

National Justice Project

Submission to the Special Rapporteur on violence against women, its causes and consequences

January 2022



CULTURAL SENSITIVITY WARNING: First Nations readers should note that we are using the names of a deceased person with permission from their family.

CONTENT WARNING: This submission contains content that is confronting and distressing. Please take care when reading.

ABOUT THE AUTHORS

This submission has been co-authored by the National Justice Project (NJP) together with Kathleen Pinkerton and Yvette Harris (sisters of Ted Mullaley and aunts of Tamica Mullaley, on behalf of their family) and in conjunction with Distinguished Professor Larissa Behrendt (Jumbunna Institute for Indigenous Education and Research) and Professor Chelsea Watego and the Institute for Collaborative Race Research.

We are grateful for the opportunity to work alongside the Mullaley family in telling their story. The Mullaley family have shown enormous strength and perseverance in their ongoing fight for truth, accountability and justice. Their story exemplifies the racial violence, abuse and neglect perpetuated against First Nations people by the Australian Government via its various agents. In sharing their story, the Mullaley family hope to affect change and prevent other families from having to live through similar experiences. More information about the Mullaley family is available on our [website](#) and at [We Hear You - The W.H.Y. Campaign](#), [See What You Made Me Do](#), and [change.org](#).

The National Justice Project

The NJP is an independent not-for-profit human rights legal, social justice education and advocacy service that works to eradicate institutional discrimination. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners we work to create systemic change and amplify the voices of communities harmed by governments and discrimination.

Acknowledgement of First Nations Peoples' custodianship

The NJP pays its respects to First Nations Elders, past and present, and extends that respect to all First Nations peoples across the country. We acknowledge the diversity of First Nations cultures and communities and recognise First Nations Peoples as the traditional owners and ongoing custodians of the lands and waters on which we work and live.

We acknowledge and celebrate the unique lore, knowledges, cultures, histories, perspectives and languages that Australia's First Nations Peoples hold. The NJP recognises that throughout history the Australian health and legal systems have been used as instruments of oppression against First Nations Peoples. The NJP seeks to strengthen and promote dialogue between the Australian legal system and First Nations laws, governance structures and protocols. We are committed to achieving social justice and to bring change to systemic abuse and discrimination.



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EXECUTIVE SUMMARY

This submission addresses the [OHCHR terms of reference](#), specifically the different manifestations of violence experienced by Indigenous women, girls, and their families. This includes systemic and institutional racism and discrimination, violence and other harmful practices in the context of discriminatory policing and the healthcare and justice systems more broadly, including access to and engagement with complaints and accountability mechanisms. With the permission of the family, this submission details the experiences of the Mullaley family in Western Australia (WA) to illustrate how discretionary powers and narratives are weaponised against First Nations people by police and the various agencies, institutions and oversight bodies that work directly with or peripherally to the criminal justice system (CJS).

Racial violence is a foundational element of the ongoing colonial relationship between the state and First Nations Peoples in Australia. The foundational structure of race and racism in Australia today is most clearly expressed in the operations of the CJS in relation to First Nations Peoples, where the pervasive and entrenched discrimination against First Nations women and girls, in particular, is a form of violence itself.¹

Informed by the experiences of our clients, in particular the Mullaley family, this submission seeks to highlight the racial violence perpetuated by the Australian Government via its various agents. The purpose of detailing the Mullaley family's experiences in this submission is twofold. The first is to foreground their account of the events of 19-20 March 2013, the subsequent investigations, and the impact that this tragedy has had on their family. The second is to frame the Mullaley family's experience as representative of the endemic racism and violence experienced by First Nations Peoples, in particular women and girls in the operations of the Australian CJS. In this case, exemplified through the WA Police Force and WA Government institutions, in particular independent police investigators, the WA Corruption and Crime Commission (CCC) and the WA State Coroner that repeatedly failed to adequately respond to this tragedy.

RECOMMENDATIONS

In seeking justice, we offer the following strategies for systemic reform and redress that are needed to prevent and combat violence against Indigenous women and their families.

1. Systemic reform of relevant police practices and policies, including those regarding the independent investigation of complaints against police and those relating to victims of domestic and family violence (DFV) and their children, with a further specific focus on First Nations women and children, and implementation of these by police officers on the ground.
2. First Nations-led policy and law reform to address the criminalisation and hyper-incarceration of First Nations people, with specific focus on women and children.²

¹ As articulated by the former-United Nations Special Rapporteur on the rights of Indigenous peoples, the "routine exclusion of Indigenous women and girls from the rights and resources otherwise guaranteed to citizens" and the "endemic violations of [their] collective, civil and political, and economic, social and cultural rights" constitute a form of structural violence against them: Victoria Tauli-Corpuz, UN Human Rights Council, *Report of the Special Rapporteur on Rights of Indigenous Peoples*, UN General Assembly A/HRC/30/41 (6 August 2015) [46].

² Including but not limited to: a) alternatives to fines; b) abolishing mandatory sentencing, short term sentences and imprisonment for fine default and other minor offences; c) improved bail, remand, community-based sentencing and parole options; and d) funding and supports for the expansion of justice reinvestment programs and culturally safe and trauma informed services for at-risk First Nations women and their families.

3. First Nations-led anti-racism and cultural competency education and training³ for police and government agents within the CJS, including all Integrity Agencies (IA), State/Territory corruption and complaints bodies and coroner's courts, engaging with First Nations people to be delivered on an ongoing basis.
4. Improved IA practices, including increased transparency and accountability for police and the opportunity for complainants to submit victim impact statements and respond to allegations or criticisms made against them and their families. This includes procedural fairness practices, such as right of reply, where racist and stereotypical slurs are made against victims of police and other state actors.
5. Appointing First Nations people to IAs and coroner's courts to investigate matters where First Nations people are the victims of crime, corruption or other malpractice.
6. Pathways for First Nations people to be supported, respected and empowered investigators in the IA Unit to identify misconduct and systemic racism and make appropriate recommendations.
7. Law reform to ensure that coroners are required to investigate the conduct of police or other state actors or officials (including investigating systemic or structural discrimination) where their acts or omissions may have in any way contributed to the death of a person, particularly in cases of DFV.
8. Greater transparency in the Coronial process and implementation of respectful and culturally safe protocols for investigating First Nations deaths, and for these to be applied consistently across all Australian States/Territories.
9. Appointing First Nations Coroners and Investigators to investigate and make findings and recommendations into First Nations deaths.
10. Law and policy reform to increase scrutiny and accountability for police misconduct, including but not limited to improved Freedom of Information policies to allow greater transparency of Police, IAs and other institutions.
11. Reforms to the *Racial Discrimination Act 1975* (Cth) and the *Australian Human Rights Commission Act 1986* (Cth) to ensure complaints processes are victim-centred, trauma-informed and better attend to the intersectional nature of discrimination.⁴

CASE STUDY – THE MULLALEY FAMILY

On the evening of 19 March 2013, Ms. Tamica Mullaley was assaulted by her partner, Mr. Mervyn Bell. When police were called to the scene by a witness, they racially profiled and harassed the traumatised, bleeding and naked Ms. Mullaley and her father, Mr. Ted Mullaley when he arrived to help his daughter. Police continued to escalate the situation and events spiralled out of control, culminating with both father⁵

³ As identified in the concluding observations of the [UN Committee on the Elimination of Racial Discrimination](#) which sets out a range of key issues to be addressed in relation to Australia's obligations under the ICERD; the Aboriginal and Torres Strait Islander Social Justice Commissioner's 2020 [Wiyi Yanu U Thangani report](#); Reconciliation Australia's 2021 [State of Reconciliation Report](#); and the Human Rights Commission's 2021 Concept Paper for a [National Anti-Racism Framework](#).

⁴ See Professor Chelsea Watego, 'Always Bet on Black (Power)', *Meanjin Quarterly* (Spring 2021) <https://meanjin.com.au/essays/always-bet-on-black-power/>.

⁵ In the absence of any effort by police to deescalate the situation, Mr. Mullaley attempted to manage escalating tensions while simultaneously looking after his daughter and at different times his grandson. He was later charged with obstructing

and daughter⁶ being criminalised and arrested by police. When Mr. Mullaley followed police and his injured daughter to hospital, the police neglected to maintain control and custody of the scene and ensure Ms. Mullaley's son, Baby Charlie was safe.

Mr. Bell returned to abduct Baby Charlie. Police refused to listen to Mr. Mullaley's pleas for help. By the time they initiated a search nine hours later, Mr. Bell had fled with Charlie. Fourteen hours after Charlie was taken, Mr. Bell brought Baby Charlie to a roadhouse more than 900kms away. The trauma and injuries visited on his tiny body were horrific. Baby Charlie was pronounced dead soon after.

Mr. Bell was found guilty of Baby Charlie's murder and convicted in 2014. In 2019, the Mullaley family requested a coronial inquest into his death. This request was rejected by the State Coroner. The WA CCC failed to investigate the family's legitimate complaints about discrimination, diminished the reputations of Ms. and Mr. Mullaley and effectively blamed Ms. Mullaley for police misconduct by suggesting that she, as the victim of a crime, had distracted them from their duties.

The events of 19-20 March 2013 and the subsequent investigations into those events, reveal the multiple ways in which the Mullaley family were subject to interpersonal, institutional and structural racism. The family's account is substantiated by the overwhelming weight of evidence, which continues to be discounted by the WA Government, its courts and officials. The family continue to be denied any sense of closure, justice or accountability.

CONTEXT – RACIAL VIOLENCE AGAINST FIRST NATIONS WOMEN AND GIRLS⁷

Manifestations of violence experienced by Indigenous women and girls

State systems

The mistreatment of the Mullaley family cannot be understood without examining the context that enabled such a tragic and violent set of interactions.

In Australia, First Nations people are particularly vulnerable to discriminatory policing due to a colonial legacy of police implementing discriminatory and brutal policies and practices including the forced removal of children, forced servitude, massacres and segregation, that have continued to hamper police-community relationships.

In the context of this violent colonial legacy, the pervasive use of racially charged, offensive and inflammatory language by police in their interactions with First Nations communities directly contributes to escalating community-police tensions and perpetuates the cycle of violence and abuse against First

police. Mr Mullaley admitted that he pushed a police officer who was holding down his naked injured daughter in efforts to protect her. He was convicted and received a \$300 fine.

⁶ Police failed to treat Ms. Mullaley as the victim of an assault. This failure led to an increasingly volatile situation during which Ms. Mullaley swore at a police officer resulting in her being arrested for assault. Ms. Mullaley, still bloodied, bruised and clothed only in a single fitted bedsheet, made a number of attempts to resist a violent arrest. These attempts were met with further excessive force by police, including smashing a car window when Ms. Mullaley managed to lock herself in her father's car to escape them. She was later charged with assaulting police, to which she plead guilty and was given a 12-month suspended sentence.

⁷ This section includes research and insight from First Nations scholars, Distinguished Professor Larissa Behrendt from the [Jumbunna Institute for Indigenous Education and Research](#) and Professor Chelsea Watego and her team at the [Institute for Collaborative Race Research](#).

Nations people by police. Racial profiling, aggressive over-policing, intimidation, abuse of power and disproportionate use of force by police against First Nations people directly contribute to the criminalisation and hyper-incarceration of First Nations people as they continue to suffer unjust and unacceptable levels of violence, abuse and neglect and continue to die in custody without accountability and without justice.⁸

There is a profound lack of trust between First Nations Peoples and the Australian CJS, in particular police. The damaging patterns of police interaction have not improved despite constant reports and promises. Incarceration rates of First Nations people, particularly women and children, are escalating sharply, including for female victims of DFV who continue to be criminalised.

Police and legal systems frequently choose to punish rather than protect First Nations women and girls. 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 DFV protection order on at least one occasion.⁹ 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. The Mullaley case provides one of the most egregious and specific examples of this normalised pattern of racism against First Nations women by police.

The Mullaley family understands the significant role racism played in their mistreatment by WA police, courts and investigative agencies in their failure to review and investigate their legitimate concerns and complaints of racism and police misconduct. The critical lack of fairness and independence of investigators, courts and the WA CCC throughout the complaints process, reinforces the existing mistrust in the system by First Nations families and communities seeking justice. Like many First Nations people, the Mullaley family's experience of the CJS is that it's fundamentally structured against their interests. The CJS is perceived as a tool for perpetuating the suffering, impoverishment and punishment of their families while police, under the sanction of the state, operate with impunity for the violence and suffering they inflict.

Domestic and family violence

It is well-established that the criminalisation of First Nations women is deeply entwined with the experience of domestic, family, sexual and other forms of violence against women.¹⁰ Structured reforms to policy and laws are urgently needed to divert First Nations women from entering the CJS by addressing the way police and the courts identify and respond to DFV.

First Nations women comprise just 2% of the adult female population nationally, while accounting for 39% of the female prison population.¹¹ Up to 90% of all women in Australian prisons have experienced DFV.¹²

⁸ National Justice Project, *Submission to the Select Committee into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody* (August 2020)

<https://www.parliament.nsw.gov.au/lcdocs/submissions/68996/0102%20National%20Justice%20Project.pdf>.

⁹ Heather Nancarrow, Kate Thomas, Valerie Ringland and Tanya Modini, *Accurately Identifying the 'Person Most in Need of Protection' in Domestic and Family Violence Law*, Research Report, Issue 23, Sydney: ANROWS (2020)

<https://www.anrows.org.au/publication/accurately-identifying-the-person-most-in-need-of-protection-in-domestic-and-family-violence-law/>.

¹⁰ Committee on the Elimination of Discrimination against Women, General recommendation No. 35 on gender-based violence against women, updating general recommendation No. 19, CEDAW/C/GC/35 (26 July 2017)

https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW/C/GC/35&Lang=en

¹¹ Mandy Wilson, Jocelyn Jones, Tony Butler et al. 'Violence in the Lives of Incarcerated Aboriginal Mothers in Western Australia', *SAGE Open* (January 2017). doi:[10.1177/2158244016686814](https://doi.org/10.1177/2158244016686814).

¹² Ibid.

The true figure for First Nations women is harder to determine due to under-reporting.¹³ First Nations women are 32 times more likely to be hospitalised due to domestic or family violence and 11 times more likely to die from assault than their non-Indigenous counterparts.¹⁴

First Nations women face significant obstacles in accessing justice within State institutions due to discrimination, bias, shame, stigma, language and cultural barriers and re-victimisation risks. Coupled with poor police response, fear of child removal and lack of culturally safe and trauma informed services, the violence experienced by First Nations women, as exemplified in the Mullaley case, often results in impunity for perpetrators while failing to provide First Nations women and their families access to remedy or reparation for the violence they experience. As a consequence, some women feel they have little choice but to fight back in efforts to defend and protect themselves and their children from violence, resulting in their arrest.¹⁵ It is therefore imperative that police, including those in WA are able to recognise these underlying issues and the role they play when coming into contact with First Nations women.

Access to preventive mechanisms, justice and self-determination for Indigenous women and girls

The right to freedom from racial and gender-based violence is enshrined in international law. These rights are indivisible from and interdependent on other human rights including the rights to life; health; liberty and security of the person; equality and equal protection within the family; freedom from arbitrary arrest; freedom from torture, cruel, inhumane or degrading treatment; and freedom of expression, movement, participation, assembly and association.¹⁶

The Australian Governments' obligations under international law extend to implementing measures to prevent acts or omissions by its own agents.

Despite the disproportionate impact of DFV on First Nations women, investigations into their experiences of DFV are repeatedly overlooked, underfunded and under-reported in media. The systemic failures that deny the Mullaley family any sense of closure, justice or accountability are analogous to those across all Australian jurisdictions.¹⁷ Investigative processes both by police and coroners seemingly have a sense of inevitability to them, never offering any sense of justice to First Nations women experiencing violence, in life or in death.¹⁸ These inadequacies are compounded by the media's deliberate attempts to at worst silence

¹³ Domestic Violence NSW Aboriginal and Torres Strait Islander Women's Steering Committee, Australia, *Submission to the Committee on the Elimination of Discrimination against Women general discussion on the rights of Indigenous women and girls* (June 2021) 4 <https://www.ohchr.org/Documents/HRBodies/CEDAW/DGD24June2021/16.docx>.

¹⁴ <https://www.abc.net.au/news/2021-11-25/first-nation-missing-murdered-women-senate-inquiry/100650852>

¹⁵ Judy Atkinson, 'Violence against Aboriginal women: Reconstitution of community law - the way forward', *Indigenous Law Bulletin* (2007) 6(27), 13–17.

¹⁶ Universal Declaration of Human Rights, adopted by General Assembly Resolution 217 A(III) of 10 December 1948 <https://www.un.org/en/about-us/universal-declaration-of-human-rights>.

¹⁷ Although it is worth noting that a Senate inquiry into missing and murdered First Nations women and children is currently underway in Australia, following WA Greens Senator Dorinda Cox, a Yamatji-Noongar woman, and Victorian Greens Senator Lidia Thorpe, a Gunaai-Gunditjmarra woman securing the support of the Senate to establish a parliamentary inquiry which will examine the policing processes used in First Nations murder and missing persons investigations. See Giovanni Torre 'Inquiry into missing and murdered First Nations women announced' in *National Indigenous Times* (Webpage 25 November 2021) <https://nit.com.au/inquiry-into-missing-and-murdered-first-nations-women-announced/>; Parliament of Australia, Senate Standing Committees on Legal and Constitutional Affairs, 'Missing and murdered First Nations women and children' https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Missingmurdered_women.

¹⁸ Amy McQuire, 'Newsworthy cases: Where is the 'care' for missing black children?' in *Substack* (Webpage 5 November 2021) <https://amymcquire.substack.com/p/newsworthy-cases-where-is-the-care>.

black women's voices and at best re-victimise First Nations women who are victims of violence through representations that dehumanise them and where they are seen as complicit in their own deaths.¹⁹

Policy and laws that fail to respect principles of self-determination remain inextricably linked to the continuance of destructive practices that intensify the ongoing perpetration of violence and injustice by Australian governments, via its various agents, against First Nations Peoples.²⁰ Significant investment in First Nations-led policies, practices and supports are urgently needed to reduce this violence, including through self-determined strategies and initiatives that give First Nations women and their families the right to influence policy development and implementation to protect themselves from the violence and discrimination of the state.²¹

¹⁹ Amy McQuire, 'Silencing Aboriginal women on issues of violence' in *Substack* (Webpage 11 October 2021) <https://amymcquire.substack.com/p/silencing-aboriginal-women-on-issues>.

²⁰ For instance, the Federal Government's suspension of the Racial Discrimination Act in 2007 in order to execute the Northern Territory Emergency Response. See Jens Korff, 'Northern Territory Emergency Response (NTER) - "The Intervention"' in *Creative Spirits* (Webpage 17 February 2021) <https://www.creativespirits.info/aboriginalculture/politics/northern-territory-emergency-response-intervention#axzz4km94gzlH>.

²¹ For instance, exercised through a constitutionally enshrined First Nations Voice to Parliament and Makarrata Commission to oversee treaty-making processes between Australian governments and First Nations people towards truth telling, justice and self-determination: See First Nations National Constitutional Convention, 'Uluru Statement from the Heart' (2017) www.referendumcouncil.org.au/event/first-nations-regional-dialogue-in-uluru; <https://fromtheheart.com.au/uluru-statement/the-statement/>.