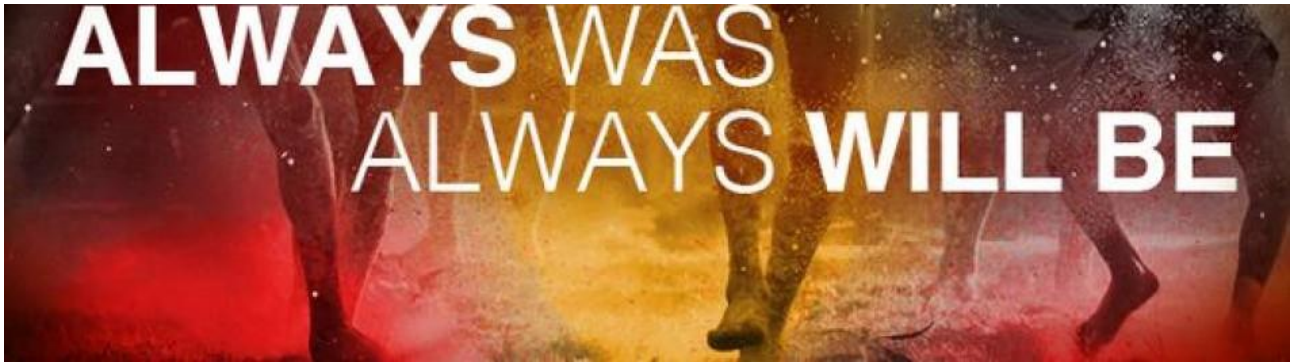


Submission
No 47

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF
DEATHS IN CUSTODY**

Name: Ms Lisa J Ryan
Date Received: 25 August 2020

SUBMISSION – Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody



Committee Members

Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

By email: First.Nations@parliament.nsw.gov.au

I acknowledge the Traditional Owners of Country throughout Australia and recognise their continuing connection to land, waters and community. I pay my respects to their cultures and their elders past, present and emerging.

1. PREFACE

I welcome this very important opportunity to lodge a submission to the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody. I also wish to express my gratitude for the efforts of the NSW Greens and the Committee's Deputy Chair, David Shoebridge, in respect to the motion which acknowledged, "*the unacceptably high level of First Nations people in custody in New South Wales*", and the agreed formation of a cross party parliamentary inquiry into how deaths in custody are investigated in NSW.

I consent to the publication of my personal submission and my name as author of this submission.

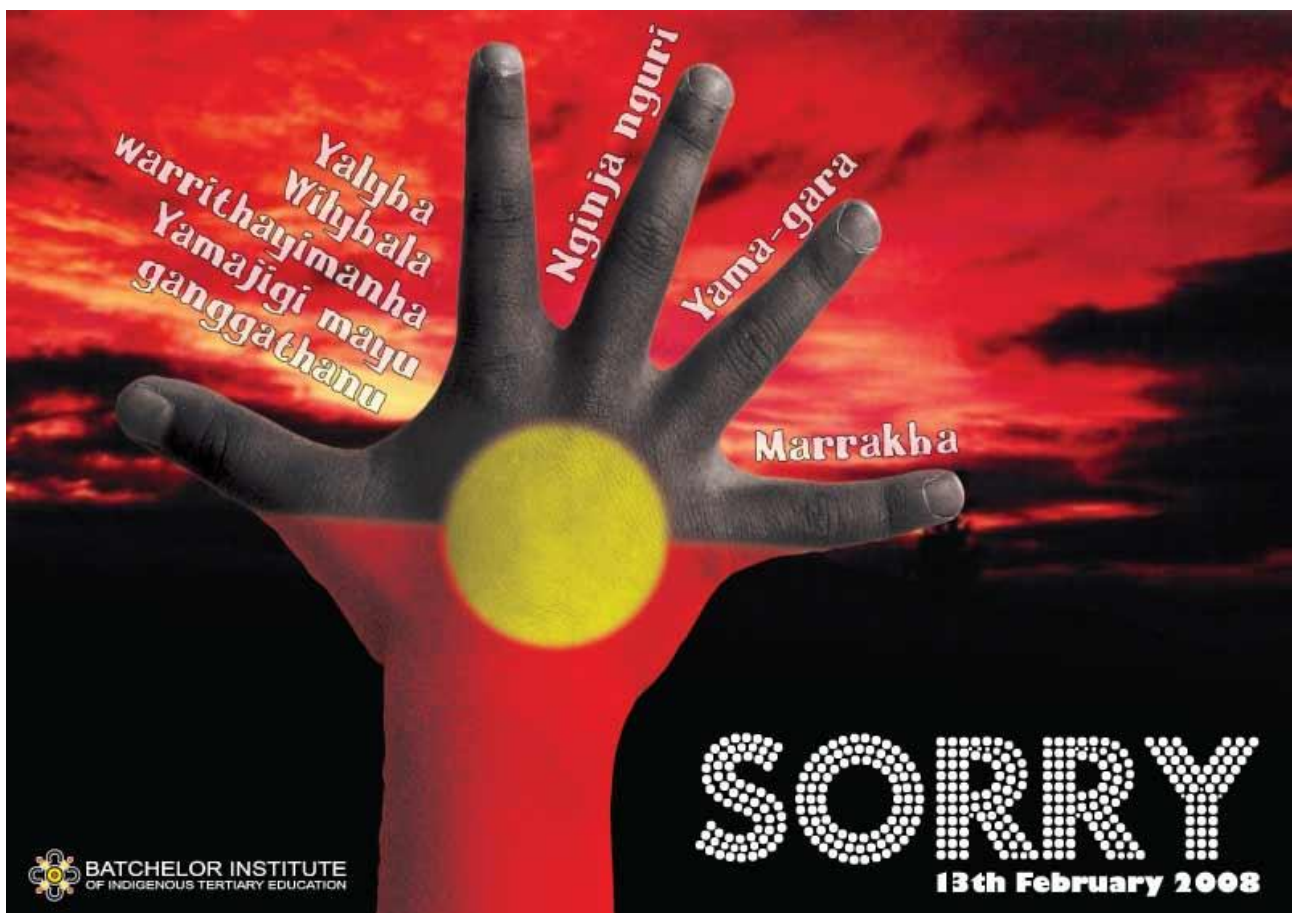
I am a long-time, informed and experienced advocate and activist for many social justice causes including Australia's First Peoples, and all non-human animals and their habitat (our shared and inter-connected environment). I have a strong level of knowledge and experience with the broad issues pertaining to these subjects.

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I am strongly opposed to all forms of discrimination, prejudice, inequality and disadvantage which is prevalent against people based on race, ethnicity, skin colour, sex and sexual preference or religious beliefs. I am also strongly opposed to the discrimination, inequality and disadvantage which is prevalent against Australia's Indigenous people.

This discrimination has been culturally and deeply entrenched across Australia and while I sense a gradual shift in the perceptions and behaviour of the Australian general public, the response from the Commonwealth and State and Territory Governments including important policy direction, is still floundering, and re-active rather than proactive. This delayed equality and justice is protracting the general levels of discrimination and dis-advantage against Australia's First Nations people.

We must act and change this discrimination and dis-advantage through decisive actions and urgent legal reforms and a shift in policy direction. It is 2020 and the time for floundering has long expired.



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My advocacy and activism are a constant in my life and I have volunteered in a number of capacities over an extensive period of time for the rights of all animal species including non-human animals, and I currently undertake a voluntary role with Animal Liberation as Regional Campaigns Coordinator. I care deeply about all non-human and human species and matters of equality and justice and the very ability and capacity to seek and obtain equality and justice and to have an equal “voice”.

My submission is not intended to provide exhaustive commentary on the list of identified serious issues. Rather, it is intended to provide general responses to select areas of broad public concern, and issues which are important to me personally. As such, the absence of commentary on any particular aspect or component of the review should not be read as or considered to be indicative of consent or acceptance.

Generally, my submission maintains that significant government change must be prioritised and made in terms of how we address and respond willingly and pro-actively to “*the unacceptably high level of First Nations people in custody in New South Wales*”.

My submission broadly responds to the following **Terms of Reference**:

- (a) the unacceptably high level of First Nations people in custody in New South Wales,
- (b) the suitability of the oversight bodies tasked with inquiries into deaths in custody in New South Wales, with reference to the Inspector of Custodial Services, the NSW Ombudsman, the Independent Commission Against Corruption, Corrective Services professional standards, the NSW Coroner and any other oversight body that could undertake such oversight,
- (c) the oversight functions performed by various State bodies in relation to reviewing all deaths in custody, any overlaps in the functions and the funding of those bodies,
- (d) how those functions should be undertaken and what structures are appropriate, and
- (e) any other related matter.

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I share and support the sentiments of Larissa Behrendt, Professor of Law and Director of Research at the Jumbunna Indigenous House of Learning, UTS, who said when referring to this Select Committee Inquiry, “This is an important first step in a more transparent process that builds confidence in investigating deaths in custody and ensuring reform.”

I also acknowledge “the consistent and decades long frontline work done by First Nations families who have had family members die in custody who have been determined that other families not go through the same thing.”

2. FORWARD

As a very young child, I received a series of books depicting and illustrating the Aboriginal Dreamtime as a gift from my late mother. My understanding, awe of, and respect for Australia's first peoples and their connection to 'country', was forged from that time forward. Our family home included artwork depicting the blatant European land grabs from the Wurundjeri, the Indigenous descendants of the people of the Indigenous Australian nation of the Wurundjeri language group, in the Kulin alliance who occupied the Birrarung (Yarra River) Valley and its tributaries, which are the present location of Melbourne.

As young children we learned the names of most native trees and plant species and the Aboriginal people and other native fauna who depended on them. As an infant, I took my very first steps along the banks of the Murray river in northern Victoria and learned to swim in this great river and absorbed our history which began with Australia's first nation's people.

My late father (Martin C Ryan), a journalist, spent the last years of his working life as Publications Editor with the then Australian Tourism Commission, including a five (5) year posting in Singapore, much of which concentrated on capitalising on the world's fascination and love of Australia's nomadic Indigenous people and our precious and unique fauna and flora. A fierce advocate for and protector of Australian fauna and flora, my father was duly recognised for his conservation and social justice work, primarily with vulnerable Australians.

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As a teenager I rebelled against the secondary school teachings of Australian history and the Geoffrey Blainey prescribed history which was blatantly and offensively void of Indigenous Australian civilisation and European invasion and oppression.

My childhood nurturing and experiences, and the examples and role modelling I enjoyed have been further cemented by my own pro-active volunteer work for animals, the environment and social justice causes over several decades, and the corresponding knowledge and experience I have accordingly acquired.

3. INTRODUCTION

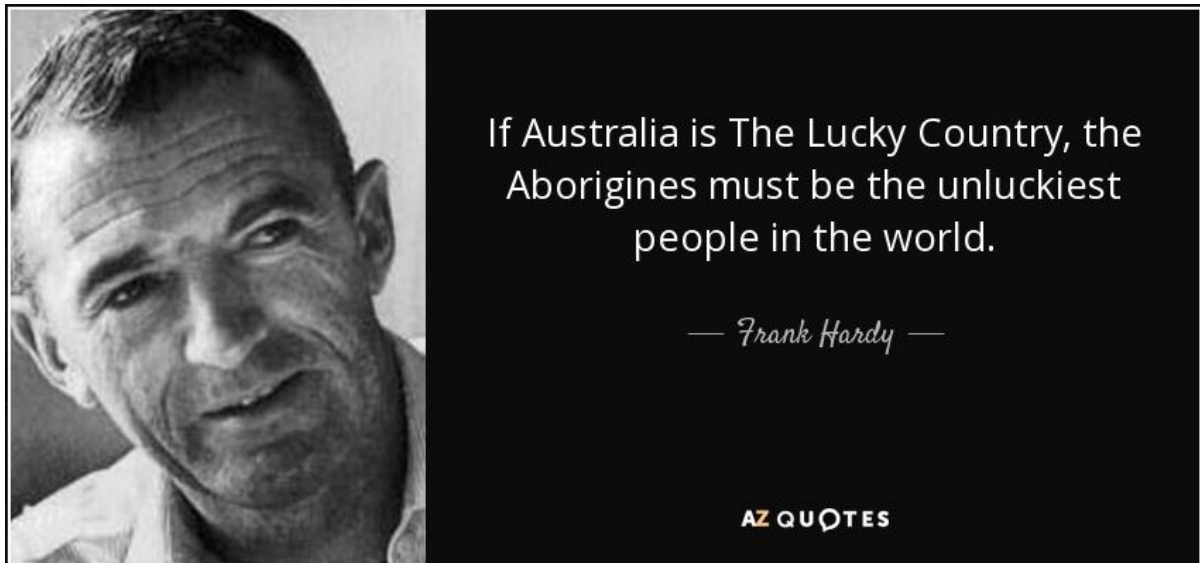
Since European settlement or more precisely, 'invasion', Australia has amassed an appalling human rights record, history and reputation with treatment of and relationship with Indigenous Australians. The continued level of under-funding and the lack of priority demonstrated from governments is leading to systemic and entrenched issues. Like many I am increasingly frustrated, angry and concerned about Australia's lack of committed and genuine response to these issues.

Australia's historic policies which encapsulate the 'White Australia' position and practices aimed at forbidding entry to non-European people, commenced in 1901. Governments dismantled these policies slowly between 1949 and 1973. Only a few decades ago, the majority of Australian Indigenous people were deprived of a meaningful education, the right to vote, denied access to whites-only buses, cinemas, even toilets. Children were forcibly removed from their families and thrust into a completely foreign world often involving abuse, exploitation and a complete loss of their culture, language and family ties. This was apartheid in Australia under British oppression, dominance and rule and in-directly related to Australia's White Australia policy.

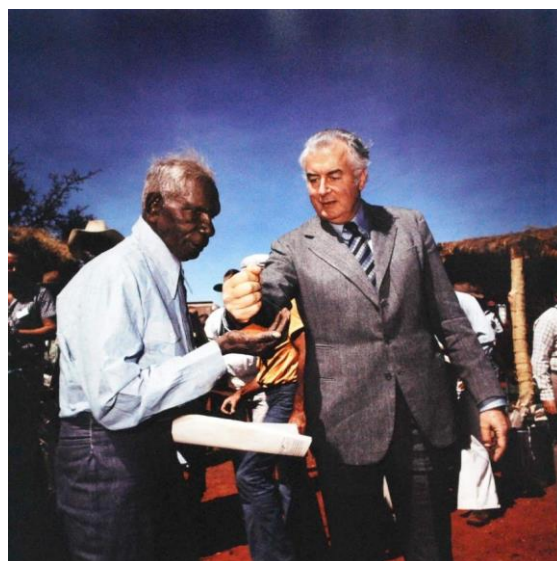
I acknowledge that over many decades many in positions of power and authority have sought to create positive and progressive change for Indigenous Australians and that these endeavors have been genuine and represented a shift and progressive step forward, even with the many acknowledged flaws, shortcomings, injustice and in-equality.

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However, in spite of these best endeavors, we must accept the evidence that in spite of good intentions, the scales of justice, lack of recognition and lack of any genuine commitment to the principles of self-determination, with a central role for First Nations people in investigating the treatment of people; the future for Indigenous Australians is skewed to ongoing injustice, and we will continue to make the same mistakes over and over again, leading to chronic and systemic issues which are life impacting and resulting in un-necessary deaths and deep and permanent family distress.



The concept of Terra Nullius, land belonging to no-one was used, systematically, cynically and effectively to deprive Australia's Indigenous people of their own land. For two centuries, the British and then white Australians operated under the fallacy, that somehow Aboriginal people did not exist or have land rights before the first settlers arrived in 1788.



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The 3 June 1992 Eddie Marbo Australian High Court decision to overturn more than two centuries of white domination of land ownership was referred to by the judges when describing the policy as "the darkest aspect of (our) national history" and one that left "a legacy of unutterable shame".

I believe Aboriginal deaths in custody continues this "unutterable shame".



3. TERMS OF REFERENCE

The ongoing problem of over-policing of Aboriginal communities and how this results in high levels of unnecessary contact with the criminal justice system. Normal youth behaviour including meeting up in parks or shopping centres is treated and responded to differently when it involves young Aboriginal people. They are indeed targeted and face serious penalties for offences which their non-Aboriginal peers would receive only a warning. All of this contributes to over-representation of First Nations people in prisons.

Any death in the prison system is traumatic. Families deserve and should be entitled to know that if their loved one dies in prison they will have a "voice", will be heard, and a proper independent investigation will occur – including inspection of where their family member died, interviews of all witnesses including fellow inmates, and that they will be regularly updated about the progress of an inquiry.

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There have been 435 deaths in custody since the Royal Commission, and thousands of deaths before that time, and yet, not a single police officer or prison officer has ever been held responsible for a single one of these deaths. Independent oversight is urgently needed for all Aboriginal deaths in custody to ensure those responsible face justice, and those impacted, receive justice.

None of the current six separate oversight bodies responsible for reviewing conduct in NSW prisons has the capacity to send independent investigators into prisons to obtain critical evidence following a death in custody. This over-duplication of roles and functions and lack of authority to authorise independent investigators, is failing to achieve core functions, transparency and justice.

This Select Committee Inquiry provides the first and best chance in decades to implement a credible, independent and properly resourced authority to investigate all deaths in custody in NSW. First Nations families have repeatedly stated they have no confidence in the independence of investigations into deaths in custody of their family members. We must not fail to seize this unique opportunity and address and respond to these valid grievances.

The establishment of a fully funded and resourced independent body tasked with investigating deaths in custody is imperative, as it is urgent. Such a body must be compelled to operate with a commitment to principles of self-determination, with a central role for First Nations people in investigating the treatment of people.

5. OTHER

Today, decades after the judgement, there's still strong debate among constitutionalists, lawyers and politicians about the legacy of Eddie Mabo with some believing the victory has been more symbolic than practical and that the native title system has failed to deliver for indigenous people and the High Court rights have been eroded away by government, courts and socio-economic pressure. Others regard the High Court decision as a watershed moment in Australian political, cultural and economic life.

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Now, with this Select Committee, we have another significant watershed moment which can and will address many wrongs and inequalities. I encourage all members of this important Select Committee to seize the day and stand on the “right” side of history for our nation and our First Peoples.

We can and must do better. We must keep children out of the justice system or at least ensure that their experience does not result in a life-long fear and dis-trust of Australia’s judicial system where they grow to accept in-equality and not having a strong voice.

Thank you for taking the time to read and consider my submission.

Lisa J Ryan

