

Submission
No 65

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

Organisation: New England Greens Armidale Tamworth

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NEGAT to Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody

New England Greens Armidale Tamworth (NEGAT) is grateful for the opportunity to contribute to the considerations of this significant Inquiry.

‘the link between the intergenerational cycle of poverty and interaction with the criminal justice system is entrenched. Our laws and the way they are enforced have a disproportionate impact on vulnerable members of our community, including Indigenous Australians’, Pauline Wright. President of the Law Council of Australia [here](#)

a) the unacceptably high level of First Nations people in custody in New South Wales

The unanimous acknowledgement by our State Parliamentarians that the levels of First Nations people in custody in New South Wales is unacceptably high and the establishment of this Inquiry are welcome steps. NEGAT offers the following observations as to how the issue can be addressed:

i) Raise the age

In NSW, 75 per cent of people under 14 in detention are Aboriginal.

The decision of the Attorneys General to delay consideration of raising the age at which children may be incarcerated was a retrograde step. NEGAT commends the ACT Legislative Assembly (which has voted to raise the age of criminal responsibility from 10, to 14, making it the first jurisdiction in Australia to agree to bring its laws with United Nations standards); however, we would urge the minimum age of incarceration should be 16.

It is a gross misuse of resources that \$1414 a day per child is spent on incarceration in a system which includes strip-searching in front of adult strangers of children as young as 11. ‘Nothing improves by locking up kids. When you do, you take us away from everything – our family, our culture, our country’, [here](#)

ii) Challenge over-policing and racial bias

- a. Young indigenous visitors to our rural community report a level of interaction with the police which they regard as ‘harassment’ and makes them happy to return to the relative security of Sydney. Aboriginal young people are targeted while out riding bikes, walking to the local skate park or in shopping centres and face serious penalties for offences for which their non-Aboriginal peers would receive only a warning.

Every unwarranted negative experience is damaging to the trust which should exist between the police and our community’s youth. This is particularly disconcerting as the higher-ranking local officers are sensitive to the concerns of the Indigenous community and supportive of community activities such as Black Lives Matter and points to a problem with police culture.

- b. Experiences such as those of Stephen Bell ([here](#)) are part of the everyday experience of many. Bell, former police officer turned Indigenous rights activist reports: *While volunteering with the*

Aboriginal Legal Service, Bell was confronted by an Aboriginal worker who claimed he, and other Grafton police, had been racially profiling drivers for roadside breath testing. As an experiment, Bell and several colleagues jumped in cars and drove past a local RBT hotspot. Only the Aboriginal colleague was pulled over. They switched cars, with the same result. They repeated the experiment on a different day, but nothing changed.

"I was struck dumb," Bell says.

- c. Articles such as 'Aboriginal people twice as likely to get a jail sentence', [here](#) illustrate the negative effects disproportionately impacting on Indigenous people where not having a birth certificate, combined with low literacy levels, financial difficulties and limited access to services, may make an action as apparently simple as getting a driver's licence an insurmountable task and pave the way for crushing interactions with the courts.
- d. *In Sydney city, more Indigenous people went to jail than others for offensive language and other public order offences despite fewer being charged with this offence, while Indigenous defendants were three times more likely to go to jail for acts intended to cause injury. Roughly three in every 10 Indigenous defendants went to jail for assault-related crimes while one in 10 non-Indigenous people were locked up for the same offence. 'Aboriginal people twice as likely to get a jail sentence', [here](#)*

iii) Reform Remand and Bail Conditions

The legal maxim 'Justice delayed is Justice denied' is evident in our current system.

- a. The Australian Law Reform Commission's (ALRC's) Pathways to Justice Report as summarised in the Guardian report, 'What will it take for governments to recognise Australia's justice gap is a national tragedy?' [here](#) addressed the issue:

The ALRC found that irregular employment, previous convictions for other low-level offences and a lack of secure accommodation all count against Aboriginal and Torres Strait Islander people seeking bail. Reforms to bail laws to require authorities to consider a person's Aboriginality when making bail determinations could be simply achieved and would go a long way to reducing the unacceptably disproportionate incarceration rate.

And while up to a third of Indigenous people in prison are on remand awaiting trial or sentence, a large proportion of them do not go on to receive a custodial sentence upon conviction, while others will be sentenced only to time served while on remand. This is particularly true of Indigenous women, who are often held on remand for otherwise low-level offending.

Since 1991, the incarceration rate for Aboriginal women has risen 148% and is increasing more rapidly than any other group. And 80% of this population are mothers.

NEGAT to Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody

The imprisonment of a parent is one of the best indicators of a child later entering into the criminal justice system themselves. Removal of a child by the state from parental or close family care is another. Little surprise, then, that Aboriginal and Torres Strait Islander children aged 10 to 17 are 22 times more likely than their non-Indigenous counterparts to be in detention and 15 times more likely to be under community-based supervision

- b. The COVID19 experience has seen the release of release of prisoners who would previously have been held on remand with no apparent impact on community safety, ('Indigenous prison rates can fall fast: here's the proof', [here](#))

Remand periods Prison statistics for the last quarter, released this week by the NSW Bureau of Crime Statistics and Research, show a 10.7 per cent decrease in the overall prison population and an 11.3 per cent fall in the number of Aboriginal people in prison. Seventy per cent of that decrease is attributed to a decline in the remand population – people denied bail while awaiting trial or sentence. This is because police have been issuing fewer court attendance notices, and police and courts are more likely to grant bail. In April, the number of remandees released on bail doubled. There has also been a 27 per cent fall in the Aboriginal youth detention population.

- c. Tane Chatfield, a young man from Armidale died in custody after being on remand for two years. He died days before he was expected to be released having been cleared of the charge.

The current Inquiry is in a position to effect much needed reform of remand and bail conditions to ensure justice and to disrupt the cycle of hostile (even fatal) contact of young people with the legal system.

- iv) Mandatory sentencing

Commenting on mandatory sentencing on 5 January 2020 (when it had been only recently introduced for some offences in NSW), The Conversation [here](#) observed:

Juveniles, persons with mental illness or cognitive impairment, and Indigenous peoples are often disproportionately impacted by mandatory sentencing.

In particular, (young) Indigenous people are disproportionately targeted by this legislation.

Indigenous people are already grossly over-represented in Australia's prison system. They make up 27% of the national prison population, while only accounting for 2.5% of the total Australian population.

Recent examples are the introduction of mandatory sentences in NSW in response to alcohol and drug-fuelled violent offences, and the expansion of the "three strikes" home burglary laws in WA, both in 2014.

Politicians claim to respond to the public calling for harsher sentences, as the courts would be too lenient. Unfortunately, the public is largely misinformed about crime and justice matters. Most people think that crime rates are rising, although this is not the case.

The Inquiry is urged to recommend that NSW Government follows international jurisdictions that are moving away from mandatory sentences, due to a lack of evidence that they work in protecting the community, and leave it to the judges to judge

NEGAT to Inquiry into the high level of First Nations people in custody and oversight and review of deaths in custody

Here in Armidale we have seen how Indigenous community action can effectively keep our young people from negative interactions with the law through programs such as a street patrol and the Armidale Aboriginal Health Service Crime Prevention program. However, funding for such projects is intermittent and more resourced, non-Indigenous organisations are better placed to write the submissions required. This results in extremely inappropriate situations such as young, white male Counsellors advising vulnerable teenage Aboriginal females. Teenagers at risk are often employed 'doing odd jobs' when the Indigenous community seeks co-ordinated training, certification and skill acquisition programs for their vulnerable youth.

NEGAT urges the Inquiry to support structures that ensure Indigenous communities be empowered to drive their own culturally specific programs and solutions; the Government must ensure that these programs focus on skills acquisition and are properly resourced and ongoing.

- (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**

Here in Armidale we have followed the sad journey of the family of Tane Chatfield who died in custody on 20 September 2017 as they seek *truth and justice*. In a report, 'Family seek answers about the death of Aboriginal inmate Tane Chatfield' on 18 July 2020, ABC net news [reported](#): *In addition to finding a cause of death, NSW deputy state coroner Harriet Grahame may also make recommendations to help prevent similar deaths in the future.*

Nioka Chatfield is pinning her hopes on recommendations that would see fewer Aboriginal people incarcerated and dying in jail.

"If that's what we build this court case upon is saving that next life, I can walk away as a mum knowing I did the best that I could," she said.

The current situation where six separate oversight bodies review conduct in NSW prisons is clearly untenable: that none has the capacity to send independent investigators into prisons to obtain critical evidence following a death in custody and that transparent accounts of process are not available in open courts is completely unacceptable. NEGAT urges that the Inquiry recommend an independent and properly resourced body to investigate all deaths in custody in NSW and to lay charges where these are appropriate.

We thank members of the Inquiry for taking the time to consider our observations and recommendations.