

# ANROWS

AUSTRALIA'S NATIONAL RESEARCH  
ORGANISATION FOR WOMEN'S SAFETY  
*to Reduce Violence against Women & their Children*

## **NSW Legislative Council**

Parliament House

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### **Re: Supplementary questions on notice**

Dear the Honourable Adam Searle MLC

Australia's National Research Organisation for Women's Safety (ANROWS) would like to thank the Select Committee for the opportunity to respond to these supplementary questions on notice from the Thursday 3 December 2020 hearing of the Inquiry into the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody.

The answers below apply relevant ANROWS research evidence to the supplementary questions on notice as set out by the Select Committee. We would be very pleased to assist the Select Committee further, as required.

Yours sincerely

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## Supplementary questions on notice

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**QUESTION 1:** Women’s incarceration has risen faster than men’s incarceration. This is especially pronounced for First Nations women. Misidentification of offenders in DV situations has been one driver of this.

- a. To what degree is this responsible for that outcome?
- b. What are the other key drivers?
- c. What are five key things that could be done to address this?

The extent to which the inaccurate identification of domestic and family violence (DFV) victims/survivors as offenders contributes to the rising rates of First Nations women in prison is difficult to assess for a number of reasons. However, evidence indicates it has significant impact: ANROWS evidence suggests that women victims/survivors are being misidentified as offenders in the context of DFV, that First Nations women are over-represented both as respondents on protection orders and in charges relating to breaches, and that First Nations women face significant and compounding barriers that contribute to both incarceration and re-incarceration once misidentification has occurred.

While it is difficult to compare national data on protection orders due to inconsistent recording, in most Australian jurisdictions, women are being named as respondents on around one fifth to one quarter of protection orders (Nancarrow, Thomas, Ringland, & Modini, 2020). Given that we know coercive and controlling violence is a gendered pattern of behaviour, with men more likely to perpetrate abuse, and women more likely to experience the impacts of abuse, this figure suggests that a significant number of victims/survivors are being misidentified as offenders in DFV situations.

First Nations peoples are over-represented as respondents on protection orders (Nancarrow et al., 2020; see also Douglas & Fitzgerald, 2018). First Nations women are particularly disproportionately represented in charges relating to breaching orders in most jurisdictions (Nancarrow et al., 2020; see also Douglas & Fitzgerald, 2018). Disturbingly, for First Nations women, these charges have a significant likelihood of leading to incarceration: Douglas and Fitzgerald (2018) found in Queensland that 69 percent of women sentenced to serve a period of incarceration for contravening a domestic violence order in 2013–14 were Aboriginal and Torres Strait Islander women, despite First Nations women accounting for just 3.3 percent of Queensland women in the 2011 census.

Another indicator of prevalence of the misidentification of DFV offenders comes from examining cross-applications and cross-orders where linked data exist. This is because cross-applications and cross-orders can indicate a failure to identify coercive control and the person most in need of protection. For example, in Queensland, where data exist that link cross-applications and cross-orders, an examination of the three financial years between 2015–16 and 2017–18 found that 12 percent of the cases had cross-applications while 9 percent had cross-orders. This indicates that only “a small percentage of cross-applications are being identified, and the person most in need of protection then considered in court” (Nancarrow et al., 2020, p. 10). Cross-applications can then also

be weaponised as a form of systems abuse. As Women's Legal Service Victoria (WLS Vic; 2018) points out, women subject to cross-orders are made vulnerable to being pulled into the criminal justice system (and potentially imprisoned) via perpetrators calling the police for breaches (WLS Vic, 2018).

Other key drivers of First Nations women's incarceration include the women having experienced DFV or sexual violence, poverty, homelessness, and social exclusion relating to their status as Aboriginal and Torres Strait Islander women and/or as women who have experienced incarceration. Distrust of police and other authorities, stemming from a history of colonisation and the enforcement of colonial polices that aimed to subjugate Aboriginal and Torres Strait Islander peoples, can also be a driver of incarceration. Racism, including both overt racism and unconscious bias, is another driver of First Nations women's incarceration. Imprisonment is made more likely by the lack of culturally appropriate, wrap around services to support First Nations women either to avoid incarceration in the first place, or to break the cycle of re-imprisonment. Without these essential diversion and prison initiatives, case management and pre-release planning, First Nations women released from prison face extreme difficulty in meeting court-mandated reporting requirements. Several reasons for this include a lack of transport, moving from one crisis to the next, and the fact that they are often homeless (Bevis, Atkinson, McCarthy, & Sweet, 2020). For a fuller explanation of these drivers of women's incarceration, please see the ANROWS synthesis paper, [\*Women's imprisonment and domestic, family and sexual violence\*](#).

In addition to guidance on identifying patterns of coercive control to assist police and legal actors in identifying the person most in need of protection from future harm or abuse (highlighted in our initial submission), the five key things ANROWS recommends to address First Nations women's imprisonment are:

1. Ensure the provision of accessible, affordable housing, as this is fundamental to addressing both DFV and imprisonment. Increase the supply of public housing, particularly for Aboriginal and Torres Strait Islander communities.
2. Develop and fund culturally relevant diversion and prison initiatives such as the Kunga Stopping Violence Program, the Miranda Project or the Sisters Inside diversionary program.
3. Recognise gendered differences when designing and implementing prison policies and programs.
4. Place more emphasis on whole-of-family and whole-of-community approaches to family violence interventions, including early intervention for teenagers, in recognition of the effects of intergenerational trauma. For women who have been incarcerated, this focus should include facilitation of reconnection with children upon release and support around parenting.
5. Recognise the importance of continuity of services, case management, pre-release planning and throughcare. These services should be available to those on short sentences or on remand.

**QUESTION 2:** From the evidence we heard, lack of access to health services, housing, and skills to gain paid work are key issues in women re-offending and are key to women leaving prison having agency to regain control of their lives. How can this be best addressed?

As mentioned above, providing accessible, affordable housing is fundamental to addressing both imprisonment and DFV. Research evidence repeatedly identifies a shortage of public housing, particularly for Aboriginal and Torres Strait Islander communities. The real or immediate threat of homelessness can trap Aboriginal and Torres Strait Islander women in unsafe situations, where they often are reliant on their violent partner to provide financial support to the household (Langton et al., 2020).

Beyond the fundamental importance of housing, the evidence points to the importance of access to other support services. While centred upon two cross-border towns in Victoria and New South Wales, the research report [\*Improving family violence legal and support services for Aboriginal and Torres Strait Islander women\*](#) highlights the barriers that Aboriginal and Torres Strait Islander women face when accessing a range of services (Langton et al., 2020). The recommendations include suggestions of ways to make services more available, accessible and acceptable to Aboriginal and Torres Strait Islander women, which are relevant beyond the specific sites under study. These recommendations include addressing the short-term, insecure resourcing of services aimed at Aboriginal and Torres Strait Islander women's safety; resourcing services to address early interventions (not just services geared at women in crisis); and increasing support for the Aboriginal service sector—particularly for mental health and counselling services (Langton et al., 2020). The latter would include training on how to retain Aboriginal and Torres Strait Islander personnel, and how to adopt cultural protocols and procedures (Langton et al., 2020). Improving the recruitment and retention of Aboriginal and Torres Strait Islander staff, including specific Aboriginal liaison officers, across the human services system would make a significant difference in this area (Langton et al., 2020).

While the Select Committee has identified issues with First Nations women sometimes lacking skills to gain paid employment as a vital issue to solve, First Nations women who wish to return to work after incarceration also face other barriers. Stigma and discrimination, centred on both their racial identity and their status as former prisoners, can intersect to make finding a job near impossible, even with the relevant skills, particularly if the women are subject to restrictive parole conditions. Job hunting can also be impacted by homelessness and the lack of a fixed address. With a high proportion of formerly incarcerated First Nations women experiencing intimate partner violence (IPV), these barriers exist in addition to those faced by women experiencing IPV, including the potential for job loss when work is missed due to violence (Day, Casey, Gerace, Oster, & O'Kane, 2018).

## References

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