

Dr Marlene Longbottom and Dr Amanda Porter – Submission to the *Women’s Safety and Justice Taskforce: Discussion Paper 1 – Options for legislating against coercive control and the creation of a standalone domestic violence offence*

To: Margaret McMurdo AC
Committee Chair,
Women’s Safety and Justice Taskforce
Queensland Government

16 July 2021

Dear Ms McMurdo AC,

Thank for your invitation to make a submission to the *Women’s Safety and Justice Taskforce on Coercive Control*.

The questions posed by the Women’s Safety and Justice Taskforce are complex, requiring careful consideration and analysis, especially with respect to the perspectives of Indigenous victim/survivors, Indigenous frontline organisations who support people who have experienced violence. This is due to the fact that for Indigenous women and girls, the state is itself a source of violence and coercive control. While the drivers of violence are multilayered and complex, within Indigenous communities violence is a phenomena that greatly impacts Aboriginal and Torres Strait Islander women and children and gender diverse people, in ways that are different to non-Indigenous women. These complexities defy easy or straight-forward answers. Thus, we have organised the following submission according to discrete topics that require further examination and consideration. It is our firm belief that the creation of a new criminal offence of coercive control will adversely impact Indigenous women and girls and gender diverse people.

The following submission is jointly co-authored. Dr Longbottom provides the following submission as a mother, an Aboriginal woman, a survivor of violence, a former Aboriginal Health Worker who has worked in the Aboriginal Community Control and Government sectors in the drug and alcohol, chronic disease and family support sectors. At present she is a Postdoctoral Research Fellow with the Ngarruwan Ngadju First Peoples Health and Wellbeing Research Centre at the University of Wollongong. Dr Longbottom’s area of work focuses on violence, trauma and social justice issues in Indigenous communities including systems level responses, she is often sought out to comment on issues that impact Aboriginal and Torres Strait Islander communities and recently participated in the Cairns stakeholder meeting of the Taskforce. The submission is co-authored with Dr Amanda Porter, who is a Senior Fellow (Indigenous Programs) at Melbourne Law School, who has over a decade’s experience researching on policing, Indigenous deaths in custody and missing and murdered Indigenous women and children.

1 State service system responses

The system responds to Indigenous women and gender diverse people in ways that differ to that of non-Indigenous women. Indigenous women and gender diverse people are often racialised due to their Indigeneity, while also discriminated against as a result of intersectional factors that include their race, gender, sexuality, disability, education (both – whether they have an education or not) and socioeconomic status. Thus, we affirm that the diversity of the Indigenous community polarises certain groups of people, who are under protected, while also hypersurveilled.

The system does not protect Indigenous women and gender diverse people. There are staff employed within the system, including those who may be contractors or associates, such as the specialised DV support programs, however these services are inaccessible. Difficulties that arise from an inability to access support and advice as a result of barriers related to staff perceptions, stereotypical behaviour, racialised experiences, coupled with eligibility criteria, can create a reluctance with Indigenous women and gender diverse people in seeking support and further protection from police and the court systems. At times, police discretion is utilised to apply for protection orders however this can place Indigenous women and children at further harm and consequence of retribution. These experiences are not representative of all experiences however are some of the experiences Indigenous women have shared with me.

2 Indigenous women’s experiences of domestic and state sanctioned violence

Quite often Indigenous women, gender diverse and people with a disability or those caring for people with a disability, not only contend with the violence of their partners (in the case of intimate partnered violence), but also a combination of violence by the state system and those employed within it. Violence in its entirety is encountered by the state such physically, psychologically, mentally, emotionally, and we argue, including sexually, as it relates to in particular where strip searches of Indigenous community members take place. Indigenous women have been misidentified as a person using violence in their own home where police have been called on the basis of a community report, after being physically assaulted.

For Indigenous women and girls, the police represent a site of lethal violence. Nine of the 11 female deaths in custody examined in the *Royal Commission into Aboriginal Deaths in Custody* (‘the RCIADIC’) were in police custody at the time of their death (Johnston, 1991 [b]-[c]; O’Dea, 1991 [a]-[d]; Wyvill, 1991 [a]-[f]). Most were being held for minor, victimless offences, for example as the offence of public drunkenness, fine default or offensive language. The only sentenced female prisoner at the time of death was incarcerated for motor vehicle related offences. The young Aboriginal girl who died in juvenile detention in Queensland was in custody for trying to escape the welfare authorities. More than half the women who died in custody had been removed from their families as children. Many women were themselves victims of gender-based violence. All were ultimately victims of state sanctioned violence.

Indigenous women and girls continue to bear the brunt of the violence of policing today. Nearly all of the recent deaths in detention involving Indigenous women—for example the recent deaths in detention of Ms Dhu (Fogliani, 2016[a]), Ms Mandijarra (Fogliani, 2016[b]),

Ms Day (English, 2020), Ms Maher (O’Sullivan, 2019), among many others—bare resemblance with the circumstances of those women whose deaths were investigated as part of the Royal Commission. It is disappointing that the stories of these women were not centered or platformed during these debates, especially given the fact that 2021 marked the thirty-year anniversary since the publication of the RCIADIC.

3 First responders to domestic and state sanctioned violence

Indigenous women and gender diverse people are further marginalised by first responders who attend crisis incidents. There is already a strained relationship between Indigenous people and the police, that is likely to include a resistance to speak to the police due to the racialised and discriminative nature of the previous and historical interactions with the state. There is a need for First Responders to know, understand and recognise the power imbalance, whereby historical and current day events impact the relationships between Indigenous communities and the state. These strained relationships can include a hostility between the First Responders and the community, thus perpetuate further violence.

The First Responders approach should be one of de-escalation, to ascertain the situation at hand. However, in a situation of a call out of a domestic dispute, what is often experienced by the Indigenous woman, is a meticulous and calculated person who uses coercive control as a mechanism of deflection and diversion so that the focus is on the woman who is generally in a state of frustration and anger after being attacked, beaten or sexually assaulted. It is at this time that First Responders can misidentify who the person is that requires protection, the mislabelling of the woman (in most cases) as being the person perpetrating the aggressive behaviours and thus this commences the switch between the victim – perpetrator trajectory that we now see.

Indigenous advocates have repeatedly drawn attention to the issue of the state police’s failure to protect. A clear example of this involves the case of Tiffany Paterson, an Aboriginal woman from the Northern Territory who was violently assaulted after the Northern Territory Police failed to protect her from an attack. Paterson, who survived the attack, later sued the Northern Territory Police on the grounds of negligence and settled on confidential terms (Carrick, 2014).

The failure to protect can be seen equally through the issue of missing and murdered Indigenous women and girls (Behrendt, 2014; Clarke, 2018; McQuire, 2018; Porter and Whittaker, 2019). In Turtle Island/Canada, a report into the Thunder Bay police service found that the police consistently ‘devalued Indigenous lives, reflected differential treatment and were based on racist attitudes and stereotypical preconceptions about Indigenous people’ (McNeilly, 2018). More recently, a national inquiry found persistent and deliberate pattern of human rights abuses and characterised the issue of missing and murdered Aboriginal women and children in terms of genocide (NIMMIWG, 2019).

While there has been no equivalent national or regional inquiry in Australia, the names and stories of missing and murdered Indigenous women and children have been brought to the attention of the Australian public thanks to the labour of Indigenous journalists and

academics—in particular Distinguished Professor Larissa Behrendt, Allan Clarke, Amy McQuire and Martin Hodgson. Furthermore, the tireless work of Dr Hannah McGlade who has been at the forefront of human rights at the international national and state level along with working closely with families, such as Stacey Thorne who was murdered while 22 weeks pregnant with the accused acquitted of all charges (McGlade *et al*, 2021). It is regrettable that these people do not yet appear to have been included or afforded a platform in discussions and debates on domestic and family violence and their solutions.

4 Coercive control laws

It is from our work as Indigenous researchers that we have found the state to be selective in the urgency (or lack thereof) and protection of Indigenous women and gender diverse people. If we are to look at the coercive control laws as it relates to interpersonal relationships, there is a need to investigate the impact of state based violence and how the state along with those employed within the system apply coercive control in their surveillance of Indigenous community members. The current laws do not protect Indigenous women, and do not protect gender diverse people nor those with a disability or carers. We do not see that narrowing the definitions or having a specific laws will increase the protection. From our understanding of the laws and the current social indicators as well as the work we have conducted, it is our belief that Indigenous community members, such as women and gender diverse people, will continue to be under protected and indeed misidentified as the perpetrator as they resist the violent behaviour as well as resist discretion and intervention by police.

5 Use of violent resistance

Indigenous women are the fastest growing population group incarcerated. We are aware that more Indigenous women using violent resistance (Johnson, 2010) as a result of defending themselves against a person who is abusive and violent over a period of time. From this standpoint we witness Indigenous women who are under protected or not protected at all by the system, where they fight back and possibly cause injury, with some fatal consequences. The trajectory of being the person who experiences(ed) violence to the person who uses violence, is being witnessed more regularly as noted in the violence theory (Johnson, 2010; Stark E., 2013). What is often misunderstood and non-contextualised to the Indigenous woman’s lived experiences is the ongoing nature of this violence and how the only way out an Indigenous woman may have been to cause harm to the person who is being violent towards her, or self-harm. This phenomena is particularly concerning as we see many Indigenous women incarcerated at alarming rates who have experienced enormous amounts of trauma and violence prior to entering the carceral system.

6 Contextualising the relationship in court

Currently the admission of evidence of ongoing violence in relationships is limited in the court of law. As we witness more Indigenous women using violent resistance there is a need to adjust the court process on a case by case scenario particularly where there is a known history of violence in the relationship.

7 Mandatory reporting issues and potential child removal

These violent encounters are based upon current day experiences, however there is also the cumulative impact of historical and multigenerational trauma that Indigenous women experience. This includes a reluctance to approach the police or authorities for support due to the mandatory reporting to child safety. Not only is this a concern for the Indigenous woman who is seeking help, but it can also be weaponised by the person who is perpetrating the violence. This factor is often overlooked as we also witness Indigenous children being overrepresented in the child protection system.

8 Specific issues in relation to LGBTIQ+ and gender diverse people and people with a disability

While we have attempted to be inclusive in our language through this submission, there are Indigenous people who are likely to experience negative impacts of coercive control laws including those from the LGBTIQ+ and gender diverse communities, and those with a disability or whom have responsibility as a carer. Indigenous people are also part of the LGBTIQ+, gender diverse and disability community who require specific service due to the potential points of discrimination that they can experience by First Responders and the legal system. These groups require a separate discussion to ensure their voices are heard in regard to these laws as they will impact them negatively also.

A way forward

1 Social entrapment model

There is a need to understand violence from a framework of social entrapment (Tolmie et al., 2018). This framework provides us with a better understanding of how violence is experienced and provides the ability to strategise the approaches needed to address the responses to supporting Indigenous women and gender diverse people. Social entrapment frames violence through three dimensions.

- a) the social isolation, fear and coercion that the predominant aggressor's coercive and controlling behaviour creates in the victim's life.
- b) the indifference of powerful institutions to the victim's suffering; and
- c) the exacerbation of coercive control by the structural inequities associated with gender, class, race and disability.

2 Trauma and culturally informed and responsive services

Along with the social entrapment model there is a need to respond to violence in Indigenous communities from a trauma and culturally informed and responsive model. Understanding trauma and the culturally nuances of communities are vital. There is also the need to understand that a model based on homogeneity will not work in the context of the diversity of Indigenous communities within the entire state of Queensland. Thus, there is a need to work from a framework of community-based responses that incorporate the stakeholder within community. As can be seen in the work Dr Longbottom has been part of with the Aboriginal and Torres Strait Islander Community Controlled Organisations who are vital service providers in this space (Cullen et al.; Walker et al.)

3 The vital role of Aboriginal and Torres Strait Islander Community Controlled Organisations

Aboriginal and Torres Strait Islander Community Controlled Organisations respond to violence whether it is within the scope of their funding and practice or not. This specific focus of work requires an increase and adequately resource allocation Indigenous communities to develop their own programs and strategies of working with community through a holistic and comprehensive model that supports not only the women and children but also the men in the families (Cullen et al.; Walker et al.). A family centered approach is required that ensures each individual is supported while also the family needs are prioritised. This is particularly in the case where there is violence and family law matter that require mediation and where children or caring responsibilities are part of the relationship.

4 Indigenous specific family mediation services

Supportive mediation process cannot take place where one party is denied their right to speak to their experiences and especially where a violent partner has the ability to engage in conversations with the person who has experienced violence. These are complex matters that require agency for the woman and children to speak to their needs from their experiences. To our knowledge there are limited Indigenous family mediation centres in Queensland that are family focused and recognised by the federal Family Law court.

5 Criminalising coercive control requires caution

The proposal to criminalise coercive control laws need to be handled with caution, as we see there are possible negative implications for Indigenous women, and gender diverse people as well as those who have or are caring for someone with a disability, while also the broader Indigenous community. The social circumstances that we are currently faced with in terms of the violence that Aboriginal and Torres Strait Islander women and children experience is not something that can be legislated nor policed our way out of. Identifying coercive control requires specialist skills which First Responders may not receive in their training, they may not recognise when these situations arise. Thus, can increase the misidentification of who the person using violence is and who is the person who requires protection.

From our individual and collaborative work, we do not believe that criminalising coercive control laws will protect or improve access to support for Indigenous women, gender diverse people and those with or caring for a person with a disability.

6 We urge caution with the influence of carceral feminism – women police stations

What can be seen from the evidence put forth in addressing the issues that impact Indigenous women and children lives, is that white women assume the role of speaker and knower of the issues pertaining to Indigenous women and children (Moreton-Robinson, 2000; Smallacombe, 2004). However, what has been documented in the empirical evidence is that white women have been and are complicit in the violence of Indigenous women (Moreton-Robinson, 2000; Smallacombe, 2004). Furthermore, that white women have also contributed to the violence on Indigenous women’s bodies historically as well as in the current day (Moreton-Robinson, 2000; Smallacombe, 2004). The theory, policy and research

implications in relation to the women police station model are in question through the work of Natarajan and Babu (Natarajan & Babu, 2020). As a result, with the limited work and evidence in Australia, it is impossible to suggest that these models will support and indeed improve access to police services for Indigenous women.

A police station that is staffed predominantly by women will have no greater impact than the current day police stations. These models do not propose to challenge nor disrupt the cis gendered, white male patriarchal system that is currently in place, that breeds a culture of policing that causes harm to Indigenous people and communities. This is evidenced in Dr Longbottom’s forthcoming book where Indigenous women have shared that police stations and courts continue to be gendered and racialised spaces.

7 Community must be part of the solution

There is a need to have greater discussion and dialogue with community around the issues that Indigenous women and children, people who are part of the Indigenous LGBTQI+ and gender diverse communities, as well as those who have or are caring for someone with a disability. The issue is not something that can be discussed in silos, nor is it something that can be done simply in the urban centres, it requires community involvement and meaningful engagement.

As both Indigenous women and academics, who live in our own bodies, we understand that our communities experience the world differently by way of our diversity. As a result, we wish to affirm that white women should not take the space and speak for us nor Indigenous communities. We need, and our communities require, the space to share our own stories to be able to speak on topics that cause our community significant harm and mortality. This also includes the racialised and gendered manner in which Indigenous communities are perceived and that lack of response by the system. We need to hear the voices of those working on the front line and who support Indigenous women, while importantly speaking directly to Indigenous survivors themselves.

Dr Marlene Longbottom
Research Fellow
Ngarruwan Ngadju First Peoples Health & Wellbeing Research Centre
University of Wollongong

Dr Amanda Porter
Senior Fellow
Melbourne Law School
University of Melbourne

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