

Submission  
No 91

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

**Organisation:** Mr Mark Gillespie, Ms Caroline Andersen, Ms Rachel Evans and  
Gay EGG

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**A Submission to the**

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

**in the Legislative Assembly of the NSW Parliament**

by

**Caroline ANDERSEN** (a woman of NSW Aboriginal heritage, a descendent of the Wiradjuri people and mother of Wayne 'Fella' Morrison who died three days after being restrained by a group of prison officers in a van at Yatala Labour Prison in Adelaide in 2016).

with

**Mark GILLESPIE & Gay EGG** (LGBTIQ community elders and 78ers subjected to NSW Police violence at the first Sydney Mardi Gras in June, 1978) and **Rachel EVANS** (civil rights activist and strip search victim of the NSW Police)

20<sup>th</sup> August 2020

## **Preface**

We begin by acknowledging the untold pain and suffering experienced by too many families of first nations peoples in NSW and across Australia who have lost loved ones; sons, daughters, brothers, sisters, mothers and fathers; while in the care of police and prison services and law enforcement agencies. We pay our deep respect to the grieving families of those whose lives were unjustly cut short. Lives lost here in NSW include T.J. Hickey, David Dungay, Rebecca Maher, Tane Chattfield, Eric Whittiker and Veronica Baster.

I, Caroline Andersen of Sydney, New South Wales, want the committee to know that on every day that has passed since the death in custody of my son four years ago, I have felt anguish and pain and a sense of injustice. As a mother I have tried to make sense of the senseless loss of my son and have struggled to have faith or any confidence in the subsequent still ongoing coronial and judicial oversight of his violent death. I am determined to find people of goodwill and a measure of compassion who will listen to my story. My desire to bring about positive systemic changes in Australian criminal justice systems grows more and more with the passing of the days.

After the death in police custody of George Floyd in Milwaukee in the USA on 25<sup>th</sup> May this year, protests spread from America around the world to more than 2000 cities. Here in Australia I was buoyed by the groundswell of support, particularly of young Australians of all backgrounds, not only in the capital cities but in provincial cities and small towns around the continent. Blacks lives do matter and we have to find ways to make sure that they matter in Australia.

We make this submission advocating for urgent systemic and structural changes to criminal justice in NSW and across Australia based on the premise that new collaborative ways forward are required based on bold leadership and bold changes. We assert that leadership that fails to lead is a major impediment to change. Accountability and oversight are required at all levels from the most junior to the most senior positions in the criminal justice systems. People honoured to hold the most prestigious and powerful positions in the land such as cabinet ministers, premiers, prime ministers, police commissioners, coroners, magistrates and judges must be held responsible.

### **1. Working to introduce systemic change on different levels simultaneously**

We believe the root causes of deaths in custody extend far beyond captivity in the suffocating backs of police and prison vans, in police cells or within prison walls. A death in custody cannot be considered to be about the micro-conditions of custody alone. It saddens us to observe that most coroners' reports into deaths in custody investigate this more limited context to the exclusion of the wider, macro-conditions of society as a whole and the communities which perpetuate deaths in custody and the impunity that attends them.

At the micro level we strongly recommend that in all Australian jurisdictions, law enforcement officers and corrective service staff must be held to account for deaths in custody caused by acts of commission or omission in the course of their duties and they themselves must be brought before a court of law. We note, with outrage, that to date despite the hundreds and hundreds of deaths in custody in Australia since the Royal Commission into Deaths in Custody in 1991, not one police, law enforcement or corrections staff officer has been held accountable by being charged, found guilty of manslaughter or murder and sentenced in a court of law. We endorse the 1991 Royal Commission recommendation that imprisonment must be used as a last resort.

On the national and societal level far-reaching changes, including changes to the Australian constitution, are called for, to honour and engage with Aboriginal and Torres Strait Islander people who have reached out for dialogue in a search for reconciliation, a treaty and a voice to Parliament. Deeply entrenched racism, discrimination and injustice that has continued across the generations has to be confronted. Governments have a responsibility to lead attitudinal change. We are reminded of Paul Keating's Redfern Speech of 10<sup>th</sup> December 1992 and strongly support efforts to make bold steps to reimagine the place of first nations peoples in our shared destiny. The Australian Prime Minister Keating referenced the Royal Commission in his speech saying that it:

*'showed with devastating clarity that the past lives on in inequality, racism and injustice'.*

It is an indictment of governments past and present that these words quoted again now in August 2020, in this submission to your NSW Parliamentary inquiry, still ring as true now as they did then.

We believe that real meaning must be given to "justice" and "equity" – and we will only give them meaning when governments are able to work on many levels and from many perspectives with first nations people to achieve concrete results.

While micro level measures to deal with deaths in custody need to be taken immediately it is also urgent that repeated delays in action and avoidant behaviours at the wider, macro, societal level be stopped. We want no more 'kicking the ball into the long grass'.

We consider that leadership that fails to lead is a major impediment to change. What is required is bold leadership at all levels of government guided by indigenous voices in partnership and based on an understanding and acknowledgement of the traumatic history of race-relations over centuries in Australia and in NSW since 1788.

## **2. The misdirection of scarce funds into prisons and custodial incarceration is a serious waste of public expenditure**

There are fundamental structural, policy and resource issues that need to be questioned, that underpin why people die in custody.

We believe that community resources in terms of government funds in increasingly large amounts are mistakenly drained into the ever-expanding prison system. These are funds that could more wisely be invested in research to better understand why people go to prison and could be used in the adoption of new community inspired alternative approaches to crime and punishment to deal with the cycles of criminal harm that Aboriginal people are disproportionately subjected to.

We call for priority action to achieve an immediate reduction in incarceration rates. This is the same conclusion as the Royal Commission into Aboriginal Deaths in Custody nearly 30 years ago. The final report of the commission stated:

*“Commissioners identified the principal and immediate cause of deaths in custody as being the disproportionate rate at which Aboriginal people are detained, arrested and imprisoned in Australia. Too many Aboriginal people are in custody too often.”*

In 2016 my son would never have been put in custody if the recommendations of the 1991 Royal Commission had been accepted and implemented.

The past three decades since 1991 have witnessed soaring indigenous incarceration rates and a nationwide shift toward tougher law and order policies in stark contradiction with various federal and state government claims to be implementing Royal Commission recommendations. As mentioned above this has been accompanied by the corresponding flow of money into jails, in line with the rising prisoner population.

It appears to us that one of the reasons why the recommendations of the Royal Commission have been largely ignored is that there are no votes in fixing the problem and each day our privately owned and operated corrective services systems become more and more heartless. The waste of billions of dollars of public monies is unsustainable and the public need to be more aware of this waste.

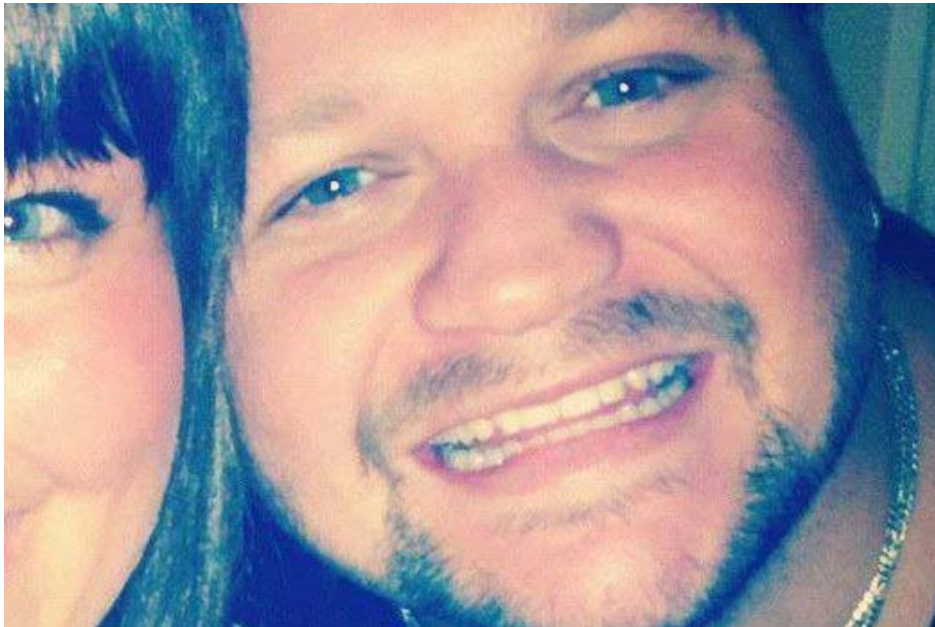
### **3. Racial typecasting, discrimination and victim blaming within the justice system**

The Aboriginal and Torres Strait Islander population makes up approximately 2% of the Australian population overall, and yet in some areas indigenous people comprise up to 80% of the prison population. Put simply, this high representation of Aboriginal people in captivity reflects a vicious and entrenched cycle that perpetuates deeply offensive and racist views of indigenous people as criminals. We believe evidence built up over decades proves that the ingrained racism that is rife in police forces and the various jurisdictions of the judiciary around the continent, can, in part, explain why indigenous people are arrested more often and are more likely to end up in jail.

We believe that State and Territory justice systems need to be seen not as solutions to the problems of crime but as perpetrators and contributors to it. For example, it is clear that laws that target homeless people, the intoxicated, the disabled, the mentally unwell

and sexual minorities ensure that indigenous men and women are more likely to be brought before the courts.

We call on all policy makers and governments to act now in concert with first nations people to expurgate the embedded racism within and address the less humane treatment and discriminatory experience of indigenous peoples at the interface of themselves and the law.



**Wayne 'Fella' Morrison** (pictured here) died three days after being forcefully restrained by a group of prison officers in a van at Yatala Labour Prison. He was 26 years of age and the son of one of the authors of this submission- Caroline Andersen. *(Acknowledement: Latoya Rule)*

## Conclusion

It is evident that too many lives have been wasted and that enough is enough. Grief, anger, trauma and pain remain, lingering heavy over the land. When will effective oversight be implemented? When will justice be done? When will leaders lead?

We make this heartfelt submission to your committee in good faith believing that positive systemic change is not only urgently needed but that it is possible.

The recommendations of the 1991 Royal Commission into Aboriginal Deaths in Custody need to be studied closely again now. We want these to be refreshed and updated to fit the current context. We point to one those recommendations here to exemplify. The Royal Commission recommended immediate notification to Aboriginal Legal Rights Services upon the arrest on any first nations person. This has been ignored. Yet we know that these Aboriginal and Torres Strait Island legal services can offer the kind of culturally appropriate support that saves lives. The funding of these community based legal services is a priority.