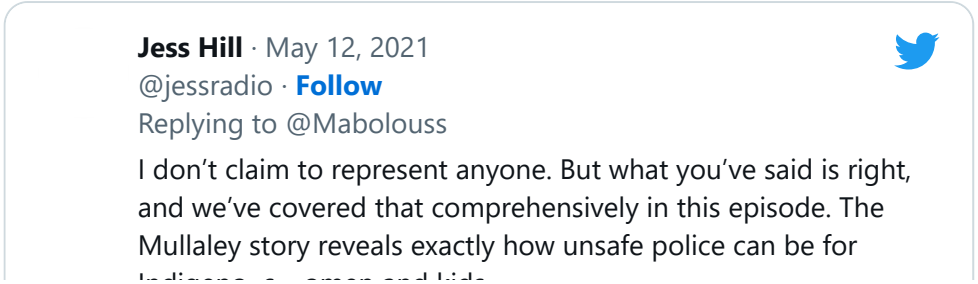
Indeed, Hill's aim to criminalise coercive control is part of a larger national agenda. It was the first priority set for the Queensland government's recently established Women's Safety and Justice Taskforce.

The taskforce and documentary both call for a carceral solution to coercive control – coercive control refers to systemic domestic violence that operates through a matrix of subtle practices including surveillance, gaslighting, financial control, and fear of potential violence.

This plan for criminalising coercive control has been met with sustained critique from a range of Indigenous women academics, activists and frontline workers. They argue such a solution would result in more Indigenous women being imprisoned than protected.

These concerns are evidenced statistically, by the staggering increases in Indigenous female incarceration. They are also shown clearly in the story of Tamica herself, who was "misidentified" as an offender by the police (which included a female officer).

In the documentary, Tamica's tragedy is used to make a case for extending police powers and consideration of female-only police stations. Yet, her story negates the case being made by demonstrating how police-based solutions will harm Indigenous women.



This has many rightfully questioning the function of Indigenous women's trauma in narratives constructed by carceral feminists - those who see state institutions such as police and prisons as appropriate solutions to gender based violence.

A key point we raise is the failure of this approach to understand how the state itself perpetrates abuse and coercive control over Indigenous women.

The terms of reference of the Queensland government taskforce expressly state Indigenous women should be considered as "victims *and* offenders." While Indigenous women and children may be positioned in public debate as victims to lever emotional support for carceral solutions, it is clear Indigenous women are already considered potential perpetrators by the taskforce meant to protect them.

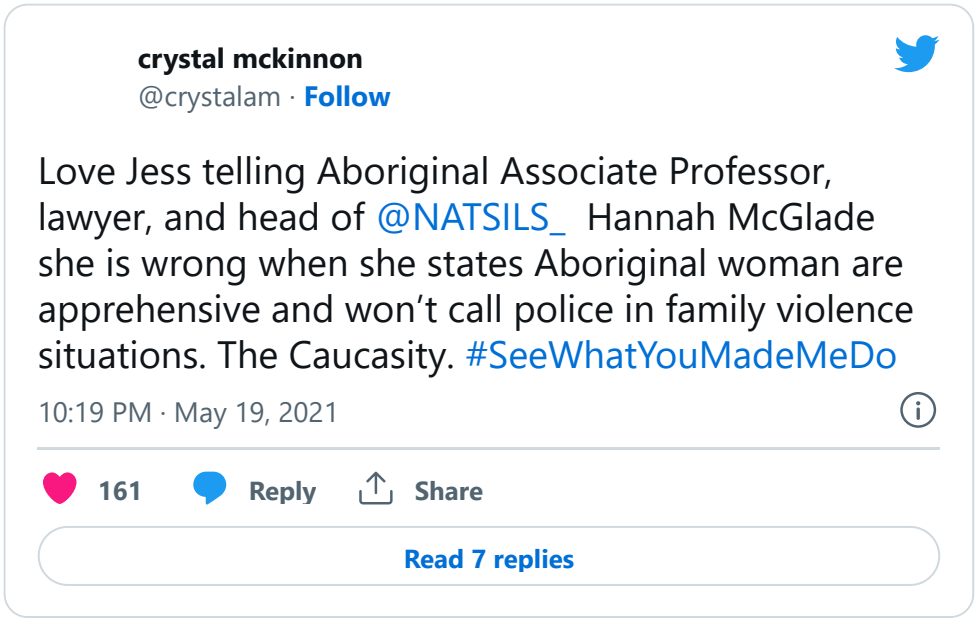
Sadly, concerns raised by Indigenous women have fallen on the deaf ears of those who claim to care. Here, we see how Indigenous women make for neither good victims nor good witnesses.

Read more: No public outrage, no vigils: Australia's silence at violence against Indigenous women

The good witness

This was on display in Hill's expert panel discussion that followed the airing of the final episode of See What You Made Me Do. Dr Hannah McGlade, a Noongar academic expert, lawyer and head of the National Aboriginal and Torres Strait Islander Legal Services, cogently challenged Hill's call to criminalise coercive control.

McGlade spoke of the reality of Aboriginal people being over-policed. Hill responded by replying directly to McGlade about "what gives her heart and keeps her advocating for these laws" despite just having heard why they are deeply problematic. Later, she again responded to McGlade, telling her that actually Indigenous women advocate for the laws rejecting her claim that Aboriginal women are fearful of contacting police.



In bringing her expertise to the conversation, McGlade interrupts what was meant to be Hill's conclusion from the three part documentary - that a "revolution" is required to save women, which includes criminalising coercive control. But the dynamics of the panel reflected the dynamics of the debate: where Indigenous women and female academics are not only not believed, but ignored and told they're wrong.

Indigenous women, much like in Tamica's case, are not deemed worthy of protection. In Queensland, nearly 50% of Indigenous women murdered in domestic violence contexts have previously been named by the state as perpetrators. We argue that Indigenous women are framed as a threat to be contained, whether they seek protection for themselves in domestic violence situations or for other Indigenous women in public debate.

The current dialogue around coercive control troubles white Australia's limited understanding of who can commit violence against whom, and who can be a victim and who is a perpetrator.

Theorists such as Darumbal and South Sea Islander journalist Amy McQuire and Judith Butler, have examined who is grievable (the good victim) and who is believable (the good witness).

White Australia tends to see both white women and state agents like police as fundamentally good, and both are almost always deemed grieveable and believable.

Amy McQuire reminds us of the importance of recentering "the voice of the Black Witness":

> *"Like the White Witness, the Black Witness also uses the language of war. While the White Witness uses it to stage an attack, the Black Witness will mount a defence, because it is not the White Witness's war they want to talk about, it is the real war — the continuing resistance against an occupying force [...]*
>
> *While the White Witness thrives on accounts of the brutalisation of black bodies, most commonly of black women and children, the Black Witness pushes these same black women to the forefront — they are the ones with the megaphones in the centre of the Melbourne CBD — in the very heart of white, respectable space."*

When we listen to Indigenous women, it is clear they don't necessarily want inclusion in the agendas of white women. They are insisting upon a broadening of policy development that ensures safety and justice for all women.

Indigenous women shine a light on a form of violence that carceral feminism continues to overlook. This violence is not only between the police officer (male or female) and Aboriginal women, but between the state and its citizens. It often manifests as exactly the kind of subtle entrapment Hill describes as coercive control - using isolation, surveillance, financial scrutiny, gaslighting, refusal of care and threats to children.

The problem with criminalising coercive control isn't only a matter of poor design or of perception of deserving victims. The problem is it results in an extension of power by the state.

In Queensland, this extension of state authority justified using the same kind of framing of female trauma Hill uses in *See What You Made Me Do*. It follows other concerning expansions of police powers and resources in recent months.

Read more: Politics with Michelle Grattan: Linda Burney on the treatment of Indigenous Women

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The Good Women

In this moment, it is Indigenous women who are refusing to aid an already authoritative state accrue more power. There is little that is revolutionary about carceral feminism. Hill herself acknowledges her calls to criminalise coercive control aim "to reform the current domestic violence law". Yet, such a reform serves to further entrench abusive power relationships against Indigenous women.

Gomeroi Kooma woman Ruby Wharton offers the revolutionary imagining required when she speaks of decarceration and Black deaths in custody:

> *it's not about doing performative things within their system, but abolishing it [...] we can't demand incarceration of police when we are dying of the same system [...] as long as we walk in love we will be able to seek justice.*

From Wharton, we see the kind of care so desperately needed in this conversation - in which all people are afforded care. The refusal of carceral feminists to think about care in its most inclusive sense is a refusal to “walk in love” alongside Indigenous women. This is because they exercise their virtue on the basis of an authority afforded by a racial order that exists within Australia, which privileges them above Indigenous women.

Distinguished professor Aileen Moreton-Robinson in her seminal text Talkin’ Up To The White Woman some 20 years ago concluded:

> *the real challenge for white feminists is to theorise the relinquishment of power so that feminist practice can contribute to changing the racial order. Until this challenge is addressed, the subject position middle-class white woman will remain centred as a site of dominance. Indigenous women will continue to resist this dominance by talkin’ up, because the invisibility of unspeakable things requires them to be spoken.*

The State as Abuser: Coercive Control in the Colony

Joint Submission from Sisters Inside and the Institute for Collaborative Race Research on Discussion Paper 1 of the Women's Safety and Justice Taskforce

ICRR

SISTERS INSIDE

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Introduction

Established in 1992, **Sisters Inside** is an independent community organisation based in Queensland, which advocates for the collective human rights of women and girls in prison, and their families, and provides services to address their individual needs. Sisters Inside believes that no one is better than anyone else. People are neither "good" nor "bad" but rather, one's environment and life circumstances play a major role in behaviour. Given complex factors lead to women and girls' entering and returning to prison, Sisters Inside believes that improved opportunities can lead to a major transformation in criminalised women's lives. Criminalisation is usually the outcome of repeated and intergenerational experiences of violence, poverty, homelessness, child removal and unemployment, resulting in complex health issues and substance use. First Nations women and girls are massively over-represented in prison due to the racism at the foundation of systems of social control.

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We provide to the Women's Safety and Justice Taskforce this joint submission which responds to the **Discussion Paper 1 'Should domestic violence be a stand-alone criminal offence? And how best could Queeensland legislate against coercive control'**.

Our joint submission contends that the state itself is a perpetrator of coercive control against all but the most privileged of white women. In relation to Aboriginal and Torres Strait Islander peoples, *the state is the primary perpetrator of coercive control.* This Discussion Paper further enacts such systematic abuse by refusing to hear sovereign Aboriginal and Torres Strait Islander women, non-binary people and girls them when they speak this truth – it offers only intensified state authority over their lives.

Central to our concerns is that this Taskforce and the wider coercive control debate positions Indigenous people in only two ways – as victims or as perpetrators (also referred to as accused persons).

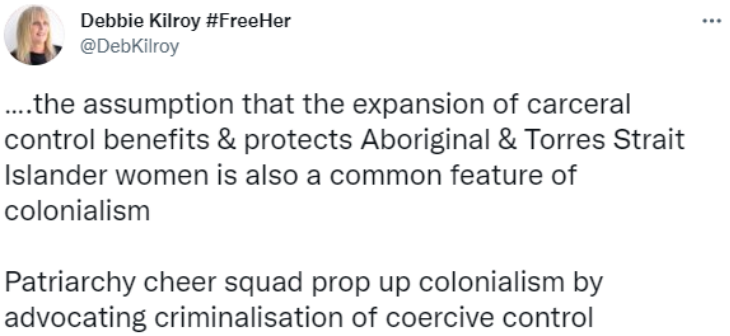
This means the Taskforce refuses to hear them – by definition victims are powerless and require saving, while perpetrators are morally illegitimate and require control. In this Paper and the broader process, the state and white feminists presume to speak for these 'victims' and about these 'perpetrators'.

Instead, we acknowledge Aboriginal and Torres Strait Islander people as sovereign knowledge holders and centre them as the experts on their own experience of DSFV and the violence of the criminal legal system. In doing so we highlight how erasing their voices is an essential part of the state's pattern of coercive control. This erasure is evidenced in the Taskforce's own **Terms of Reference** in which Aboriginal and Torres Strait Islander peoples or agencies are not named explicitly as 'a relevant advocacy group' (See Appendix 1), and in the consultation process timeframes in which substantially less time has been afforded to respond to **Discussion Paper 2 – Women's and Girls experience of the criminal justice system.**

We identify the **Discussion Paper 1's** approach to coercive control as flawed in three ways.

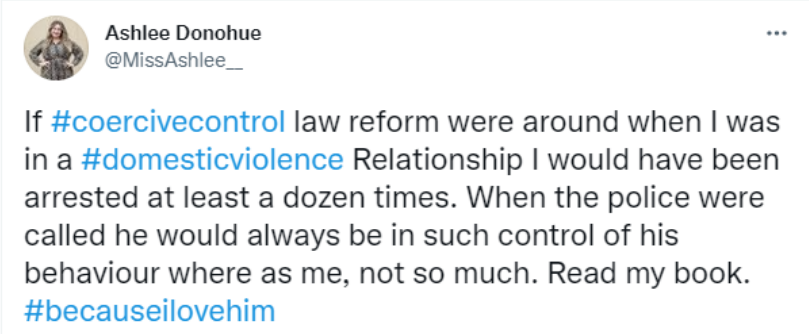
Firstly, it can only see gendered, but not racial or heteronormative, violence, despite widespread evidence of this harm. It therefore gaslights those outside the unnamed but universalized category of white straight middle-class women. It assumes that gendered power dynamics shape interpersonal relationships but not policies, laws and institutions, and it erases the effects of racialised and heteronormative domination altogether.

Secondly, this means it cannot see that the state is a primary abuser of racialized communities – especially of Indigenous peoples in the context of ongoing colonialism. Instead, it acknowledges violence perpetrated by individual men but ignores the racial violence conducted by and through white patriarchal institutions like the police. The state is never cast as a violent actor in its own right and only ever framed as the solution to violence – the saviour of women, despite overwhelming evidence to the contrary.



Finally, the Queensland government enacts this new legislation in the context of a pattern of wider racial violence, failing to consider how 'inviting the police into the home during these moments may further disadvantage Aboriginal women by putting them on notice to child-protection services' (Davis & Buxton-Namisnyk, 2021).

Recent changes to bail and youth related criminal legislation tighten the net around marginalized women, non-binary people and girls. The apparently benevolent coercive control agenda hides this disturbing pattern of intensifying carceral and racialised abuse. It also serves to legitimise intergenerational state service failures that keep women trapped in coercive relationships – the lack of appropriate funding for housing, community support, and social services means women subject to coercive control are further isolated. Instead of offering the means for these women to control their lives and leave violent relationships on their own terms, it further empowers police to determine these women's futures.



With this clear agenda to criminalise coercive control despite the objections of sovereign Aboriginal and Torres Strait Islander people and others with lived experience of the criminal legal system, the net of state coercion more fully ensnares marginalized women in the name of their liberation.

Overview of Taskforce Discussion Paper

The Women's Safety and Justice Taskforce has three aims (p8). They are:

1. To examine coercive control
2. To review the need for a specific offence of 'commit domestic violence'
3. To examine the experience of women and girls across the criminal justice system

Discussion Paper 1 deals with the first two aims. We note with concern, as we did in our previous joint statement (Appendix 1), that consideration of the actual experience of women in the criminal legal system is deferred until *after* considering coercive control and specific legislative solutions.

We also strongly object to the unreasonable timeframe for feedback on Discussion Paper 2, which deals with the critical issue of women and girls' experiences of the criminal legal system. This second submission was due one week after the submissions for Discussion Paper 1, with only a four-week timeframe. Requests for extensions by Sisters Inside and ICRR had initially been refused. A one-week extension has since been granted, however this still offers very limited time to adequately capture the lived experiences of Aboriginal and Torres Strait Islander women.

Without this broader context, the Taskforce cannot fully understand the depth and nature of Indigenous, racialised, and criminalized women and non-binary people's critique of coercive control. This critique comes in the context of sharply rising incarceration rates for Indigenous women and girls (see below Section 2), overpolicing of marginalized communities, high rates of misidentification of victims as perpetrators, the ongoing historical role of Queensland police forces in enacting colonial and racial violence and a recent pattern of new Queensland legislation that will increase incarceration rates.

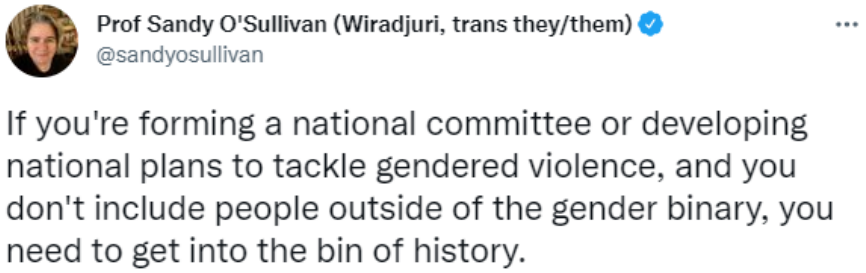
Our submission refuses to defer the question of the experience of Aboriginal and Torres Strait Islander women, non-binary people and girls in the criminal legal system. It is only by understanding the racial and colonial structures of this system that the dangers of coercive control legislation become clear. The reality is that, for all but the most privileged of women, the state acts as an abuser rather than a protector. Coercive control legislation will greatly increase this perpetrator's power to intervene in the lives of Aboriginal and Torres Strait Islander people and entangle them in carceral systems.

We note with deep concern the following points, made more fully in the submission below.

- The Discussion Paper misunderstands and therefore inappropriately deploys the Scottish model to legitimise its agenda. Scottish legislation has a non-exhaustive definition of abusive behaviour which has enabled 84% of those charged to be convicted in its first year of operation. However, the most common penalty was non-carceral diversionary programs. There are no signs that this diversionary approach will be included in the Queensland reforms, where all suggested penalties involve incarceration (p53-54). **A 'Scottish style' broad offence with high conviction rates and a 'Queensland style' pipeline to incarceration would be a catastrophe for racialised and over policed communities.**
- The Discussion Paper deploys Aboriginal and Torres Strait women's distressingly high rates of experiencing DSFV early on to legitimise its program (p8). Yet it does not mention the overwhelming racialized violence they experience at the hands of the state until page 44 – under the heading *'risks in legislating against coercive control'.* The deep racial violence of the

carceral system is reduced to a 'risk' to be mitigated during the extension of this system, rather than acknowledged as foundational.

- Coercive control is an especially pernicious form of abuse because it involves controlling another person's reality and understanding of what is happening to them. It is control based on the power of definition; in its subtlety and complexity coercive control can appear benign to the perpetrator themselves, and to outsiders. It gaslights victims that what is happening to them is acceptable, and routinely dismisses their own understandings of their experience of abuse. This is exactly what is happening in the coercive control debate itself (Appendix 2).
- Aboriginal and Torres Strait Islander women, non-binary people and girls must have the power to name and define this form of violence or else they are being abused through erasure of their experiences. Despite this attempt they continue to enact their sovereign right to speak on their own experiences and hold the state to account for its ongoing and intensifying racial violence.



This Discussion Paper notes that coercive control is enabled 'by the broader community's understanding of, and tolerance for, abuse of this kind' (p14). The Paper is right to say that this matrix of subtle abusive tactics has previously been normalised, and that it profoundly disempowers its victims. This is precisely why we reject the framing and conclusions of this Discussion Paper – especially its suggestion to enact legislation to criminalise coercive control and extend police powers. The criminalization of coercive control frames Aboriginal and Torres Strait Islander women, non-binary people and girls as voiceless victims/perpetrators, attempts to gaslight them regarding their own experiences of structural abuse, and extends the power of their primary abusers – the state itself.

1. Racism and coercive control

The Discussion paper notes that Aboriginal and Torres Strait Islander women are more likely to experience domestic and family violence, from a wider range of people, and are more likely to be seriously injured (p8). Yet it is not until page 44 – under the heading *'Risks in legislating against coercive control'* – that the Paper acknowledges that Aboriginal and Torres Strait Islander people are grossly over policed and hyper incarcerated. It states that they are "already over represented for offences relating to breaches of domestic violence orders" and "are more likely to be convicted of these offences" due to systemic racism. Therefore, violence against Indigenous women is used at the start of the report to legitimize the extension of the criminal legal system, while deep violence of this system itself is reduced to a 'risk' to be mitigated.

In this way, the impact of colonisation and racial violence ('including the history of dispossession, cultural fragmentation and marginalisation') is located 'within Aboriginal communities' rather than in the wider community. It is very noticeable that no consideration is given in the Discussion paper to the racial violence enabling legacies of colonialism that continue to inhere in legislation, policies, practices and attitudes of the State and its agents, which are reflected in land ownership, wealth distribution, health statistics, and arrest and incarceration rates. No consideration is given to the impact of colonialism in shaping the Queensland Police Service, who have played a key role in implementing racist, violent policies from their inception as an institution, and whose contemporary racist cultures and practices are well documented (including recently by Gorrie 2021; see also Porter).

Our primary concern in this submission is to highlight the racial violence authorised by the Paper's identification of gender as a system of power while remaining blind to race, and consequently the way that the racist harms of the resulting proposals are framed as a side effect or unintended consequence rather than the direct result of choices made by the State and its agents (including the Taskforce). However, we must also note that this failure to understand and address gendered violence in an intersectional way has the effect of erasing other systems of power that authorise violence against many in our community, including many women and girls. As a result, the Discussion paper identifies people with disabilities, people from culturally and linguistically diverse communities, and people who are LGBTQIA+ alongside Aboriginal and Torres Strait Islander women as 'particularly vulnerable' to domestic and family violence (p12-13), but fails to identify how these vulnerabilities are created - including the implication of the State and its agents in these power dynamics. For example, homophobia and heteronormativity have shaped the way that women who are not heterosexual or who are in relationships that are not cis-heterosexual experience violence - from differences in applicable legal frameworks, access to family, social, and service-based support, and experiences of hostility and violence from police. This experience is barely discernable in the Discussion paper beyond ritualised mention of especial vulnerabilities in relevant sections, the 1998 amendments to belatedly include same-sex relationships in the Domestic and Family Violence Protection Act are not mentioned as key Queensland DFV law reforms, and the Discussion paper's insistently binary and heteronormative framing mentioned continues to perpetuate this exclusion.

Consistently, the Discussion paper defaults to a gendered universalism which treats 'women' as an unproblematic and undifferentiated category. This has the effect of both centring and naturalising a white, temporarily able-bodied, heterosexual cisgendered norm. At the same time, it repeats and reinforces a range of colonial tropes positioning patriarchal white society and its institutions as the arbiters of civilised gender and sexual morality and identifying racialised groups as backward, in need of education or improvement (see for example p16; for resources on this see Stoler 1995; Watson 2005; Watson 2009). As such, it not only fails to acknowledge and address the social structures and systems that create the 'vulnerabilities' that it acknowledges are evident in statistically diffentiated experiences of violence, but also actively reinforces them.

From the outset, the Discussion paper notes that the experience of those subject to coercive control 'is impacted by the broader community's understanding of, and tolerance for, abuse of this kind' (p14). However, no consideration is given anywhere in the report to the unequal distribution of the 'broader community's' sympathies, or of the way that abuse and violence of many kinds against women in some of the groups named above is not just tolerated but naturalised and in some cases actively promoted.

High profile cases of appalling violence directed against middle class white women have engaged public sympathies - and provoked recent political and media attention to questions of coercive control - yet similar experiences of appalling violence often pass unremarked and unmourned when Aboriginal and Torres Strait Islander women or other racialised women are the victims.

Abusers routinely exercise coercive control by preventing their victims from mixing with their families and communities, controlling their access to financial and other resources, surveilling them and tracking their movements, threatening harm to loved ones, belittling them and speaking in abusive terms about their intelligence or other attributes; these are also common features of accepted treatment of Aboriginal people by Australian governments (through racially targeted overpolicing and extreme parole conditions, the imposition of the Indue/Basics card and other income quarantining measures and failure to recognise land rights, police violence and deaths in custody, child removals, stigmatising political discourse about Aboriginal people, families and communities). There is a continuum of abuse towards people from a number of racialised or marginalised groups - including practices resembling coercive control, including practices resembling coercive control exercised by governments - that is naturalised and deemed acceptable in the public sphere. Governments are thus not simply or technical neutral problem solvers who act benevolently to protect the interests of all citizens, but also directly implicated in creating the social and political conditions that enable high rates of violence against Aboriginal women and girls.

1.1 Centering Indigenous womens' voices

If the Taskforce seeks to identify proposals to address coercive control most likely to promote safety and justice for all women, it would be appropriate to begin with a thorough assessment of the expertise, interests, opinions and experiences of those most affected- or, in the words of the Discussion paper, those who are 'particularly vulnerable'.

Aboriginal and Torres Strait Islander women are 35 times more likely to experience domestic and family violence compared to non-Indigenous women (Mitchell 2011), and are 31 times more likely to be hospitalised for assaults inflicted within a domestic and family violence setting than other women (SCRGSP 2011). However, despite this, relevant public and policy debate - including that surrounding the constitution of the Taskforce and the treatment of coercive control in the Discussion paper - has not centered Aboriginal women's perspectives and concerns. Our recent article in the Conversation (Watego et al 2021, Appendix 2) noted that Aboriginal women's experiences of violence are often harvested for illustrations of trauma when middle class white women advocate for expansions of police powers, while their voices are dismissed and their advocacy, expertise, opinions and interests overlooked or treated as culturally and racially exceptional. In fact, the expectation that the police operate as a protective force rather than a threat or source of violence reflects the particular interests and experiences of middle-class white people.

It is particularly telling that the Discussion paper should note - in different sections - that Aboriginal and Torres Strait Islander women are simultaneously most at risk of experiencing serious harm from the violence the Taskforce seeks to address, but also most at risk of harm from the options canvassed and solutions proposed. We are disappointed and angry, but not surprised, that there is no apparent evidence this has prompted significant or substantive reflection on the framing of the issues outlined in the Discussion paper or on the proposals outlined for consideration. Aboriginal and Torres Strait Islander women's experiences have again been conscripted to serve arguments about the statistical prevalence of violence against women, while being simultaneously erased from the policy narrative and systematically refused consideration.

2. The state as perpetrator of violence against Indigenous women

Any expansion of police powers or criminalisation of coercive control will result in serious harms to Aboriginal and Torres Strait Islander women. The Discussion paper devotes fewer than five of its 89 pages to considering the risks of criminalising coercive control, and in that brief section identifies a number of significant issues of concern relating to what it calls 'overcriminalisation', 'misidentification', and 'over-representation of Aboriginal and Torres Strait Islander people' in the criminal punishment system. As Goodmark (2018) notes, expanding criminalisation and the violence of policing demonstrably does not decrease or prevent intimate partner violence, has serious impacts on victims, and allows policymakers to avoid confronting and addressing the underlying issues that drive and enable violence.

Police powers and resourcing have continued to expand in Queensland in recent months, capping a trend that has been evident for two decades. This expansion has been accompanied by a rapid escalation in the rates of incarceration of Aboriginal people, including women and girls. Proposals to criminalise coercive control create an offense based on a vague and extremely wide range of behaviours, which would give police extensive additional powers with which to investigate, interrogate and charge people without preventing or addressing underlying causes of domestic and family violence or coercive control. These additional powers, like existing police powers, will be disproportionately used against Aboriginal and Torres Strait Islander people. Davis and Buxton-Namisnyk (2021) in their analysis of the NSW Joint Select Committee on Coercive Control report notes;

> The report raises men who use Aboriginal women's fear of child-protection services in the course of their controlling behaviour. However, it does not then consider how inviting the police into the home during these moments may further disadvantage Aboriginal women by putting them on notice to child-protection services due to mandatory reporting.

While the Discussion paper is clear that domestic and family violence is gendered, in practice, police and legal systems frequently choose to punish rather than protect Aboriginal women and girls. The consequences of this practice - what the Discussion paper calls 'misidentification' - is clear. ANROWS (Nancarrow et al 2020) note Queensland Domestic Violence Death Review and Advisory Board data which demonstrates that in just under half (44.4%) of all cases of female deaths subject to review, the woman had been identified as a respondent to a domestic and family violence (DFV) protection order on at least one occasion. The further impact of racism on this 'misidentification' is clear; in **nearly all** DFV-related deaths of Aboriginal people, the deceased had been recorded as both respondent and aggrieved prior to their death. An Aboriginal woman explained the racial basis of this policing to Nancarrow et al (2020, p8):

> I was already convicted in their eyes I know because that's how they treated me, and as a black woman against the white man too they—nobody wants to hear your story, they're going to believe the white man.

In this context, giving police access to an additional broadly defined offense that can be deployed against Aboriginal people will lead to further injustices and compromise the safety of Aboriginal women and girls. This is not a risk that can be managed (with training, or careful framing of legislation) but a fundamental flaw of approaches seeking to address coercive control through criminalisation.

2.1 Dangers of proposed coercive control legislative models

The Discussion paper identifies a number of approaches to criminalising coercive control adopted in other jurisdictions, and legislation that broadly reflects this approach is canvassed as Option 6 among possible responses. It is noted that the Scottish model has been deemed the gold standard by Professor Stark (p38). Stripped of key aspects of the Scottish policy framework and translated into a Queensland context, the imposition of this model would be likely to be particularly devastating for Aboriginal and Torres Strait Islander women and girls, for all members of Indigenous communities, as well as for the broader community.

The Scottish legislation, as the discussion paper notes (p38), has a non-exhaustive definition of abusive behaviour. The exceptionally broad nature of this offence enabled 84% of those charged with the offence to be convicted in its first year of operation. The Discussion paper notes, however, that by far the most commonly imposed penalty was effectively a community based diversionary response (which may include residence conditions or participation in treatment programs, p38).

Will this diversionary approach be included in the Queensland reforms? We note that such options are explicitly not discussed in the Queensland legislation proposed as Option 6, where **suggested penalties all involve incarceration** (p53-54). A broad offence with high conviction rates and a pipeline to incarceration would be a catastrophe for racialised and over policed communities.

In addition, as Professor Dragiewicz, a Griffith University domestic violence researcher and member of the Queensland Domestic Violence Death Review and Advisory Board, noted in recent media (Smee 2021), the Scottish legislation followed a significant and two-decade long investment in community education and domestic and family violence prevention:

> We have not had that, there is no national body responsible for education and training and prevention on violence in Australia. It hasn't been funded. Most universities in Australia don't have a single required university course on domestic violence in any department. Police are Australians who came out of the same educational system that most Australians did… Aboriginal and Torres Strait Islander women and men in Australia experience serious criminal justice penalties for stuff that white people do not.

We remain deeply concerned by the implication (including in the Discussion paper, p43) that coercive control legislation is required in order to educate the public and drive changes in relationship norms. Criminal law is not primarily an educative force - and should certainly not be the primary strategy adopted for public education. As Aboriginal and Torres Strait Islander people and communities across this country can testify, criminal law is punitive and devastating. Its use, especially as a strategy of first resort, creates rather than solves problems for families and communities.

According to the Discussion paper (p16; cf. 46), many victims of abuse specifically do not seek assistance from the police for a number of valid reasons:

> They may not want the perpetrator to get into trouble. They may not trust police or consider it safe to approach them. They may have been turned away previously, or may assess it as too dangerous given potential repercussions from the perpetrator. They may fear losing their children.

The Discussion paper proposes no option by which legislators could adopt an approach that addresses the legitimate and well-founded concerns of victims. Instead it notes that availability and access to a whole range of appropriate support (including behaviour change programs, professional services, and other resources) remains problematic (p17), especially for services that are also culturally, geographically, and socially accessible. While training options for police to better address domestic abuse in general terms are canvassed, there is also no mechanism suggested for dealing with significant and documented problems of racism and cultural exclusion in the police service (and in many other mainstream support services for that matter). Considering the introduction of additional criminal offences, police powers, or penalties without addressing any of the immediate essential and systemic problems outlined above would signal that the taskforce has no interest in providing justice or safety for Aboriginal and Torres Strait Islander women and girls, and is in fact prepared to knowingly adopt a policy approach which places them and many other community members at increased and significant risk of harm.

3. How broader state service failures entrap women

Throughout the Discussion paper, there is repeated reference to fundamental failures in existing service provision that urgently require attention, and which could contribute to a non-carceral, non-violent and potentially preventative approach to coercive control and domestic violence.

Choosing to direct the State's resources to expensive and punitive policing and the legal-carceral options, rather than to other enabling social services (such as housing, childcare, supported training or education, healthcare, counselling and other supports) which would enable Queensland women to exercise greater agency in ensuring their own safety while helping to build a less inequitable and more just society is short sighted and unnecessary. In fact, this investment in coercive responses only reinforces the strategies adopted by abusers.

The Discussion Paper at its outset highlights the importance of the Queensland Domestic and Family Violence Prevention Strategy 2016-2026 as a governing framework for this work. It notes that a key overarching aim of the strategy is that "by 2026 all Queenslanders life safely in their own homes and children grow and develop in safe and secure environments", with an important additional outcome that "respectful relationships and non-violent behaviour are embedded in our community."

These crucial goals are compromised by the span of proposals envisaged in this discussion paper – which involve a significant investment in strategies that expand and authorise state violence which would result in increasing incarceration of Indigenous women and people of all genders as well as known associated impacts of this including deaths in custody, family separations and child removals.

The Discussion Paper itself explicitly acknowledges increasing incarceration of Indigenous people as a very likely outcome of the proposals (p44-45). The fact that this concern is raised towards the end of the paper, quarantined in a section devoted to acknowledging and addressing risks of an already chosen course of action, with no apparent substantive impact on either the options canvassed in the paper or the desirability of the course ahead is damning. It makes clear that the women for whom the Taskforce is empowered to seek safety and justice are not Aboriginal and Torres Strait Islander women, whose right to live safely in their own homes does not appear to merit consideration.

Expanding criminalisation and further empowering police is not a pathway to embedding respectful relationships and non-violent behaviour. It is noted in the discussion paper that the question of 'how best to legislate against coercive control' might be answered not through a recommendation to legislate new offences or change existing legislation and procedures, but potentially might involve a recommendation that the best approach would be to take no action. Rather than expanded coercion or continued inaction, we urge legislators to direct resources to enabling social programs designed and controlled by the communities they are intended to serve, to legislate for additional public education about relationships, and improving support to women, girls, and people of all genders.

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'In no uncertain terms' the violence of criminalising coercive control

Joint statement: Sisters Inside & Institute for Collaborative Race Research

Background

In March 2021, the Queensland Government announced the establishment of the Women's Safety and Justice Taskforce. They claimed it would be tasked with conducting ***"a wide-ranging review into the experience of women across the criminal justice system"***[1]. The Terms of Reference (ToR) of the Taskforce have been made publicly available and outline the timeframe, scope, guiding principles and considerations, and consultation framework for this proposed inquiry[2].

From the ToR, it is clear that this taskforce is not in fact conducting such a wide-ranging review. It has a very specific focus, which is to examine "***coercive control and review the need for a specific offence of domestic violence".*** While the second stated aim in the terms of reference is the broader examination of ***"the experience of women across the criminal justice system"***, the remainder of the ToR document make clear that this is not central to the taskforce and not possible within the scope of the terms of reference. This joint statement provides a critical appraisal of the taskforce's terms of reference, revealing the brutality of its agenda.

Summary of critique

1. The Taskforce ToR are severely restrictive. They presuppose a carceral solution as the only and best response to coercive control
2. The Taskforce ToR ignore the existing evidence base (statistical, theoretical and testimonial) relating to the violent relationship Indigenous women have with the criminal legal system
3. The Taskforce ToR are explicitly discriminatory. They name Aboriginal and Torres Strait Islander women as the only racialized category of women considered "both victims and offenders"
4. In their scope, the Taskforce ToR fail to adhere to their own guiding principles. Most notably they fail to protect and "***promote human rights"***, or to employ a ***"trauma informed"*** and ***"evidence-based approach"***
5. The Taskforce ToR fail to provide a definition of **"coercive control"**, or any conceptual clarity in relation to this contested term.
6. For all these reasons, the Taskforce ToR are an enabler to the state's exercising of coercive control over Aboriginal and Torres Strait Islander women

[1] Queensland Government (2021) Women's Safety and Justice Taskforce, Department of Justice and Attorney General, accessed May 2021 https://www.justice.qld.gov.au/initiatives/womens-safety-and-justice-taskforce

[2] Queensland Government (2021) Terms of Reference: Taskforce on Coercive Control and Women's Experience in the Criminal Justice System, Department of Justice and Attorney General, accessed May 2021 https://www.justice.qld.gov.au/__data/assets/pdf_file/0010/672706/womens-safety-justice-taskforce-tor.pdf

We argue that the Taskforce focus on coercive control, and the restricted range of criminological responses offered, ignore the experiences of Aboriginal and Torres Strait Islander women who are already over-represented across the criminal legal system. It is via the Taskforce ToR and the terminology deployed within it that we demonstrate how the Queensland Government's agenda is at odds with its apparent commitment to the principles of ***"women's safety and justice"***. In fact, rather than seeking to protect them from harm, the relationship that the state establishes over Aboriginal and Torres Strait Islander women is one of coercive control. This taskforce operates as an apparatus for intensifying this control, further trapping Aboriginal and Torres Strait Islander women within criminal legal systems which have long been a key site of colonial and racial violence.

This entrapment occurs through the erasure of power. Coercive control is a form of domination which can only take place in asymmetrical conditions of power, and these are structural as well as personal. By stripping coercive control of its gendered dimension, the ToR hide the fact that it is a practice of control exercised in conditions of patriarchal power. By failing to name the most powerful form of domination in the criminal legal space - the hyper incarceration of Aboriginal women - the ToR position these women as potential perpetrators and propose new legal instruments that can and will be used to further criminalise them. Coercive control legislation thus becomes a mechanism to further structurally disempower Indigenous women, making them more rather than less vulnerable to subtler forms of control.

We acknowledge the seriousness of coercive control and support all Aboriginal and Torres Strait Islander women who experience and speak up against it. Here, we focus on the need to extend our understanding of coercive control so that we can see its operation in the actions of the state itself. Indigenous women and survivors of DSV have solutions to coercive control beyond the criminal justice system. One of the missed opportunities of these ToR is that they do not make space for these voices, experiences and knowledges.

The problem with a carceral solution

The ToR move straight from a general injunction to examine coercive control to the assumption that the criminalisation of this category of control will be the outcome of the inquiry. The terms of reference thus pre-empt the deliberations, rendering voiceless those who oppose criminalisation even if they are invited to participate in the process. The timeframe section tells us that the taskforce will need to inform the Attorney General ***"how best to legislate against coercive control as a form of domestic violence"*** by October this year – it does not ask the taskforce to decide *if* such legislation is necessary. It also tells us that, in making recommendations, the Taskforce may consider ***"how best design, implement and successfully operationalise legislation to deal with coercive controlling behaviour in a domestic and family violence context"***. The Taskforce is also directed to consider how to improve rates of reporting and lower attrition – so how to expand the reach of existing and new criminal offences. This does not consider the fact that Aboriginal and Torres Strait Islander women may avoid interaction with the criminal legal system because of the high likelihood that this will lead to trauma and criminalisation.

The only specific areas for consideration mentioned are policing, investigative approaches, collection of evidence, first responders and so on – the state is the assumed agent of redress and protection for women. In the case of colonial Australia, we know this to be untrue. From the earliest times Native police, mission controls, child removal systems, incarceration in dormitories, police harassment, deaths in custody and hyper incarceration in the prison system have been a central mechanism of Indigenous dispossession and colonial control. This traumatic and politicised relationship with the criminal legal system continues today. These ToR erase the brutal impacts of the carceral system upon those women

who are most likely to be affected by the proposed changes and create a path dependency leading to the expansion of this violent system.

In fact, the assumption that the expansion of carceral control benefits and protects Aboriginal and Torres Strait Islander women is also a common feature of colonialism. Systems of intense, violent micromanagement have long been justified as protecting these women from predation and from the violence of their own culture (as in the language of the 1897 'Protection' legislation). The ToR might aim to ***"improve the criminal justice system",*** but there is real danger in giving more power to a system that has evolved to brutalise Aboriginal women.

The objectives listed by these ToR appear incompatible. How can the Taskforce both criminalise coercive control, and truly consider ***"any other policy, legislative or cultural reform relevant to the experience of girls and women as they engage with the criminal justice system?"*** The vagueness of the proposed methodology, and the ordering of priorities (focusing on expanding offences first, and considering contextual factors last) is highly concerning. In such a limited and vague framework, those invited to participate will determine the extent to which the racist context of the legal system is considered.

The criminalisation of coercive control can be deployed by both state and individual perpetrators to control women rather than protect them. This is of particular concern in Queensland, where incarceration rates for women have increased 72% in the last ten years[3]. But this control does not happen in the same way to all women. By erasing gender, the ToR make space for race. The imagined victim and beneficiary of media discussions of coercive control is a white straight middle-class suburban woman. It is for this woman's protection that the state has initiated the current process. The ToR implies that in protecting this middle-class white woman all women will be afforded the same protection. This is not the case; the vulnerability of white women has long been a justification for the extension and policing of racial hierarchies.

Racial violence and the state

We know that the Queensland criminal legal system is profoundly racist in its interaction with women: nearly 40% of current female prisoners are Indigenous, despite forming only 4.6% of the Queensland population. This race based hyper-incarceration has also intensified in the past decade, up from 32% of the female prison population in 2010. Unlike white women, Aboriginal and Torres Strait Islander women are seen as already culpable; domestic violence interactions with police already regularly lead to criminalisation and incarceration for Indigenous women. In this context, the vagueness of the nature of coercive control, and the difficulty demonstrating it and documenting it, makes coercive control legislation an incredibly powerful weapon in the criminalisation of Indigenous women.

Race is not mentioned in the ToR as a power structure, or a factor which profoundly shapes Indigenous women's experience of the criminal justice system as violent and coercive. Race is not mentioned to name racism. Instead, it is mentioned only *racialize* Aboriginal and Torres Strait Islander women. The ToR make this crystal clear when they claim to take into consideration:

the unique barriers faced by girls, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, incarcerated women, elderly women, women in rural, remote and regional areas and LGBTIQA+ women, when accessing justice as both victims and offenders;

[3] Australian Bureau of Statistics, Prisoner numbers and prisoner rates by Indigenous Status and sex, States and territories, 2006-2020 (Tables 40 to 42)

It is alarming that the only time Aboriginal and Torres Strait Islander women are mentioned in the ToR, they are named as "**offenders".** The ToR separate out Aboriginal and Torres Strait Islander women from the normative 'white woman' specifically criminalising them in the framing of proposed coercive control investigation. Indigenousness is the only racialised category to be explicitly named as both victim and offender, and we also note that Indigenous women occupy the other 'offending' categories listed (culturally diverse, incarcerated, LGTIQA+, rural and remote, etc). In this long list of 'diversity', difference is framed as individual and lifestyle based, rather than as structural and related to long standing systems of power. This makes it much easier to cast these individuals as responsible for their own difficulties and experiences. Indigenous women are mentioned as one of many categories of diversity, when all involved know that they are by far the most important category of women affected, many hundreds of times more likely to be imprisoned than other women.

The ToR in not naming white, middle-class, middle-aged, suburban, straight women as "both victims and offenders" make explicit how the state assures their innocence via a discourse of protection, and in doing so, guarantees their position as both victim and beneficiaries of state control. By both erasing and then reinscribing gendered and racialized systems of power, these terms of reference make their intent and eventual effect all too clear. In no uncertain terms, this taskforce aims to extend the legal jurisdiction and practical reach of criminal legal institutions which remain a key agent of violence and colonisation for Aboriginal and Torres Strait Islander women. These ToR foreclose possibilities other than intensifying harm via the extension of the state's coercive control.

Returning to coercive control

The concept of coercive control emerged out of debates over 'the disputed nature, extent and distribution of domestic violence: whether domestic violence is primarily rooted in men's control of women.' [4] The term, as first defined by Stark describes a form of domestic violence that is considered more serious in that it is 'gender asymmetrical', that is, it is focused on control over women by men, and is said to be distinguishable from fights or arguments between men and women[5]. We would highlight that, in the same way that gender asymmetries enable the subtle mechanisms of coercive control, so too do other structured forms of power including race, class and heteronormativity. Stark defines coercion as "the use of force or threats to compel or dispel a particular response" (p. 228), while control refers to "structural forms of deprivation, exploitation, and command that compel obedience indirectly" (p. 229). When coercion and control occur together, he argues, the result is a "condition of unfreedom" (p. 205) that is experienced as *entrapment.*[6] Coercive control often includes subtle psychological techniques such as gaslighting, surveillance, isolation, restricting freedom and controlling women through threats to their

[4] Walby, S & Towers, J (2018) Untangling the concept of coercive control: Theorizing domestic violence crime, Criminology & Criminal Justice, 18(1): 8. https://doi.org/10.1177%2F1748895817743541; see also Barlow, C, Johnson, K, Walklate, S and Humphreys L. (2020). Putting Coercive Control into Practice: Problems and Possibilities, The British Journal of Criminology, 60(1): 160–179, https://doi.org/10.1093/bjc/azz041

[5] Walby, S & Towers, J (2018) Untangling the concept of coercive control: Theorizing domestic violence crime, Criminology & Criminal Justice, https://doi.org/10.1177%2F1748895817743541

[6] Stark E and Hester M (2018). Coercive Control: Update and Review. Violence Against Women 25(1): 81-104. https://doi.org/10.1177/1077801218816191

children. It may or may not include physical and/or sexual assault, and can continue well after physical violence has ended.

There is an emergent literature examining the creation of coercive control as a new criminal offence, primarily from the United Kingdom[7]. One of the major criticisms of the legislative response to coercive control has been the removal of gender asymmetry as a defining characteristic. This allows vulnerable and disempowered women to be misidentified as perpetrators, especially given the necessarily imprecise and hidden nature of coercive control practices. It will be up to the police to determine the truth of coercive practices, and, as in the ToR, it appears that legislation offers little precision about the meaning and application of the term. This is a major expansion of police discretion. The threat of such a vague offence will further deter at risk women from engaging with police in domestic violence situations and will subject them to the very forms of subtle control that this legislation ostensibly seeks to avoid. Aboriginal and Torres Strait Islander women are routinely misidentified as 'offenders' rather than 'victims'. Not only will Aboriginal and Torres Strait Islander women and girls not be afforded protection by this legislation, they will be squarely targeted.

Women's Taskforce ToR as a form of coercive control

The very elements of coercive control – gaslighting, manipulation via family relationships, isolation and surveillance – already characterise much of Aboriginal and Torres Strait Islander women's interaction with the criminal legal system. When the ToR refer to these women as **"engaging"** with, **"interacting"** with or **"accessing"** the criminal justice system, it is a form of gaslighting. Such experiences are not neutral but routinely violent, criminalising and traumatic. The carceral system is a key "condition of unfreedom" for Aboriginal and Torres Strait Islander women both inside and outside formal prisons.

A critical limitation of these ToR is the fact that they centre the voices of legal and state agencies, further foreclosing non-carceral responses. Seven out of the eleven stakeholder groups specified in the ToR are such agencies – police, DPP, statutory authorities, legal practitioners and government departments. The highly politicised Queensland Police Union, which has a history of conflict with Indigenous communities, is mentioned by name as an example of an 'advocacy group'. It is clear the Queensland Police Service are seen as key stakeholders and decision makers.

While the ToR indicate that DFSV survivors will be consulted, they do not specify consultation with Aboriginal and Torres Strait Islander representative or advocacy groups. This is a clear omission, given all are aware of the extreme levels of Indigenous incarceration in the state. Therefore, it seems that the women with lived experience will again be those white middle class women who are framed as most-deserving of state protection. Even non-racialised survivors of domestic violence and of the criminal legal system are aware of the limitations of carceral responses, yet the ToR structures out such voices by predetermining the recommendations of this taskforce. The idea that the criminal legal system itself might be deeply flawed, and a site that intensifies rather than redresses domestic violence for marginalised women, is not within the scope of these terms. There is a large body of research and evidence showing precisely this, but the framing of this Taskforce can only extend the reach of this system and see it as in need of expansion and 'reform'.

There too is a deep contradiction with the ToR's apparent recognition of "***the need for attitudinal and cultural change across Government, as well as at a community, institution and professional level,***

[7] Tolmie, J (2017). Coercive Control: To Criminalise or not to Criminalise? Criminology and Criminal Justice. 18(1): 50-66. https://doi.org/10.1177/1748895817746712

including media reporting of DFSV". If there is a need for attitudinal and cultural change across government, how can this same government direct discussion of these issues by establishing such a limited and path dependent ToR? The ToR appears to share the same attitudes of those they seek to correct; there is no scope within these terms for fundamental value change.

The following examples highlight the contradictions between the scope and guiding principles built into these Terms of Reference:

- The Taskforce via its ToR claim to be *"**trauma informed**",* but the primary trauma of Indigenous women in this context is their experience with the legal system. A carceral solution, such as that already predetermined by this process, is therefore not trauma informed. Once again, we must ask whose trauma is recognised and used to inform change; Indigenous women are forced to carry the seeds of their own culpability in the current carceral system, and their trauma is therefore tainted and silenced.
- The ToR refer to the need for an ***"evidence-based approach"*** which presumes a reasoned neutrality or impartiality. Yet the ToR, which presuppose the value of criminalising coercive control, as well as the list of stakeholders to be consulted, tell us what evidence will be valued and heard. The evidence which points towards truly transformative change such as community justice processes and abolition and defunding of carceral systems is likely to be excluded.
- The ToR refer to ***"just outcomes"*** only in the context of balancing the needs of ***"victims and accused persons"***, as if this were a simple calculus, and the state the arbiter rather than a party to violence and injustice. Are just outcomes possible given the way that structural factors mitigate against even-handedness and lead to profoundly unjust distributions of harm?
- There is an apparent concern for "***cost-effectiveness'*** yet the massive expansion of the prison system and policing is clearly not considered. This is one of the major areas of increased government spending over the past two decades and is highly profitable to many private and quasi-government organisations. Abolitionist research highlights the economic forces driving the expansion of carceral systems and leads us to question the independence of a Taskforce which is deeply enmeshed in the sprawling and expanding prison industry.

Conclusion

We do not raise these concerns in relation to the ToR to call for greater inclusion of Aboriginal and Torres Strait Islander women in the Taskforce. Rather we seek to explicitly name a process that is itself violent, in its stated aims of ***"women's safety"***. By interrogating the ToR, and terminology, we show that this Taskforce's outcomes reflect the same kind of abuse that it is charged with remedying. This is not a matter of Indigenous women being silenced and 'left out' of a process of protection; in fact they will be made hyper visible and directly targeted. Aboriginal women are already rendered as marginalised, underserving victims and "***perpetrators, offenders and accused persons"***. They are not seen as worthy of inclusion in consultation and stakeholder discussions, only of inclusion as potential perpetrators of the new crime of coercive control. Instead of seeking this inclusion, we question the very terms of this Taskforce and its agenda.

The concept of coercive control itself tells us that those who are victimised typically cannot seek justice. They do not have power, are structurally silenced and are not believed – this disempowerment is reflected in the Taskforce ToR. The state casts Indigenous women as perpetrators of coercive control when it is the state itself who exercise this control and occupies the role of perpetrator. Which kind of women can avail themselves of this law to their benefit? Only a very few, and it is for them these laws are being made, and for the colonial political order that has long justified itself as protecting white female virtue and disciplining Aboriginal criminality.

Appendix 2: Article in The Conversation 'Carceral feminism and coercive control: When Indigenous women aren't seen as ideal victims, witnesses or women' 25 May 2021

Carceral feminism and coercive control: when Indigenous women aren't seen as ideal victims, witnesses or women

May 25, 2021 3.33pm AEST

The SBS documentary series See What You Made Me Do aimed to spark a national conversation about criminalising coercive control. Instead it highlighted the stark power imbalances in conversations between Indigenous and non-Indigenous women.

She wasn't being a good victim, she wasn't standing there in the sheet dripping in blood and trying to control all this emotion that was going on with her [...] she said I want my Dad, I want my Dad and they decided she couldn't have her Dad. The two policeman, one woman and one man, they said that Tamica spat and they said, 'That's assault and you're getting arrested.'

These were the words of Kathleen Pinkerton, a Widi woman from the Yamatji nation. Kathleen was describing the police treatment of her niece, Tamica Mullaley, who was a victim of domestic violence. Rather than being treated as a victim, the police treated her as an offender, which resulted in the most tragic of consequences for her baby Charlie.

The good victim

Tamica's story was at the centre of episode two of the documentary series *See What You Made Me Do*, which is based on journalist Jess Hill's book of the same name. SBS claims the documentary "is not just about making TV content, it's about making change".

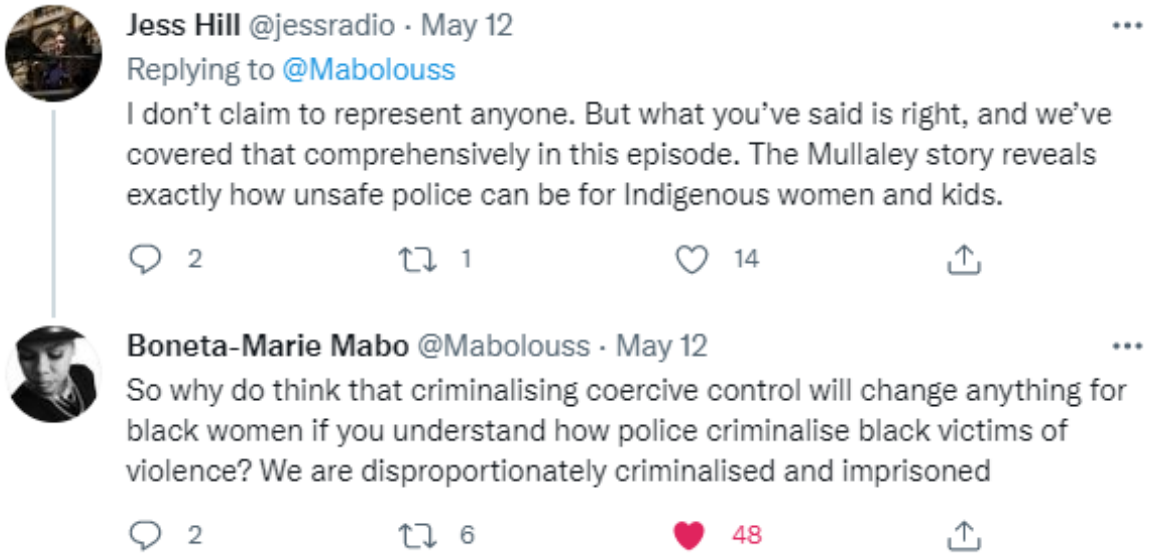
Indeed, Hill's aim to criminalise coercive control is part of a larger national agenda. It was the first priority set for the Queensland government's recently established Women's Safety and Justice Taskforce.

The taskforce and documentary both call for a carceral solution to coercive control – coercive control refers to systemic domestic violence that operates through a matrix of subtle practices including surveillance, gaslighting, financial control, and fear of potential violence.

This plan for criminalising coercive control has been met with sustained critique from a range of Indigenous women academics, activists and frontline workers. They argue such a solution would result in more Indigenous women being imprisoned than protected.

These concerns are evidenced statistically, by the staggering increases in Indigenous female incarceration. They are also shown clearly in the story of Tamica herself, who was "misidentified" as an offender by the police (which included a female officer).

In the documentary, Tamica's tragedy is used to make a case for extending police powers and consideration of female-only police stations. Yet, her story negates the case being made by demonstrating how police-based solutions will harm Indigenous women.



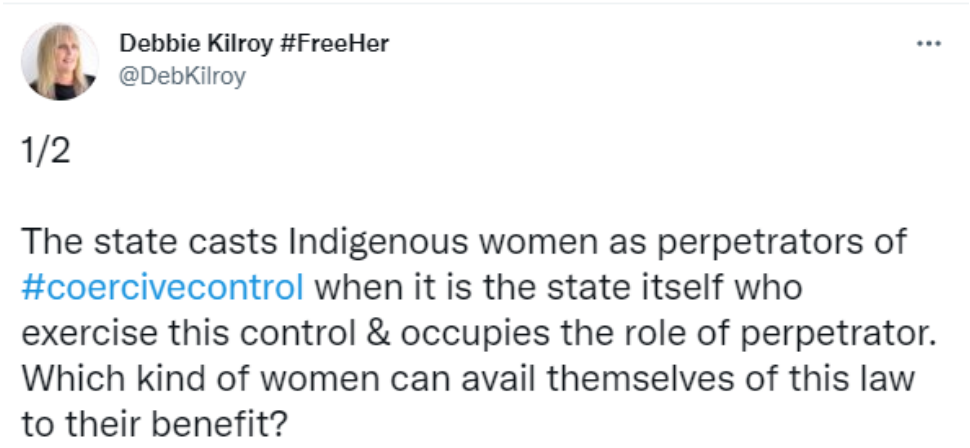
This has many rightfully questioning the function of Indigenous women's trauma in narratives constructed by carceral feminists - those who see state institutions such as police and prisons as appropriate solutions to gender based violence.

A key point we raise is the failure of this approach to understand how the state itself perpetrates abuse and coercive control over Indigenous women.

The terms of reference of the Queensland government taskforce expressly state Indigenous women should be considered as "victims *and* offenders."

While Indigenous women and children may be positioned in public debate as victims to lever emotional support for carceral solutions, it is clear Indigenous women are already considered potential perpetrators by the taskforce meant to protect them.

Sadly, concerns raised by Indigenous women have fallen on the deaf ears of those who claim to care. Here, we see how Indigenous women make for neither good victims nor good witnesses.

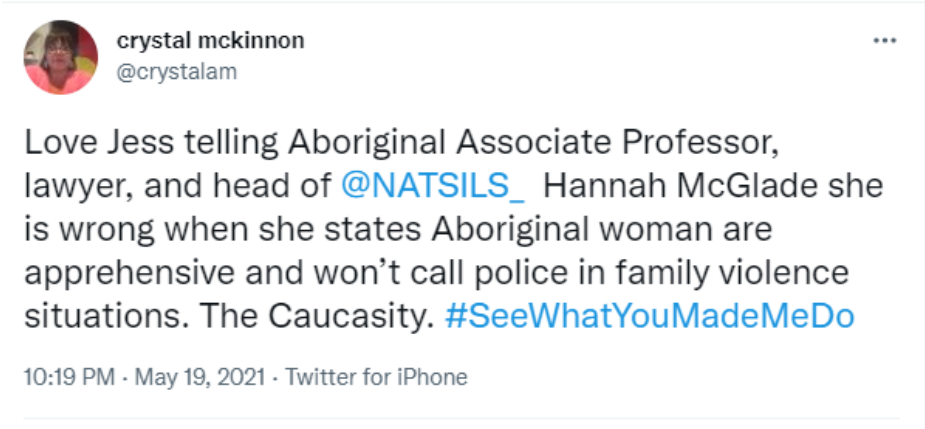


The good witness

This was on display in Hill's expert panel discussion that followed the airing of the final episode of See What You Made Me Do. Dr Hannah McGlade, a Noongar academic expert, lawyer and head of the National Aboriginal and Torres Strait Islander Legal Services, cogently challenged Hill's call to criminalise coercive control.

McGlade spoke of the reality of Aboriginal people being over-policed. Hill responded by replying directly to McGlade about "what gives her heart and keeps her advocating for these laws" despite just having heard why they are

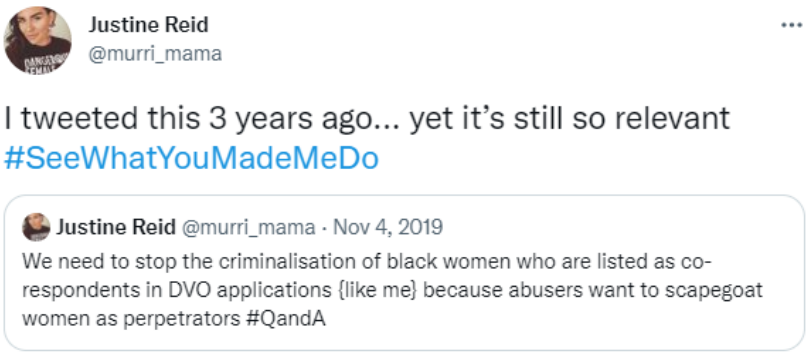
deeply problematic. Later, she again responded to McGlade, telling her that actually Indigenous women advocate for the laws rejecting her claim that Aboriginal women are fearful of contacting police.



In bringing her expertise to the conversation, McGlade interrupts what was meant to be Hill's conclusion from the three part documentary - that a "revolution" is required to save women, which includes criminalising coercive control. But the dynamics of the panel reflected the dynamics of the debate: where Indigenous women and female academics are not only not believed, but ignored and told they're wrong.

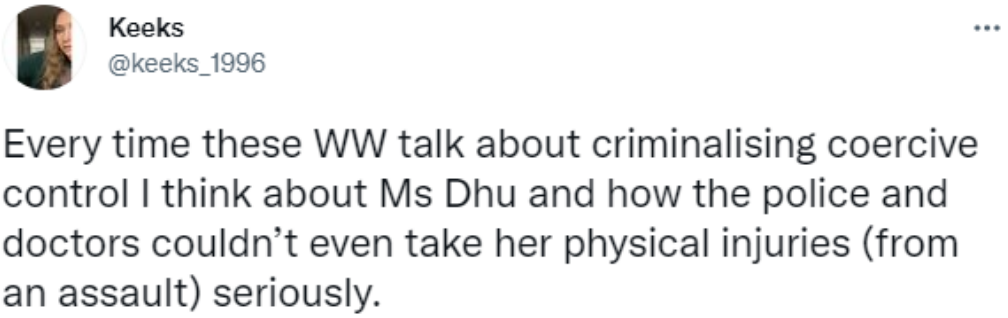
Indigenous women, much like in Tamica's case, are not deemed worthy of protection. In Queensland, nearly 50% of Indigenous women murdered in domestic violence contexts have previously been named by the state as perpetrators. We argue that Indigenous women are framed as a threat to be contained, whether they seek protection for themselves in domestic violence situations or for other Indigenous women in public debate.

The current dialogue around coercive control troubles white Australia's limited understanding of who can commit violence against whom, and who can be a victim and who is a perpetrator.



Theorists such as Darumbal and South Sea Islander journalist Amy McQuire and Judith Butler, have examined who is grievable (the good victim) and who is believable (the good witness).

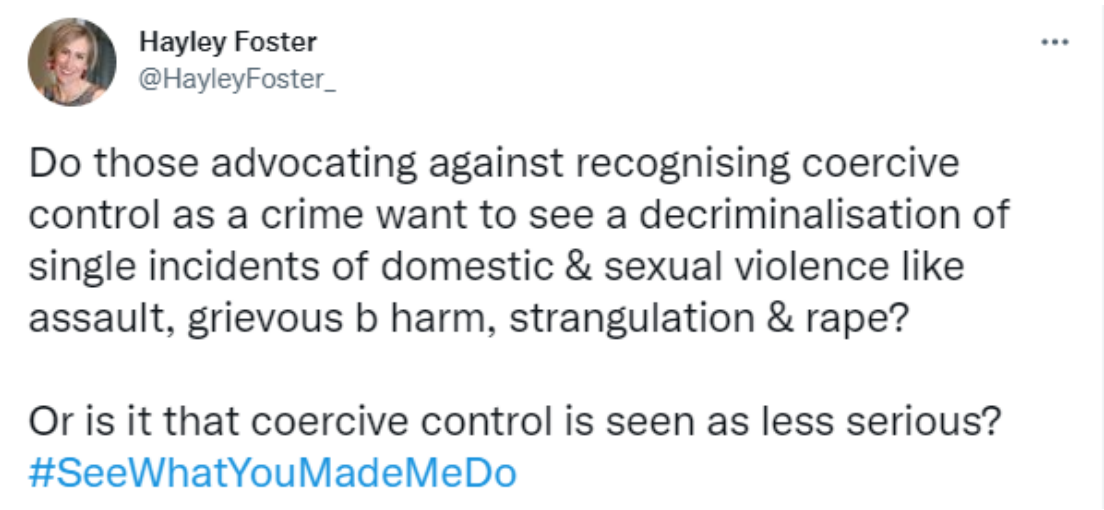
White Australia tends to see both white women and state agents like police as fundamentally good, and both are almost always deemed grieveable and believable.



Amy McQuire reminds us of the importance of recentering "the voice of the Black Witness":

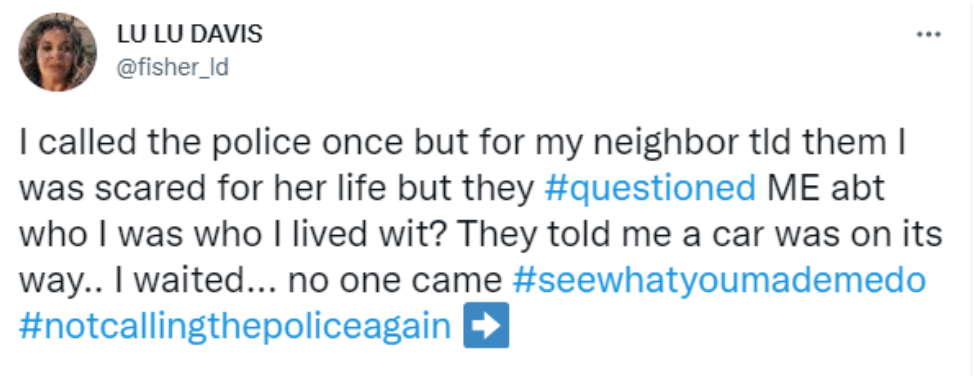
"Like the White Witness, the Black Witness also uses the language of war. While the White Witness uses it to stage an attack, the Black Witness will mount a defence, because it is not the White Witness's war they want to talk about, it is the real war — the continuing resistance against an occupying force [...]

While the White Witness thrives on accounts of the brutalisation of black bodies, most commonly of black women and children, the Black Witness pushes these same black women to the forefront — they are the ones with the megaphones in the centre of the Melbourne CBD — in the very heart of white, respectable space."



When we listen to Indigenous women, it is clear they don't necessarily want inclusion in the agendas of white women. They are insisting upon a broadening of policy development that ensures safety and justice for all women.

Indigenous women shine a light on a form of violence that carceral feminism continues to overlook. This violence is not only between the police officer (male or female) and Aboriginal women, but between the state and its citizens. It often manifests as exactly the kind of subtle entrapment Hill describes as coercive control - using isolation, surveillance, financial scrutiny, gaslighting, refusal of care and threats to children.

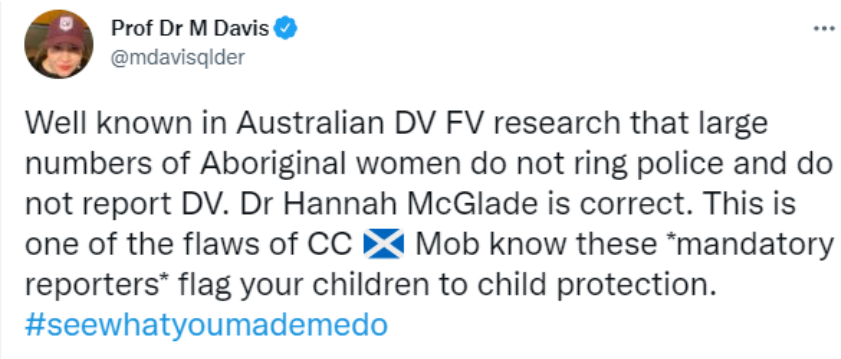


The problem with criminalising coercive control isn't only a matter of poor design or of perception of deserving victims. The problem is it results in an extension of power by the state.

In Queensland, this extension of state authority justified using the same kind of framing of female trauma Hill uses in *See What You Made Me Do*. It follows other concerning expansions of police powers and resources in recent months.

The Good Women

In this moment, it is Indigenous women who are refusing to aid an already authoritative state accrue more power. There is little that is revolutionary about carceral feminism. Hill herself acknowledges her calls to criminalise coercive control aim "to reform the current domestic violence law". Yet, such a reform serves to further entrench abusive power relationships against Indigenous women.



Gomeroi Kooma woman Ruby Wharton offers the revolutionary imagining required when she speaks of decarceration and Black deaths in custody:

it's not about doing performative things within their system, but abolishing it […] we can't demand incarceration of police when we are dying of the same system […] as long as we walk in love we will be able to seek justice.

From Wharton, we see the kind of care so desperately needed in this conversation - in which all people are afforded care. The refusal of carceral feminists to think about care in its most inclusive sense is a refusal to "walk in love" alongside Indigenous women. This is because they exercise their virtue on the basis of an authority afforded by a racial order that exists within Australia, which privileges them above Indigenous women.

Distinguished professor Aileen Moreton-Robinson in her seminal text Talkin' Up To The White Woman some 20 years ago concluded:

the real challenge for white feminists is to theorise the relinquishment of power so that feminist practice can contribute to changing the racial order. Until this challenge is addressed, the subject position middle-class white woman will remain centred as a site of dominance. Indigenous women will continue to resist this dominance by talkin' up, because the invisibility of unspeakable things requires them to be spoken.

‘In no uncertain terms’ the violence of criminalising coercive control. Joint statement: Sisters Inside &Institute for Collaborative Race Research

May 17, 2021

Background

In March 2021, the Queensland Government announced the establishment of the Women’s Safety and Justice Taskforce. They claimed it would be tasked with conducting ***“a wide-ranging review into the experience of women across the criminal justice system”***[i]. The Terms of Reference (ToR) of the Taskforce have been made publicly available and outline the timeframe, scope, guiding principles and considerations, and consultation framework for this proposed inquiryii.

From the ToR, it is clear that this taskforce is not in fact conducting such a wide-ranging review. It has a very specific focus, which is to examine “***coercive control and review the need for a specific offence of domestic violence”.*** While the second stated aim in the terms of reference is the broader examination of ***“the experience of women across the criminal justice system”***, the remainder of the ToR document make clear that this is not central to the taskforce and not possible within the scope of the terms of reference. This joint statement provides a critical appraisal of the taskforce’s terms of reference, revealing the brutality of its agenda.

Summary of critique

1. The Taskforce ToR are severely restrictive. They presuppose a carceral solution as the only and best response to coercive control
2. The Taskforce ToR ignore the existing evidence base (statistical, theoretical and testimonial) relating to the violent relationship Indigenous women have with the criminal legal system
3. The Taskforce ToR are explicitly discriminatory. They name Aboriginal and Torres Strait Islander women as the only racialized category of women considered “both victims and offenders”
4. In their scope, the Taskforce ToR fail to adhere to their own guiding principles. Most notably they fail to protect and “***promote human rights”***, or to employ a ***“trauma informed”*** and ***“evidence based approach”***
5. The Taskforce ToR fail to provide a definition of **“coercive control**”, or any conceptual clarity in relation to this contested term.
6. For all these reasons, the Taskforce ToR are an enabler to the state’s exercising of coercive control over Aboriginal and Torres Strait Islander women

We argue that the Taskforce focus on coercive control, and the restricted range of criminological responses offered, ignore the experiences of Aboriginal and Torres Strait Islander women who are already over-represented across the criminal legal system. It is via the Taskforce ToR and the terminology deployed within it that we demonstrate how the Queensland

Government's agenda is at odds with its apparent commitment to the principles of ***"women's safety and justice"***. In fact, rather than seeking to protect them from harm, the relationship that the state establishes over Aboriginal and Torres Strait Islander women is one of coercive control. This taskforce operates as an apparatus for intensifying this control, further trapping Aboriginal and Torres Strait Islander women within criminal legal systems which have long been a key site of colonial and racial violence.

This entrapment occurs through the erasure of power. Coercive control is a form of domination which can only take place in asymmetrical conditions of power, and these are structural as well as personal. By stripping coercive control of its gendered dimension, the ToR hide the fact that it is a practice of control exercised in conditions of patriarchal power. By failing to name the most powerful form of domination in the criminal legal space – the hyper incarceration of Aboriginal women – the ToR position these women as potential perpetrators and propose new legal instruments that can and will be used to further criminalise them. Coercive control legislation thus becomes a mechanism to further structurally disempower Indigenous women, making them more rather than less vulnerable to subtler forms of control.

We acknowledge the seriousness of coercive control and support all Aboriginal and Torres Strait Islander women who experience and speak up against it. Here, we focus on the need to extend our understanding of coercive control so that we can see its operation in the actions of the state itself. Indigenous women and survivors of DSV have solutions to coercive control beyond the criminal justice system. One of the missed opportunities of these ToR is that they do not make space for these voices, experiences and knowledges.

The problem with a carceral solution

The ToR move straight from a general injunction to examine coercive control to the assumption that the criminalisation of this category of control will be the outcome of the inquiry. The terms of reference thus pre-empt the deliberations, rendering voiceless those who oppose criminalisation even if they are invited to participate in the process. The timeframe section tells us that the taskforce will need to inform the Attorney General ***"how best to legislate against coercive control as a form of domestic violence"*** by October this year – it does not ask the taskforce to decide *if* such legislation is necessary. It also tells us that, in making recommendations, the Taskforce may consider ***"how best design, implement and successfully operationalise legislation to deal with coercive controlling behaviour in a domestic and family violence context"***. The Taskforce is also directed to consider how to improve rates of reporting and lower attrition – so how to expand the reach of existing and new criminal offences. This does not consider the fact that Aboriginal and Torres Strait Islander women may avoid interaction with the criminal legal system because of the high likelihood that this will lead to trauma and criminalisation.

The only specific areas for consideration mentioned are policing, investigative approaches, collection of evidence, first responders and so on – the state is the assumed agent of redress and protection for women. In the case of colonial Australia, we know this to be untrue. From the earliest times Native police, mission controls, child removal systems, incarceration in dormitories, police harassment, deaths in custody and hyper incarceration in the prison system have been a central mechanism of Indigenous dispossession and colonial control. This traumatic and politicised relationship with the criminal legal system continues today. These ToR erase the brutal impacts of the carceral system upon those women who are most likely to be affected by the proposed changes and create a path dependency leading to the expansion of this violent system.

In fact, the assumption that the expansion of carceral control benefits and protects Aboriginal and Torres Strait Islander women is also a common feature of colonialism. Systems of intense, violent micromanagement have long been justified as protecting these women from predation and from the violence of their own culture (as in the language of the 1897 'Protection' legislation). The ToR might aim to ***"improve the criminal justice system",*** but there is real danger in giving more power to a system that has evolved to brutalise Aboriginal women.

The objectives listed by these ToR appear incompatible. How can the Taskforce both criminalise coercive control, and truly consider ***"any other policy, legislative or cultural reform relevant to the experience of girls and women as they engage with the criminal justice system?"*** The vagueness of the proposed methodology, and the ordering of priorities (focusing on expanding offences first, and considering contextual factors last) is highly concerning. In such a limited and vague framework, those invited to participate will determine the extent to which the racist context of the legal system is considered.

The criminalisation of coercive control can be deployed by both state and individual perpetrators to control women rather than protect them. This is of particular concern in Queensland, where incarceration rates for women have increased 72% in the last ten yearsiii. But this control does not happen in the same way to all women. By erasing gender, the ToR make space for race. The imagined victim and beneficiary of media discussions of coercive control is a white straight middle-class suburban woman. It is for this woman's protection that the state has initiated the current process. The ToR implies that in protecting this middle-class white woman all women will be afforded the same protection. This is not the case; the vulnerability of white women has long been a justification for the extension and policing of racial hierarchies.

Racial violence and the state

We know that the Queensland criminal legal system is profoundly racist in its interaction with women: nearly 40% of current female prisoners are Indigenous, despite forming only 4.6% of the Queensland population. This race based hyper-incarceration has also intensified in the past decade, up from 32% of the female prison population in 2010. Unlike white women, Aboriginal and Torres Strait Islander women are seen as already culpable; domestic violence interactions with police already regularly lead to criminalisation and incarceration for Indigenous women. In this context, the vagueness of the nature of coercive control, and the difficulty demonstrating it and documenting it, makes coercive control legislation an incredibly powerful weapon in the criminalisation of Indigenous women.

Race is not mentioned in the ToR as a power structure, or a factor which profoundly shapes Indigenous women's experience of the criminal justice system as violent and coercive. Race is not mentioned to name racism. Instead, it is mentioned only *racialize* Aboriginal and Torres Strait Islander women. The ToR make this crystal clear when they claim to take into consideration:

the unique barriers faced by girls, Aboriginal and Torres Strait Islander women, culturally and linguistically diverse women, incarcerated women, elderly women, women in rural, remote and regional areas and LGBTIQA+ women, when accessing justice as both victims and offenders;

It is alarming that the only time Aboriginal and Torres Strait Islander women are mentioned in the ToR, they are named as "**offenders".** The ToR separate out Aboriginal and Torres Strait Islander women from the normative 'white woman' specifically criminalising them in the framing of proposed coercive control investigation. Indigenousness is the only racialised category to be explicitly named as both victim and offender, and we also note that Indigenous women occupy the other 'offending' categories listed (culturally diverse, incarcerated, LGTIQA+, rural and remote, etc). In this long list of 'diversity', difference is framed as individual and lifestyle based, rather than as structural and related to long standing systems of power. This makes it much easier to cast these individuals as responsible for their own difficulties and experiences. Indigenous women are mentioned as one of many categories of diversity, when all involved know that they are by far the most important category of women affected, many hundreds of times more likely to be imprisoned than other women.

The ToR in not naming white, middle-class, middle-aged, suburban, straight women as "both victims and offenders" make explicit how the state assures their innocence via a discourse of

protection, and in doing so, guarantees their position as both victim and beneficiaries of state control. By both erasing and then reinscribing gendered and racialized systems of power, these terms of reference make their intent and eventual effect all too clear. In no uncertain terms, this taskforce aims to extend the legal jurisdiction and practical reach of criminal legal institutions which remain a key agent of violence and colonisation for Aboriginal and Torres Strait Islander women. These ToR foreclose possibilities other than intensifying harm via the extension of the state's coercive control.

Returning to coercive control

The concept of coercive control emerged out of debates over 'the disputed nature, extent and distribution of domestic violence: whether domestic violence is primarily rooted in men's control of women.' iv The term, as first defined by Stark describes a form of domestic violence that is considered more serious in that it is 'gender asymmetrical', that is, it is focused on control over women by men, and is said to be distinguishable from fights or arguments between men and womenv. We would highlight that, in the same way that gender asymmetries enable the subtle mechanisms of coercive control, so too do other structured forms of power including race, class and heteronormativity. Stark defines coercion as "the use of force or threats to compel or dispel a particular response" (p. 228), while control refers to "structural forms of deprivation, exploitation, and command that compel obedience indirectly" (p. 229). When coercion and control occur together, he argues, the result is a "condition of unfreedom" (p. 205) that is experienced as *entrapment.vi* Coercive control often includes subtle psychological techniques such as gaslighting, surveillance, isolation, restricting freedom and controlling women through threats to their children. It may or may not include physical and/or sexual assault, and can continue well after physical violence has ended.

There is an emergent literature examining the creation of coercive control as a new criminal offence, primarily from the United Kingdomvii. One of the major criticisms of the legislative response to coercive control has been the removal of gender asymmetry as a defining characteristic. This allows vulnerable and disempowered women to be misidentified as perpetrators, especially given the necessarily imprecise and hidden nature of coercive control practices. It will be up to the police to determine the truth of coercive practices, and, as in the ToR, it appears that legislation offers little precision about the meaning and application of the term. This is a major expansion of police discretion. The threat of such a vague offence will further deter at risk women from engaging with police in domestic violence situations and will subject them to the very forms of subtle control that this legislation ostensibly seeks to avoid. Aboriginal and Torres Strait Islander women are routinely misidentified as 'offenders' rather than 'victims'. Not only will Aboriginal and Torres Strait Islander women and girls not be afforded protection by this legislation, they will be squarely targeted.

Women's Taskforce ToR as a form of coercive control

The very elements of coercive control – gaslighting, manipulation via family relationships, isolation and surveillance – already characterise much of Aboriginal and Torres Strait Islander women's interaction with the criminal legal system. When the ToR refer to these women as **"engaging"** with, **"interacting"** with or **"accessing"** the criminal justice system, it is a form of gaslighting. Such experiences are not neutral but routinely violent, criminalising and traumatic. The carceral system is a key "condition of unfreedom" for Aboriginal and Torres Strait Islander women both inside and outside formal prisons.

A critical limitation of these ToR is the fact that they centre the voices of legal and state agencies, further foreclosing non-carceral responses. Seven out of the eleven stakeholder groups specified in the ToR are such agencies – police, DPP, statutory authorities, legal practitioners and government departments. The highly politicised Queensland Police Union, which has a history of conflict with Indigenous communities, is mentioned by name as an example of an 'advocacy group'. It is clear the Queensland Police Service are seen as key stakeholders and decision makers.

While the ToR indicate that DFSV survivors will be consulted, they do not specify consultation with Aboriginal and Torres Strait Islander representative or advocacy groups. This is a clear omission, given all are aware of the extreme levels of Indigenous incarceration in the state. Therefore, it seems that the women with lived experience will again be those white middle class women who are framed as most-deserving of state protection. Even non-racialised survivors of domestic violence and of the criminal legal system are aware of the limitations of carceral responses, yet the ToR structures out such voices by predetermining the recommendations of this taskforce. The idea that the criminal legal system itself might be deeply flawed, and a site that intensifies rather than redresses domestic violence for marginalised women, is not within the scope of these terms. There is a large body of research and evidence showing precisely this, but the framing of this Taskforce can only extend the reach of this system and see it as in need of expansion and 'reform'.

There too is a deep contradiction with the ToR's apparent recognition of "***the need for attitudinal and cultural change across Government, as well as at a community, institution and professional level, including media reporting of DFSV"***. If there is a need for attitudinal and cultural change across government, how can this same government direct discussion of these issues by establishing such a limited and path dependent ToR? The ToR appears to share the same attitudes of those they seek to correct; there is no scope within these terms for fundamental value change.

The following examples highlight the contradictions between the scope and guiding principles built into these Terms of Reference:

- The Taskforce via its ToR claim to be *"**trauma informed**",* but the primary trauma of Indigenous women in this context is their experience with the legal system. A carceral solution, such as that already predetermined by this process, is therefore not trauma informed. Once again, we must ask whose trauma is recognised and used to inform change; Indigenous women are forced to carry the seeds of their own culpability in the current carceral system, and their trauma is therefore tainted and silenced.
- The ToR refer to the need for an ***"evidence-based approach"*** which presumes a reasoned neutrality or impartiality. Yet the ToR, which presuppose the value of criminalising coercive control, as well as the list of stakeholders to be consulted, tell us what evidence will be valued and heard. The evidence which points towards truly transformative change such as community justice processes and abolition and defunding of carceral systems is likely to be excluded.
- The ToR refer to ***"just outcomes"*** only in the context of balancing the needs of ***"victims and accused persons"***, as if this were a simple calculus, and the state the arbiter rather than a party to violence and injustice. Are just outcomes possible given the way thatstructural factors mitigate against even-handedness and lead to profoundly unjust distributions of harm?
- There is an apparent concern for "***cost-effectiveness'*** yet the massive expansion of the prison system and policing is clearly not considered. This is one of the major areas of increased government spending over the past two decades and is highly profitable to

many private and quasi-government organisations. Abolitionist research highlights the economic forces driving the expansion of carceral systems and leads us to question the independence of a Taskforce which is deeply enmeshed in the sprawling and expanding prison industry.

Conclusion

We do not raise these concerns in relation to the ToR to call for greater inclusion of Aboriginal and Torres Strait Islander women in the Taskforce. Rather we seek to explicitly name a process that is itself violent, in its stated aims of ***"women's safety"***. By interrogating the ToR, and terminology, we show that this Taskforce's outcomesreflect the same kind of abuse that it is charged with remedying. This is not a matter of Indigenous women being silenced and 'left out' of a process of protection; in fact they will be made hyper visible and directly targeted. Aboriginal women are already rendered as marginalised, underserving victims and "***perpetrators, offenders and accused persons"***. They are not seen as worthy of inclusion in consultation and stakeholder discussions, only of inclusion as potential perpetrators of the new crime of coercive control. Instead of seeking this inclusion, we question the very terms of this Taskforce and its agenda.
The concept of coercive control itself tells us that those who are victimised typically cannot seek justice. They do not have power, are structurally silenced and are not believed – this disempowerment is reflected in the Taskforce ToR. The state casts Indigenous women as perpetrators of coercive control when it is the state itself who exercise this control and occupies the role of perpetrator. Which kind of women can avail themselves of this law to their benefit? Only a very few, and it is for them these laws are being made, and for the colonial political order that has long justified itself as protecting white female virtue and disciplining Aboriginal criminality.

References:

i Queensland Government (2021) Women's Safety and Justice Taskforce, Department of Justice and Attorney General, accessed May 2021 https://www.justice.qld.gov.au/initiatives/womens-safety and-justice-taskforce

ii Queensland Government (2021) Terms of Reference: Taskforce on Coercive Control and Women's Experience in the Criminal Justice System, Department of Justice and Attorney General, accessed May 2021 https://www.justice.qld.gov.au/ data/assets/pdf file/0010/672706/womens-safety justice-taskforce-tor.pdf

iii Australian Bureau of Statistics, Prisoner numbers and prisoner rates by Indigenous Status and sex, States and territories, 2006-2020 (Tables 40 to 42)

iv Walby, S & Towers, J (2018) Untangling the concept of coercive control: Theorizing domestic violence crime, Criminology & Criminal Justice, 18(1): 8. https://doi.org/10.1177%2F1748895817743541; see also Barlow, C, Johnson, K, Walklate, S and Humphreys L. (2020). Putting Coercive Control into Practice: Problems and Possibilities, The British Journal of Criminology, 60(1): 160–179, https://doi.org/10.1093/bjc/azz041 v Walby, S & Towers, J (2018) Untangling the concept of coercive control: Theorizing domestic violence crime, Criminology & Criminal Justice, https://doi.org/10.1177%2F1748895817743541 vi Stark E and Hester M (2018). Coercive Control: Update and Review. Violence Against Women 25(1): 81-104. https://doi.org/10.1177/1077801218816191

v Tolmie, J (2017). Coercive Control: To Criminalise or not to Criminalise? Criminology and Criminal Justice. 18(1): 50-66. https://doi.org/10.1177/1748895817746712