

Director gives evidence to Senate Inquiry

14/08/2023

On 28 July, Director Sally Dowling SC appeared at a hearing of the federal Senate Inquiry into Missing and Murdered First Nations Women and Children, where she spoke about the importance of improving the experiences of First Nations witnesses and victims of crime during their interactions with the criminal justice system.

The Director was invited to give evidence by the Senate Legal and Constitutional Affairs References Committee. Topics for discussion included prosecutors' policies and practices relating to cultural awareness and cultural safety; policies and practices when liaising with First Nations victims and their families, including communicating about the progress of cases and the bases for decisions and decision-making; and the various evidentiary and judicial processes that could be used to promote cultural safety and wellbeing.

During her evidence, the Director reaffirmed that a priority of her directorship is ensuring that the ODPP better serves First Nations witnesses and victims, and that ODPP legal staff have a thorough understanding of trauma-informed practice.

She outlined initiatives the ODPP has already introduced, including establishing a First Nations Advisory Group and internship program, mandating cultural awareness training for all staff and providing training on communicating effectively with Aboriginal people.

In her evidence, the Director also highlighted the valuable support provided by the ODPP's WAS officers to First Nations witnesses and complainants. She said if services and support provided by the ODPP and other agencies were not culturally appropriate and safe, there was a risk that witnesses and complainants might disengage from the legal process and trials would not proceed.

The Director discussed how different styles of communication in First Nations communities can be misconstrued during court proceedings. She noted that judicial directions – such as the Mildren Directions used in the Northern Territory, Western Australia and Queensland, to provide a cultural context for the different ways First Nations witnesses communicate – would greatly assist the fair assessment of their evidence. Asked by Senator David Shoebridge whether she thought it would be useful for Australian parliaments to pass legislation requiring courts to consider evidence on such matters, the Director said she did.

The Director told the hearing that, as with any other proposition for law reform, improving the system for First Nations victims and witnesses would require consultation with the relevant stakeholders, including the legal profession, the judiciary and First Nations communities. Legislative and practice pathways to reform might include mandatory directions, judicial directions in the bench book and amendments to the Evidence Act, she said.

Prior to the Director's appearance, the ODPP provided the Committee with a report canvassing the various issues faced by First Nations witnesses and complainants in the criminal justice system.

"For First Nations victims, 'whole-of-system' reforms may be just as important as specific 'victim-tailored' measures. This also suggests that cooperation amongst the core institutions of the criminal justice system will provide the greatest opportunity to meaningfully address these issues," the ODPP's report said.

"Given the function that the ODPP serves in relation to all victims of crime, it is uniquely placed to respond to the complexities associated with First Nations victimisation, including by advocating for a greater emphasis on culturally safe judicial practices."

The Director would like to thank WAS Manager Jane Wolf and WASOs Ruth Shinn, Kylie Simpson and Tarney Weldon; Deputy Senior Crown Prosecutor Miiko Kumar; Crown Prosecutor Damian Beaufils; Principal Legal Advisor James Dorney; Manager Communications Kim Arlington; and the Associate to the Director, Andrew Gay, for their invaluable insights and assistance in preparing for the Inquiry.

The ODPP's report, 'Improving the wellbeing and safety of First Nations complainants and witnesses in the criminal justice system', can be found here: [First Nations Report for Senate - July 2023](#).