**Submission No 106**

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

**Name:** Ms Sue Davis

**Date Received:** 6 September 2020

**SUBMISSION TO THE NSW PARLIAMENTARY SELECT COMMITTEE INQUIRY ON THE HIGH LEVEL OF FIRST NATIONS PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF DEATHS IN CUSTODY**
**- S.B. Davis**

**SUMMARY of MAIN SUBMISSION POINTS – other questions highlighted in bold below:**

**It is in the public interest to urgently find an alternative MP for the MP on this Committee who is an ex-police officer – the replacement MP should not have previously worked as a Police or Corrections Officer**

**All members of this Committee, plus all staff directly involved, attend at least a two-day (12-hour minimum) Cultural Awareness Training course that is supplied & run by a Supply Nation provider, and watch the recommended videos/programs, and visit the Sydney Jewish Museum's Human Rights Exhibition – prior to commencement proper of the Committee/submissions**

Immediate audit & reporting to this Committee of what recommendations from the RCIADIC 1991 have yet to be implemented in full – across all JUSTICE sectors and at all their locations - plus urgent implementation of outstanding recommendations from the RCIADIC and reporting of such, plus report outlining any recommendations which cannot be implemented by 1 March 2021 with an implementation strategy**.**

Immediate audit of all cells (police/court/detention/prison) for hanging points. Rectification prior to January 1 2021. Report to this Select Committee by 1 March 2021

Urgent review/reporting of all NSW Coronial Inquiry Recommendations from First Nations deaths in custody since 1st April 1989 to 1 September 2020, with audit of outstanding recommendations. Reporting of plan for Immediate implementation of outstanding recommendations to this Select Committee by 1 March 2021.

Change legislation to mandate publication of all Coronial Findings/Reports* into deaths in custody; to make more comprehensive and searchable statistics* information freely available in a timely manner; and for the NSW to formally respond – each year - to all Coronial Recommendations made in that year - and report to Parliament on a yearly basis whether any action has been or is planned and if not the reason why. All reporting should be more current/timelier and be wider in scope and list all fields for First Nations reporting – I have been unable to find reports for Findings made 18 months ago in NSW – a Coronial Inspectors Report made in 2018 only contained information up to 2014/2015 – this is unacceptable. The Report listed be looked at in depth as serious concerns are raised – and certainly I can echo how difficult it is for a concerned citizen to find information... The statistics are also limited in scope and comparison, with important information missing from datasets, especially with regards to Indigenous status, mental health, and disability. I recommend that the Findings of addressed
(* it is noted that in have found that the RC recommendations regarding reporting should not be considered implemented – p146 - .)

A review of all aspects of Police and Corrections Officer (& Health staff) training with respect to recommendations listed in RCIADIC and all Coronial Inquests since 1990, cultural awareness, bias and prejudice, duty of care, procedures, etc.

Work directly with, give adequate funding and self-determination to **the Aboriginal Community Controlled Health Services (ACCHSs) across NSW to ensure access to an adequately resourced and skilled workforce**

to provide high-quality health care services for Aboriginal communities, and to The Aboriginal Health and Medical Research Council (AH&MRC).

Mental health service provision (or lack of) and planning for Aboriginal detainees in New South Wales
- given the Coronial findings for the death in custody of David Dungay and others
- address the shortcomings/findings of the Mental health service planning for Aboriginal people in New South Wales Report By the New South Wales Auditor-General - 2 9 A U G 2 0 1 9

Mandatory sentencing should be reviewed with a view to it being reduced – especially with regards to young people and young adults – it can result in miscarriages of justice.

Immediately and urgently raise the age of criminal responsibility to at least 14 years old.

NSW should introduce a mandatory requirement/regulation for police and prison officers to intervene and stop any violence/excessive force by a fellow officer AND that this be accompanied by Peer Intervention Training (to stop them having a bad day…) as well as training on unconscious and implicit bias, prejudice, racism, anti-racism and cultural awareness programs, as well as other relevant basic policies, procedures and required knowledge (like positional asphyxiation.) Operational officers should receive refresher training every 3 years on listed mandatory items before being allowed back on active duty – no training no operational duties. Full training records should be maintained to ensure these are available for disciplinary and court proceedings.

Despite recent very good amendments to The Law Book is, unless there is actual training by Indigenous lawyers and trainers for magistrates and judges (and barristers & lawyers), not much will change.

That NSW – on an ongoing basis - note the recommendations of Coronial Inquiries in other jurisdictions within Australia and check (as in it is signed by a senior departmental manager and retained) whether NSW procedures prevent that occurring in NSW. NSW should learn the lessons from other jurisdictions.

Unless MPs, their staff and all who work for NS Parliament and Political Parties (who receive taxpayers funds) receive training on bias and cultural awareness training from Supply Nation companies – then we are undone at the first stone. Secondly – this needs to be followed by all staff in the Criminal Justice System, their contractors and the Health services.

In light of the ANU Report - BIAS AGAINST INDIGENOUS AUSTRALIANS: IMPLICIT ASSOCIATION TEST RESULTS FOR AUSTRALIA by Siddharth Shirodkar - the Justice Sector should engage in a process of self-awareness and find the mechanism to deliver some structural and cultural change to ensure that the biases are known and they actually know how much these biases are affecting the delivery of justice and then they do things to remediate and ameliorate those biases.

**IT IS CLEAR THAT THE NSW POLICE CANNOT INVESTIGATE THEMSELVES AND ITS QUIOSTIONABEL IF THEY CAN INVESTIGATE THEIR COLLEGAUES IN THE NSW JUSTICE SECTOR. WE NEED A ROYAL COMMISSION INTO THE RECENT INJUSTICES WHERE OFFICERS HAVE NOT BEEN CHARGED AND TAKEN TO COURT.**

*Serious questions about the integrity, accountability and independence of death in custody investigations are still being raised by NSW coroners. Is there a pattern? Have these questions been collated, in order for them to be considered and addressed?*

Given, that it seems to be the norm for all Australian governments to delay action on Indigenous Injustice by setting in place investigation upon investigation and review and inquiries – in order to delay the introduction of change (save of course this Inquiry, which is well overdue and needed in order to promulgate the required change) I strongly urge this Inquiry to ensure that at the very least, that every effort is made to expedite – in full consultation and joint decision making with the Indigenous Community - all those outstanding recommendations made, firstly by the 1991 Royal Commission, and then by Coroners in the last 29 years, along with those contained in "DEATHS IN CUSTODY IN AUSTRALIA: A QUANTITATIVE ANALYSIS OF CORONERS' REPORTS" and all issues raised in the INDIGENOUS DEATHS IN CUSTODY: PART C - PROFILES ANALYSIS by the AHRC.

***immediately and urgently raise the age of criminal responsibility to at least 14 years old.***
The Australian Capital Territory's Legislative Assembly has voted to raise the age of criminal responsibility from 10 to 14, making it the first Australian jurisdiction to bring its laws in line with United Nations standards.

*RATHER than wait for these things to happen on a national level, it is imperative that NSW takes the lead in implementing changes recommended by the many Inquiries, Reports, Audits and First Nations organisations, families and representatives, to address not only the systemic and institutional racism within the Justice Sector but to also remediate and ameliorate the known negative biases that 3 out of 4 people across society including the Justice Sector have towards First Nations Peoples.*

Submission Comments:

FIRSTLY – on a point of the Terms of Reference Committee Membership details – it is noted that one member of the Committee is a retired police officer.
This is most unfortunate, most undesirable, and extremely problematic, as the inclusion of any ex-police or prison officer could undermine this Inquiry.
It could lead to a conflict of interests or could be seen to be a conflict of interests – especially given the issues involved and that police officers have previous been implicated in – and have been seen on video footage and have been criticised by Coroners – in not following procedures, violence/excessive force, unlawful assaults, having a bad day, and deaths in custody, etc.
Without casting any aspersions on the character of the particular MP –
**It is in the public interest to find an alternative MP for his position on this Committee – one who has not previously worked as a Police or Corrections Officer**
- so that there can be no doubt or questions as to the possibility of particular bias towards any of the organisations being looked at, or indeed lobbying/pressure from his former colleagues/police employer, or particular bias or prejudice against any Aboriginal and Torres Strait Islander people (in particular and in general.)
And last but not least – if the MP remains on the Inquiry, one may find it being questioned as to whether the findings of this Committee will be accepted by the public as independent (noting in particular 1b+c+d below), or whether they are accepted at all – and there will always be the concern that there may have been particular bias or a conflict of interest.
No doubt there are already arrangements in place for Parliamentary Committee Memberships to be changed due to conflicts of interest or in the public interest, and indeed illness or other circumstances

whereby a Committee Member is unable to sit on the Committee for the duration – so this should not be hard to arrange.

SECONDLY:

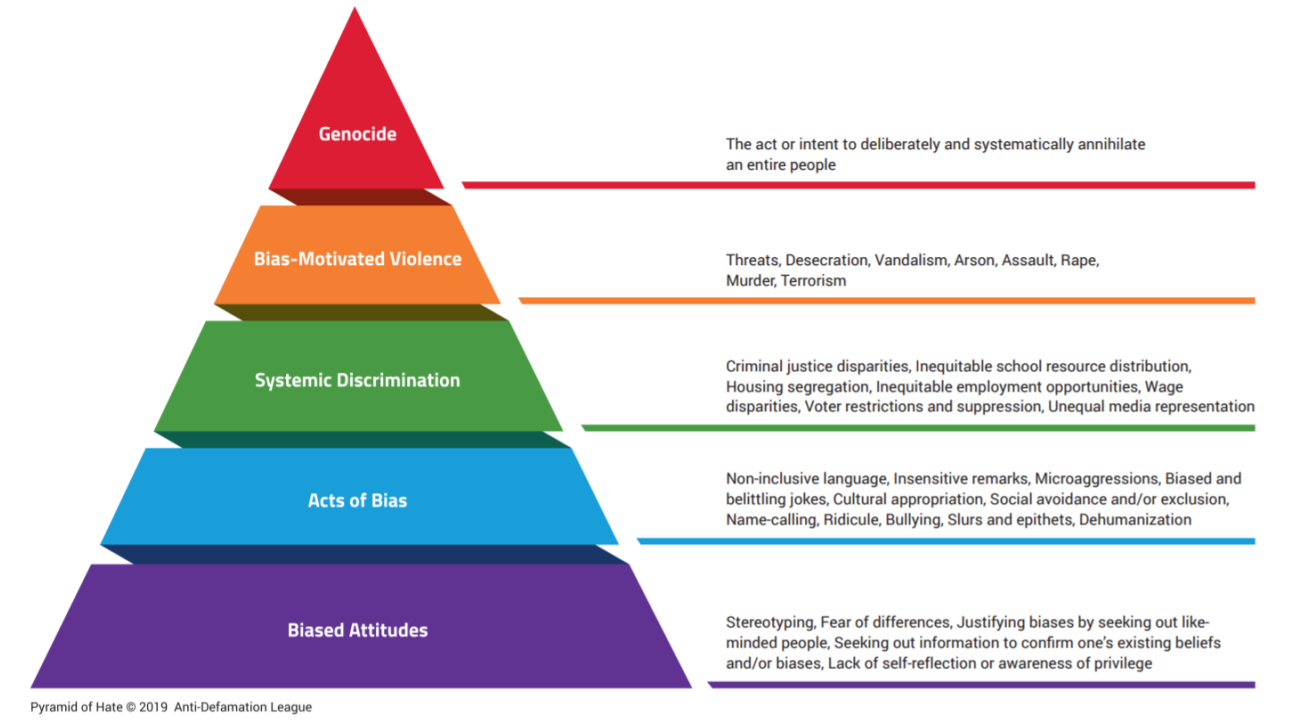
**All members of this Committee, plus all staff directly involved, attend at least a two-day (12-hour minimum) Cultural Awareness Training course that is supplied & run by a Supply Nation provider – and watch the programs listed** below (or alternatives suggested by the training provider) and understanding the Pyramid of Bias-Hate **– prior to commencement of Committee/submissions:**

Without such training, I cannot think how this Inquiry can even begin to look at the Terms of Reference and Submissions without looking through a biased non-Indigenous lens – with questions raised about unconscious bias and even fairness.

In light of the implicit negative bias (and general lack of awareness) of 3 out of 4 average non-Indigenous Australians (ANY Study detailed below), I submit that all members of this Select Committee receive some Cultural awareness training from a Supply Nations provider, understand bias, read the ANU Study Results on Bias and in addition watch the following programs (if not seen already), PRIOR to sitting and prior to evaluation any submissions:

- Watch SBS series of *First Australians* (available on demand)
- Documentary Film – *The Final Quarter*
- Documentary Film – *The Australian Dream*
- Documentary Film – *In My Blood It Runs*
- Documentary Film – *Black Man Down* - Short Film by Sam Watson 1994, available on SBS On Demand until 16 September 2020

Understand the Pyramid of Bias/Hate - it is a fact that prejudice and bias exist in society (see ANU Findings below.) The pyramid of bias explains this and is something that not only those in the justice system need to understand, but also those in our legislature – for how can we have just laws if the people who make them are biased and prejudiced?



The Pyramid of Bias-Hate illustrates the prevalence of bias, hate and oppression in our society. Like a pyramid, the upper levels are supported by the lower levels. Bias at each level negatively impacts individuals, institutions and society and it becomes increasingly difficult to challenge and dismantle as behaviours escalate. When bias goes unchecked, it becomes "normalized" and contributes to a pattern of accepting discrimination, hate and injustice in society. When we challenge those biased attitudes and behaviours in ourselves, others and institutions, we can interrupt the escalation of bias and make it more difficult for discrimination, hate and violence to flourish.'

It is clear that there has been no real commitment to real change from both the NSW Parliament and government bodies like Corrective Services, NSP Police and Health (not withstanding huge efforts from individual and units) – if it were otherwise, things would have changed for the better in the last 29 years not least in implementation of Recommendations from the RCIADIC* - the unacceptably high and increasing level of First Nations people in custody in New South Wales and most terrible, tragic and often preventable Deaths in Custody (and Australia generally) along with the most appalling violence, neglect and lack of a duty of care that some in both the police and corrective services have towards First Nations people that is evident from listening in person to families' first hand accounts of their experiences with the police and also those who have lost a loved one through a death in custody, watching CCTV footage, attending a Deaths in Custody Coronial Inquest, reading Coronial findings and other findings/research/reports.

* A survey of the *Australian Indigenous Law Review* in 2009 showed that Australia's states still had only acted on a fraction of the commission's recommendations - NSW on 48%. Six years later things hadn't improved much. A 2015 report by law firm Clayton Utz found that the bulk of the commission's 339 recommendations remained unimplemented or only partially implemented. "An arrested Aboriginal person has to run the gauntlet of first being in police custody then being placed in custodial transport, then being incarcerated in a prison," explains Aboriginal elder and leader of the Euahlayi tribe, Michael Anderson [23]. "At each stage we now have records that indicate that all three stages have increased their statistics of Aboriginal deaths since the Royal Commission into Aboriginal Deaths in Custody."
Source: Royal Commission into Aboriginal deaths in custody - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/royal-commission-into-aboriginal-deaths-in-custody

Various research/articles such as the **Deaths Inside Database**, **DeathScapes** database and the research paper "**DEATHS IN CUSTODY IN AUSTRALIA: A QUANTITATIVE ANALYSIS OF CORONERS' REPORTS**", by Tamara **Walsh** & Angelene **Counter** (2019) Current Issues in Criminal Justice, 31:2, 143163, DOI: 10.1080/10345329.2019.1603831 **(Walsh & Counter - TW/AC-19)**

https://search.informit.com.au/documentSummary;dn=150032703197478;res=IELIND

and Report - **BIAS AGAINST INDIGENOUS AUSTRALIANS: IMPLICIT ASSOCIATION TEST RESULTS FOR AUSTRALIA** by Shirodkar, Siddharth (Journal of Australian Indigenous Issues, Volume 22 Issue 3-4, Dec 2019) https://www.anu.edu.au/news/all-news/three-in-four-people-hold-negative-view-of-indigenous-people (**see notes above re training & awareness for Select Committee members & further notes below**)

and also the below Report, which no doubt also applies to all areas of the Justice and Health system too - **'TOKENISED, SILENCED': NEW RESEARCH REVEALS INDIGENOUS PUBLIC SERVANTS' EXPERIENCES OF RACISM** - July 9, 2020 **https://theconversation.com/tokenised-silenced-new-research-reveals-indigenous-public-servants-experiences-of-racism-141372**

- Walsh & Counter (p151) also raise the possibility *that Coroner's may also not necessarily be a neutral component f the JUSTICE system, stating that the extend of any bias in Australia 'is not well*

*understood. (Pelfrey & Covington – 'they acknowledge that coroners may be placed in a 'compromising position' because they are public servants being asked to pass judgement on other public servants'*)

It is quite clear that there has been and continues to be both deeply entrenched systemic and institutional racism within the Justice System (and also in the Health System and throughout society in NSW and Australia) modern Australia is unquestionably founded upon White Colonialism and White Australia Policy was still around only a few decades ago and still leaves its mark within societies structures.

The Black Lives Matter movement in Australia is not imported from the USA – it has been around for decades as First Nations people have asked to be treated with dignity, not to be dehumanised and to be treated as human beings. There are even speeches and petitions which predate the public protests which led to the RCIADIC in 1987. Arguments as culture wars and Marxism are distractions from the big elephant in the room – namely RACISM, which no-one wants to admit exists in Australia.

Jack Charles famously said on tv a few years ago - "Aboriginal people suffer a peculiar type of racism and if you don't know that I don't know why you don't know that."

**This has now been corroborated in the above ANU Study & Report by Mr Shirodkar finding that** <u>THREE IN FOUR PEOPLE HOLD NEGATIVE VIEWS OF INDIGENOUS PEOPLE:</u>

*Most Australians tested for unconscious bias hold a negative view of Indigenous Australians which can lead to widespread racism, new analysis from The Australian National University (ANU) shows. "This study presents stark evidence of the solid invisible barrier that Indigenous people face in society.*

*"But the data is actually not about Indigenous Australians, it's about the rest of us."*

*The results show it is likely that many people who hold these views have no awareness of their prejudice.*

*"As it is often unconscious, implicit bias can seep seamlessly into the everyday decisions at all levels of society," said Mr Shirodkar.*

*"If you implicitly see Indigenous people in a negative light then that is going to affect all of your interactions and dealings with Indigenous people. We can only imagine the impact of that collective negativity on outcomes for Indigenous Australians."*

*The test measured how quickly participants paired positive and negative words with historical images of Indigenous and Caucasian Australians.*

*Regardless of their occupations or levels of education, on average people displayed a negative bias against Indigenous faces. The same was found for people from all religions, as well as people who do not identify as being part of any religion.*

*Almost all ethnicities on average displayed bias against Indigenous Australians but people who identified as Aboriginal or Torres Strait Islander were statistically unbiased toward either group.*

***<u>"It suggests Indigenous Australians are likely to be in the best position to make unbiased decisions about other Indigenous people</u>**," said Mr Shirodkar.*

Notably, NSW participants did not record the lowest or highest average scores for bias – so there is much work to be done.

**Does this bias and racism account for the fact that whilst "Based on the last census, the estimated resident population of NSW Aboriginal people was 265,685 (3.4%) of the total 7.73 million residents of NSW:**

- *3.9% of Aboriginal people appearing before the NSW Local Court appear on at least one offensive language or behaviour charge[37] — this represents almost 35.6% of such charges.[38]*
- *Aboriginal people were 4 times more likely than the NSW average to commit a murder, 10 times more likely to commit robbery, and 12 times more likely than the NSW average to be implicated in a motor vehicle theft.[39] (not my words – it should state 4 times/10 times more likely to be convicted of xyz…)*
- *Aboriginal defendants are more likely to be refused bail in NSW courts — 14.5% compared with 6.9% for non-Aboriginal defendants. Aboriginal defendants are also more likely to be refused bail due to already being in custody for a prior offence — 9% compared to 3% for non-Aboriginal defendants. Yet 32.9% of Aboriginal people who were remanded in custody after their bail was refused do not receive custodial sentences.[40]*
- *Aboriginal juveniles account for 48% of all juveniles in detention centres, and are imprisoned at a rate approximately 17 times that of the non-Aboriginal population.[41]*
- *In December 2018, Aboriginal women accounted for 33.1% of the adult female prison population. Aboriginal men accounted for 24% of the adult male prison population. Overall, Aboriginal people remain grossly over-represented in NSW prisons. The full-time Aboriginal prisoner population was 24.5% of the prison population or 3,232 out of a total of 13,165 full-time inmates. This means that Aboriginal people are approximately 10 times more likely to be incarcerated in NSW than non-Aboriginal people.[42]*
- *Between 2008 and 2018, the Aboriginal imprisonment rate rose by 45% (nation-wide) compared to the non-Aboriginal rate of a 29% increase. In NSW, the rate of Aboriginal imprisonment increased by 32% from approximately 1,600 Aboriginal persons per 100,000 to 2,137 Aboriginal persons per 100,000. This contrasts with a rate change of 162 to 184 for non-Aboriginal persons per 100,000 for the same period. [43]*
- *As at 30 June 2018, Aboriginal imprisonment rates in the Northern Territory (84%), Western Australia (39%) and Queensland (31%) are higher than NSW (24%). South Australia (24%), Victoria (9%), the ACT (22%) and Tasmania (19%) are lower. [44]*
- *In 2018, there were 28,456 appearances by Aboriginal people in NSW courts charged with a criminal offence. Their court appearance rate is therefore 7 times higher than the NSW population as a whole — 140,080 people.[45]*
- *In 2018, across all NSW Criminal Courts (that is, Children's, Local and Higher court jurisdictions) the number of Aboriginal people given a custodial sentence was 5,335. This was approximately 13 times higher than the overall rate of NSW people given a custodial sentence.[46]*
- *Whilst here, I note that at 2.3 – there is a list of Practical Considerations – is there any annual review of how these are going for (individual) judges & magistrates? Given the above statistics, we are not doing so well – and given above research just now – whilst the updates in 2019 to this book are good – publication of some cultural awareness information is not going to have a huge effect on the up to 75% of those in court who are biased against Aboriginal people.* ***(Law Bench Book)***

**Despite how improved this Law Bench Book is, unless Magistrates, Judges and their staff receive actual training – including by Indigenous lawyers, not much will change.**

**I submit that unless MPs, their staff and all who work for NS Parliament and Political Parties (who receive taxpayers funds) receive training on bias and cultural awareness training from Supply Nation companies – then we are undone at the first stone. Secondly – this needs to be followed by all staff in the Justice System, their contractors and the Health services.**

Tony McAvoy SC recently presented on the shame of Australia's Justice System – How The Justice System Is Failing First Nations People – and spoke specifically about racism in Australia and how unconscious bias can negatively impact on First Nations people in their interactions with the justice sector:

**AUSTRALIA'S SHAME – HOW THE JUSTICE SYSTEM IS FAILING FIRST NATIONS PEOPLE**

**5/8/2020 - AMNESTY ONLINE FORUM**

**NOTES FROM ONE OF THE SPEAKERS - TONY MCAVOY SC***

"The reality though is that many people outside of the Northern Territory like to think of the racism there is unacceptable, but that same systemic racism and institutionalized racism exists throughout the rest of the country.

It is simply writ large in the Northern Territory because First Nations people make up a third of the population and it's comes out on the big screen so to speak so impossible to miss, but in the southern states where Aboriginal people make up 3% of the population, it's just not in everybody's face every day…

One recent confirmation of that view is the recent Report** that was released by Mr. Shirodkar at ANU … on Implicit and Unconscious Bias, and that Report, released in June I believe, found after eleven thousand tests were undertaken - a very good sample - that three out of four Australian people have an implicit or unconscious negative bias against First Australians.

And that report received coverage for a day in the media and then slipped out of everybody's consciousness, but people like me who work in the justice system see it played out every day. And that figure stuck with me … so that figure I would add is something that one sees very strongly played out in the Northern Territory.

*How should those findings be understood more broadly in the Justice sector?*

As soon as I heard that report, I thought should those figures be applied to the Justice Sector? Is there any reason why not, why we should not accept that three out of four people involved in the Justice Sector have a negative implicit or unconscious bias against Aboriginal people and I couldn't see any reason why not three out of four judges in the justice system will have that negative bias.

If that's the case, how do we guarantee that First Nations people ever get a fair trial?

You see if you dig down a little, you might think that unconscious or implicit bias is likely to affect things such as the weight that a judge will give to the evidence of a white person as opposed to contradictory evidence from a First Nations person or whether the judge accepts the evidence of an offender that he or she feels remorse about their activity and they should be given leniency on the basis of that remorse, or they are likely to reoffend and whether they're suitable to be granted bail.

Or in relation to the circumstances surrounding the offence - this unconscious and implicit bias at a really high level 3 out of 4 people, I think on its face would appear to have a very dramatic effect on the administration of justice.

It is likely to affect for instance the assessments of witnesses made by juries. How do you get a fair jury trial, when three out of four of the witnesses have a negative bias against your client?

It's likely to affect decisions made by police officers in regards to whether charges should be laid and I've heard it many times - as the other lawyers on this panel will have - the times when police are called to an event and the black fella, the First Nations person gets arrested because the white fella says they started it and the police disregard the view of the Aboriginal person.

It's likely to effect whether somebody is warned and sent home, and so we see from a report that came out of Western Australia earlier this year in relation to a minor thing, but it was in relation to the police issuing fines for traffic offences for speeding and it was found in this report that where the speeding fine was as a result of a camera - so there was no human intervention - Aboriginal people in Western Australia had a lower rate of fine than the rest of the community; but where that speeding ticket was issued by an officer they were 3.9 times more likely to be given a ticket.

And that figure it seems to me reverberates through the whole of the justice system. And so how can we expect that police won't exercise all of their various discretions in a manner that is unbiased against First Nations people? How do we know that they're not going to make a decision to search somebody's car or bag because of bias or whether they should conduct a strip search or a body cavity search?

And we heard the Attorney General in Western Australia just a few weeks ago talking about a mother who presented herself at the police station - and because she was in hospital at the time when she should have been a witness in a domestic-violence matter and the prosecutor asked for a warrant to be issued against her - and so at the police station they arrested her and then they did a cavity search and they held her overnight. The Attorney General in Western Australia said this would not have happened to a white mother from G. But it happened in Western Australia to an Aboriginal woman and that is consistent with a bias against Aboriginal people.

So, it's likely, it seems to me, that those biases also affect the decisions of corrections officers, of parole officers and child welfare officers.

So, the question I ask myself, because I sit on all these committees in the justice system, trying to figure out how to make this system fairer for my people.

And I ask myself, **what must the Justice Sector do about it?**

**Does it engage in a process of self-awareness and find the mechanism to deliver some structural and cultural change to ensure that the biases are known and they actually know how much these biases are affecting the delivery of justice and then they do things to remediate and ameliorate those biases?**

Or does it say? Like we heard the Minister for Police New South Wales say a few weeks ago, about the officer that body slammed the young man into the pavement and put him in the hospital - that, oh well, the officer would think he had a bad day in the office?

So the question for the Justice Sector it seems to me is - does it ignore it?

Does it ignore this latest Report, and hope that we will go away or does it grasp the nettle and confront and look at itself in the mirror, as it's doing in respect of sexual harassment at this very point in time as a result of the Report in the High Court about the activities of former Justice DH?

So these are my observations about that report and I think that we need to hold on to that report and we need to put it in people's faces, in the Justice face – and say you need to confront this, you need to think about what this means for the way in which you deliver Justice and you need to make some changes.

And it's my own observation that at its very heart, the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody Report 1991 was clearly for cultural change in the systems that affect Aboriginal people in the justice sector.

It had Aboriginal Justice Advisory Committees, talked about cultural awareness training…

And that Report failed to final bring about the change that we need and that was not for want of trying - there was so many people involved, yet the systems were so entrenched that we couldn't shift them.

And here we are again 30 years later saying, "you've got to do it this time, got to make this change."

Tony McAvoy SC

**Australia's first Indigenous Senior Counsel, Tony McAvoy SC is a Wirdi man who is Co-Chair of the Indigenous Legal Issues Committee of the Law Council of Australia, and assisted the Royal Commission into Youth Detention in the Northern Territory.*

**** Report - BIAS AGAINST INDIGENOUS AUSTRALIANS: IMPLICIT ASSOCIATION TEST RESULTS FOR AUSTRALIA by Shirodkar, Siddharth (Journal of Australian Indigenous Issues, Volume 22 Issue 3-4, Dec 2019)**

https://search.informit.com.au/documentSummary;dn=150032703197478;res=IELIND & https://www.anu.edu.au/news/all-news/three-in-four-people-hold-negative-view-of-indigenous-people

> **Senior Commissioner, Hal Wootten QC has admitted the four year RCIADIC process produced a disappointing result**. https://www.smh.com.au/politics/federal/wootten-warns-of-unrealistic-hopes-for-finding-closure-20121113-29aj2.html#ixzz34hEhKyy2
>
> *According to ABS figures, between 1992 and 2008 there were more than 250 Aboriginal deaths in custody. In the five years from 2008 to 2013, the numbers rose sharply*

**and today – not quite 30 years after the RC, there have been over 435 First Nations deaths in custody – for NSW, that figure stands at 113 First Nations deaths in custody.**

> *The Royal Commission made 339 recommendations, but lack of implementation has shocked many. This failure is all the more surprising given the less than ambitious nature of many of the recommendations. Of "The Findings of the Commission as to the Deaths", the sole recommendations were that government should "negotiate" with the families about compensation (rather than taking them to court) and "give sympathetic support".*

I am not trying to suggest that all staff and officers within the JUSTICE System are racist – by no means. Although it is clear that there is some sort of peer pressure whereby when officers do the wrong thing, they are not immediately stopped by their fellow officers and an assault (or whatever violence or hateful attitude/behaviour is perpetrated against the First Nations person.) Indeed, having looked at numerous footage, it is fair to say that other officers are more likely to try and attempt to restrain the member of public in the hope that their fellow officer will then stop – as opposed to making the officer stop. It is also clear from numerous comments from NSW Coroners during their investigations into various deaths in custody, that some officers are unreliable witnesses and some officers have colluded prior to making their witness statements.

Little has changed in the last 29 years since the Final Report Of The Royal Commission Into Aboriginal Deaths In Custody – the rate of Aboriginal deaths in custody is increasing and so many of the issues raised are still happening today:

Review of RCIADIC:

**Indigenous Deaths in Custody - Report by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner** - Part E Profiles: Indigenous Deaths in Custody 1989 – 1996
https://humanrights.gov.au/our-work/indigenous-deaths-custody-part-e-profiles-indigenous-deaths-custody-1989-1996

- this Profile from back in 1990 highlights how little has changed in terms of how Aboriginal people are treated, and the constant ignoring of various recommendations – if one reads more recent Coronial findings, numerous similar statements are made in terms of police and prison actions (highlighted in green) - it appears nothing has changed in terms of police interactions and procedures in prisons:

| | |
|---|---|
| 19NSW | Male 19, died on 31 May 1990<br>Long Bay Gaol, NSW<br>Natural Causes, Epilepsy |

**Coronial Inquiry** State Coroner Kevin Waller

Finding handed down on the 29 January 1991

**Finding**

Deceased died of natural cause, namely epilepsy

**Summing-Up**
***Circumstances of Death***

The transcript of the coronial proceedings was accidentally destroyed. Information regarding the death is limited to witness statements and a newspaper article. 1

The deceased was involved in a car crash at the age of sixteen. He suffered brain damage and the onset of fits. The family believe this precipitated the deceased's aggressive behaviour which led to his conviction in

January 1990 for a range of minor offences, and his subsequent conviction for burglary in March in relation to offences before his imprisonment. He was due for release in March 1992.

He was initially depressed but improved after being moved into a cell with his brother. When the deceased suffered fits his brother was able to call for help. A month before his death the deceased's brother was transferred and the deceased was moved in with a stranger.

Two police sergeants in their 'Report of Death to Coroner' state that the deceased refused to take his prescribed medication, 200mg Dilantin, at 8.20am 30 May 1990. However, the sergeants provide inconsistent evidence as to the identity of the officer who attended the cell with the deceased's medication.

A Prison Officer checked the deceased's cell at 7.45am the following morning. After the deceased gave no response, he touched his body and called for assistance. Resuscitation equipment was later brought but the deceased could not be revived.

**Recommendations**

Unknown

**Royal Commission Recommendations Breached**

Unknown

**Social Justice Commissioner**

**Comment**

The case raises a number of issues. First, the placement of the deceased in a cell with a prisoner unable to care for him. Second, the refusal of the deceased to take his medication. While a person has a right to decline medication the psychiatrist's report to the Coroner indicates that the deceased was potentially suicidal and that his behaviour was unpredictable. Prison officers should have known of his suicidal ideations (Royal Commission recommendation 152f and 152giv) and taken appropriate efforts to ensure that medication was taken. Third, the prison officers were unable to perform resuscitation, and had to wait for medical staff to arrive.

The deceased's criminal history raises important issues. The deceased was first sentenced on 5 January 1990 to six months imprisonment for a number of charges: using offensive language; resisting arrest; assaulting a police officer; maliciously damaging property; maliciously destroying property; and simple larceny.

A recent study found that between 1990 and 1992 the only people imprisoned in New South Wales for maliciously damaging property were Aboriginal. 2 Six months imprisonment instead of an appropriate alternative for these offences seems difficult to justify in light of the deceased's age, psychiatric problems and absence of criminal record. The deceased's subsequent sentence of two years imprisonment for burglary also seems questionable.

**Additional Royal Commission Recommendations Breached**

IR1 Legislation to enforce principle of imprisonment as sanction of last resort

IR8 Arrest for minor offences to be avoided when alternatives are available

IR41 Automatic resuscitation equipment be available in police stations and prisons

R86 Offensive language during police initiated action not to be basis for arrest and charge, and monitoring to ensure compliance.

R87 Police to apply arrest as a final sanction, and implement practical procedures to ensure this occurs.

R92 Legislation to enforce principle of imprisonment as sanction of last resort.

R158 First priority on finding a person apparently dead to be resuscitation and medical assistance.

R159 Availability of safe, effective resuscitation equipment and trained staff in all prisons and watch houses.

R160 Basic training for all police and prison officers in resuscitation techniques.

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**I submit that NSW should introduce a mandatory requirement/regulation for police and prison officers to intervene and stop any violence/excessive force by a fellow officer AND that this be accompanied by Peer Intervention Training (to stop them having a bad day…) as well as training on unconscious and implicit bias, prejudice, racism, anti-racism and cultural awareness programs, as well as other relevant basic policies, procedures and required knowledge (like positional asphyxiation.) Operational officers should receive refresher training every 3 years on listed mandatory items before being allowed back on active duty – no training no operational duties. Full training records should be maintained to ensure these are available for disciplinary and court proceedings.**

> https://www.jurist.org/commentary/2020/06/hanink-verma-ward-trust-police/ - *policy requires police officers to stop fellow police from using unreasonable force, not just follow orders.*
>
> *"either stop or attempt to stop another sworn employee when force is being inappropriately applied or is no longer required".*
>
> *City officials moved on Friday to strengthen that duty by seeking to make it enforceable in court and to require officers to immediately report to their superiors when they see the use of any neck restraint or chokehold.*
>
> *You're better off being ostracised by the group than going to prison for murder."*
>
> *Given the ubiquity of explicit and implicit racism and other biases, we can see how white officers who victimize non-white civilians are routinely granted wide latitude in assessments of the reasonableness of their violent acts, by fellow officers, prosecutors, jurors, and the general public.*
>
> *The New Orleans Police Department, which has been under a federal consent decree since 2012 for widespread misconduct following Hurricane Katrina seven years earlier, is now a national leader in peer intervention training. Many experts, civil rights lawyers and law enforcement leaders believe such training might have prevented Floyd's death. But only a handful of departments use it.*

*Peer intervention training instils the idea that officers have a duty to act as a check on their fellow officers' misconduct, such as using excessive force, planting evidence or lying in official reports. They are legally obligated, the training teaches, to quickly stop an officer from committing an act of improper policing before it leads to firings, criminal charges or death.*

*Advocates of peer intervention say training that puts the oversight onus on fellow officers could help solve systemic problems in law enforcement.*

*"You should be requiring this for every person," said Christy Lopez, who led the U.S. Department of Justice Civil Rights Division's investigation and consent decree negotiations with the Ferguson, Missouri, Police Department after the 2014 shooting of Michael Brown. "This is a no-brainer," said Lopez, who now co-leads Georgetown Law's Innovative Policing Program. "There's no downside to requiring this."*

*After Floyd's death, more police departments and state police training academies are preparing to adopt this training for their officers.*

*Sue Rahr, executive director of the Washington State Criminal Justice Training Commission, which designs state training curriculum. There must be a culture shift in law enforcement, Rahr told Stateline. The "blue wall of silence" and no-snitch traditions can no longer be tolerated, and failure to intervene in police misconduct should be met with swift punishment.*

*Peer intervention training is one of many solutions that should be applied nationwide, said Lynda Garcia, the policing campaign director of the Leadership Conference Education Fund, a Washington, D.C.-based non-profit that last year released a 400-page report on implementing fair, safe and effective community policing.*

*"It has to be a robust, all-hands-on-deck effort in order to adequately reform the police that is necessary at this point," she said. "What we are seeing in cities across the nation is a collective exasperation for change."*

*The Active Bystander - In his peer intervention police training, Jonathan Aronie often points to a scenario many officers have experienced: What to do when a perpetrator spits in an officer's face?*

*The first reaction of many officers is to hit the perpetrator, which could lead to injuries to both parties and criminal charges against the officer, said Aronie, lead federal monitor for the New Orleans Police Department and an architect of its peer intervention training program, Ethical Policing Is Courageous (EPIC), which is retaught in part to officers and leaders every year.*

*Instead, fellow officers should intervene, separate the officer from the offender and de-escalate the situation. The active bystander concept, when embraced from leaders on down, can change the mood in the training room, as officers understand its importance, he said.*

*This isn't just a policing issue, he noted. In a wide array of industries, from aviation to medicine, the issue of passive bystandership has been addressed through specific training.*

*Co-pilots are taught to intervene when a fellow pilot's decision-making may be impaired, just as fellow surgeons are required to report their colleagues' malpractice. Police, too, should be active bystanders, he said.*

*"If you can teach someone to put on a bulletproof vest and you can teach them how to round a corner, you can teach someone to more effectively intervene," he said. "We know that this can be taught and learned."*

*The core teachings of this program come from a Holocaust survivor and emeritus professor of psychology at the University of Massachusetts, Amherst. Ervin Staub learned firsthand about the power of bystanders coming to the aid of people devalued by society in Nazi-occupied Hungary.*

*Staub studied clinical and real-world examples of bystanders acting or refusing to act to prevent harm — from the Rwandan genocide to the Rodney King beating in Los Angeles, where 17 officers watched colleagues hit King more than 50 times with batons in 1991.*

*He helped New Orleans create the EPIC curriculum — the first department to add this comprehensive training.*

*"Active bystanders have great power," he said.*

*Within seconds, he said, officers can intervene before fellow officers lash out violently. It can be as simple as tapping an officer on the shoulder or as forceful as a shove.*

*In Seattle, for example, police officers last week pinned down an alleged looter outside of a T-Mobile store in the downtown area. One officer knelt on the suspect's neck — reminiscent of the tactic that killed George Floyd.*

*As onlookers screamed at the officer to get his knee off the suspect's neck, the other officer on the scene grabbed his colleague's knee and pulled it off.*

*Aronie and his instructors have received pushback during training. Some trainees claim they already fully understand and practice intervention, but Aronie is quick to point out they do not. He also faces deep-seated cultural issues in law enforcement against ratting on fellow officers.*

*"It has nothing to do with ratting," said Aronie, who is a D.C.-based attorney at the international law firm Sheppard Mullin. "It's about intervening before you're ever at a point where you have to rat. Peer intervention is a sign of loyalty."*

*As protests broke out after Floyd's death, Ferguson sent an email to his colleagues last weekend, reminding them of their peer intervention training.*

*"When you intervene," he wrote, "you have the ability to potentially save a life and a career."*

https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/06/05/training-police-to-step-in-and-prevent-another-george-floyd

This will assist in a variety of ways – encourage officers to do the right thing, discourage officers from doing the wrong thing and hold all officers accountable in terms of their job security/disciplinary proceedings if they commit acts of violence/excessive force – or fail to act/be complicit in such acts.

The Coronial Inquest into the death n custody of David Dungay Jnr highlighted many severe inadequacies in training – both of prison officers and the health staff. It appeared to me listening to a manager cross examine a nurse that perhaps he wanted the nurse to change her testimony, which was utterly shocking. It highlighted that the defensive position taken by the JUSTICE is not one that will admit wrong and change

processes to ensure that a similar death in custody occurs. Also – the fact that Corrections did not immediately train their officers in positional asphyxiation after it became apparent they had no knowledge – which has been basic training for well over 10 years before then in other Justice jurisdictions (a quick google search found this) was unfathomable and indicates a total unwillingness to address their shortcomings. There is a real need to change the culture. The same could be said for Senior Police Officers after what was said recently at a press conference following a young man assaulted by a Sydney police officer.

Take the opportunity to adopt and expand upon existing best practices for **promoting** race equality and race equity at all levels and in all areas of the justice system – and as society does not consist of individualised silos, this should also apply to the education, health and other sectors

Seeing as so much of the public provision of services is now privatised – as the Victorian Coid-19 Aged Care Tragedy has shown – there is a great need to ensure that not only are contracts, policies and procedures in the private sector are adequate and cover all the various recommendations and best practice, but that they are audited and enforced in a transparent and accountable way – because at the end of the day, privatised provision of services does not have the care and rehabilitation of their clients as their bottom line, for their master is profit.

Last year's Study **"DEATHS IN CUSTODY IN AUSTRALIA: A QUANTITATIVE ANALYSIS OF CORONERS' REPORTS"** ***(TW/AC-19)*** raised some huge issues to be addressed:

1. *There needs to be an acknowledgement that there is prejudice and both systemic and institutional racism within all areas of the Justice System (and Health System – which obviously has a direct bearing on those Aboriginal and Torres Strait Islander detainees when they are taken to hospital for treatment.) Without any acknowledgement, how can the issues be honestly and properly dealt with?*

2. *Over policing of Aboriginal communities is an ongoing and worsening problem, and leads to high levels of unnecessary contact with the justice system. Aboriginal young people are targeted for just hanging out in parks or in shopping centres and face serious penalties for offences which their non-Aboriginal peers would receive only a warning – we see it in videos on social media and I have personally heard about this from another Mum at a church event. All of this contributes to overrepresentation of First Nations people in prisons. Over policing is in part due to prejudice as well as policy making (which again in part will be down to the prejudice of the policy makers and approvals), which needs to be dealt with (see above).*

*An important conclusion reached by the Royal Commission was that Indigenous prisoners were not dying at significantly higher rate than non-Indigenous prisoners.* ***What accounted for the high number of Indigenous deaths in custody was the disproportionate number of Indigenous persons being arrested and incarcerated in the first place*** *(Johnson, 1991, paras 1.3.1–1.3.2). Consistent with this, many of the Royal Commission's recommendations were directed towards addressing the over-criminalisation of Indigenous people. For example, it was recommended that the offence of public drunkenness be abolished (Recommendation 79); that offensive language not normally result in an arrest (Recommendation 86); and that arrest only be used as the sanction of last resort (Recommendations 87, 239, 240). Indeed, Recommendation 148 stated that the 'highest priority' should be to 'reduce the number of Aboriginal people in custody' through diversionary and bail-based programs. Further to this, many of the Royal Commission's Recommendations were aimed at*

*addressing Indigenous disadvantage more generally, based on the acknowledgment that their depressed 'social and economic circumstances' both predisposed' Indigenous people to and explained the focus of the justice system upon them (Cunneen, 2006b, p. 335). (TW/AC-19)*

**1 and 2 above has also led to and will continue to cause an unacceptably and disproportionately high rate of First Nations' people being excluded from jury service - there needs to be an acknowledgement that in the past some Indigenous people were excluded from jury service as a result of the wrongful criminal convictions they were given as babies/toddlers/children when they were stolen under the white Australia Policy. This also causes a huge adverse affect on the Justice System – and reinforces negative bias.**

3. *Families deserve to be told immediately and properly when a loved one dies in custody and they should know that if their loved one dies in prison they will be heard and a **proper independent, fair and thorough investigation** will occur – including full forensic inspection of where their family member died, prompt at the time statements & interviews of all witnesses including fellow inmates, and that families will be told of the progress of this inquiry.*

4. *Evidence gathering and Coronial Inquest dates should be expediated to prevent what it an ever occurring problem, which is witnesses (police and prison officers) saying they cannot remember specifics about the death because it was so long ago. Perhaps interviews should be videoed and those played at the Inquest? Enough days should be booked for the Inquest so that it is not rushed, all evidence heard and so that it does not get postponed with the inevitable additional trauma for the families, as well as memories fading.*

*5. Independent oversight is needed of all Aboriginal deaths in custody to ensure those responsible face **justice**. Not a single police officer or prison officer has ever been held responsible for a single one of the more than 435 deaths in custody since the Royal Commission, or the thousands of deaths before that time. Where are the statistics showing complaints of abuse by police and prison officers? Internal racism statistics? Statistics on disciplinary actions including dismissals? It is not in the public interest to let assault and murder go unpunished in terms of gross misconduct – yet even when clearly there has been gross misconduct in terms of excessive force, there*

*6. If the law needs changing so that those responsible for deaths in custody do not get given 'get out of prosecution' cards, then please do it.*

7. *Particular attention needs to be given to the worsening situation for Indigenous Youth and Women, and also Disabled Indigenous – as indications from statistics, Coronial Reports and external research shows that often the usual human rights and duties of care that would be applied to say a white male, are not being applied to Indigenous people in these groups. NSW Parliament should ensure that instead of paternalistic improvements being made, that groups such as Sisters Inside, are consulted and involved in the decision making prior to new policies being made.*

*Of the 681 female prisoners in custody in NSW as at February 2014, 201 (30 percent) were Aboriginal women. Analysis of NSW Criminal Court Statistics* shows that, compared to convicted non-Aboriginal women, convicted Aboriginal women are: • five times more likely to be imprisoned*

*for assault (11 percent compared to 2 percent) • 28 times more likely to be imprisoned for possessing and/or using illicit drugs (2.8 percent compared to 0.1 percent) • six times more likely to be imprisoned for exceeding the prescribed content of alcohol or other substance (1.8 percent compared to 0.3 percent) • almost eight times as likely to be imprisoned for resisting or hindering police or justice officials. (NB – see point 8 about timely and readily available up to date information – this is what I could find online – it would have been better to produce information for 2018 or 2019, and quite possibly the figures would have been worse -* ***https://www.women.nsw.gov.au/__data/assets/file/0019/300772/3303_WNSW-Report2014_web.pdf)***

*8. Information about Deaths in Custody needs to be transformed –*

*Royal Commission made several Recommendations directed towards making information on deaths in custody more accessible to improve accountability and transparency. The Royal Commission noted the importance of maintaining a watching brief on the rate of Indigenous deaths in custody, through the collection and distribution of statistical information on the number of people in custody and the number of deaths in custody each year, as well as the circumstances in which any deaths occurred (Recommendations 17, 40–47). It recommended that all deaths in custody be subject to a coronial inquiry and that a formal inquest be conducted into the circumstances of all deaths (Recommendations 11–13). It also recommended that governments be required to respond to any findings made by the coroner and report on whether any action has been, or will be, taken to implement any Recommendations made (Recommendation 15). (TW/AC-19)*

(Any necessary new review could be undertaken concurrently – but it is not acceptable to delay implementation of recommendations which were made nearly 30 years ago.) Indeed – I would expect this Inquiry to produce a document showing all outstanding Recommendations from the 1991 RC and those from all Coroners Reports since then – this should not be that hard, seeing at it should have actually already have been produced, year on year, following on from 1991.

**An Action Plan with all the outstanding recommendations should be produced and presented to Parliament no later than 6 months after this Inquiries findings. The Action Plan results should then be presented to Parliament each 12 months.**

**That NSW note the recommendations of Coronial Inquiries in other jurisdictions within Australia and check (as in it is signed by a senior departmental manager and retained) whether NSW procedures prevent that occurring in NSW. NSW should learn the lessons from other jurisdictions.**

*The purpose of this fact sheet is to provide information to the Australian public about Indigenous Australian deaths resulting from intentional self-harm****. This fact sheet includes closed cases from Australian State and Territory coronial cases from 1 January 2001 to 31 December 2013.***

*• Indigenous Australians aged 24 years or under accounted for more than a third of all fatalities (37.8%), in comparison to 12.6% of non-Indigenous Australians within the same age group*

*• The highest difference in the fatality rate per 100,000 persons occurred among those aged 15 to 19 years, with an average of 24.2 fatalities for Indigenous Australians, compared with an average of 6.0 fatalities for non-Indigenous Australians*

*Hanging was the most common mechanism of injury, leading to death in 83.5% of cases involving Indigenous Australians, compared with 45.2% for non-Indigenous Australians.*

*Intentional Self-Harm Fatalities by Jurisdiction of Investigation and Indigenous Status – almost the same between Indigenous Australians and non Indigenous Australians, whilst of course, the*

*Figure 9. Intentional Self-Harm Fatalities by Incident Location and Indigenous Status*

*- are fatalities in the Category OTHER location include those Deaths in Custody?*

*Yet, despite the establishment of the NCIS and the Australian Institute of Criminology's Deaths in Custody Program, the Royal Commission's recommendations regarding reporting should not be considered implemented. The NCIS operates a user-pays system based on the type of access required, and its access costs are thousands of dollars a year, even for low-level, restricted access. Such costs may be considered prohibitive for anyone other than government departments and very large organisations. Further, ethical clearance is required to gain access, and this is exceedingly difficult to obtain, as multiple ethics committees must be satisfied,4 and strict confidentiality requirements can be imposed which limit researchers' capacity to report on their findings. The database also has significant functional limitations; indeed, in 2003, a report commissioned by the Australian Institute of Health and Welfare described its coverage as 'limited' and questioned the quality of the information it contained, noting that there were extensive inconsistencies and errors in the data and its coding (Driscoll, Henley, & Harrison, 2003, p. 86–88). P146 (TW/AC-19)*

*with no detailed analysis of the circumstances of the deaths or the extent to which the Royal Commission's recommendations have been implemented. Two large-scale investigations on the implementation of the Royal Commission's recommendations have been undertaken in recent years (Clayton Utz, 2015; Deloitte Access Economics, 2018). One of these (the Deloitte Report) was commissioned by the Federal Government, but its findings have been criticised as misleading and inaccurate (Jordan, Anthony, Walsh, & Markham, 2018). Meanwhile, there has been limited original academic research regarding deaths in custody;*

*indeed, there is a 'dearth of theoretical literature' on coroners' inquest findings generally in Australia (Scott Bray, 2017, p. 146). Our project goes some way towards filling these 4*
*They include the Western Australian Coronial Ethics Committee, the Coroners Court of Victoria Research Committee, the Victorian Department of Justice Human Research Ethics Committee and the NCIS Research Committee, in addition to any institutional/university ethics committee applicable to the individual researcher. 146 T. WALSH AND A. COUNTER (TW/AC-19)*

**The NSW coroner's office has yet to make all of its inquest findings on deaths in custody since the Royal Commission publicly available in a format that is cross reference and searchable.**

*As noted above, the NCIS contains the most comprehensive set of coroners' inquest data in the country. We paid $AUD2750 to access this database, which provided us with 'Level 1 Access' for three users for one year.6 However, once we obtained access to the NCIS, we faced a number of new barriers to our research. First, the NCIS' search engine was ineffective. There seemed to be no way to isolate deaths in custody from*
*other reportable deaths. Whilst database training is included as part of the NCIS subscription, we were informed that there was no way we could be certain that our searches would be accurate or comprehensive. Secondly, the confidentiality requirements imposed on us were unduly stringent. Our capacity to report on our findings would have been limited to the point where we would not have been able to present case studies or make any re-identifiable information publicly available.7 As a result, we made the decision to cancel our subscription and withdraw our access to the NCIS database, and we have not included any information from the NCIS database in our dataset. (TW/AC-19)*

**My Question to the Inquiry – how many NCIS subscriptions and how many users has NSW government paid for (directly and indirectly – each year since inception) – which departments?**
**Availability of full-text inquest findings on Australia coroners' websites?**

**NOTE – the other result of being the most incarcerated peoples on the whole planet, inevitably means being unable to vote, and unable to undertake jury duty – these both have far reaching implications in terms of the fairness and integrity of the justice system including in particular trial by jury, and the democratic process**

If as a result, you have a system whereby those administering the Justice system only ever see Indigenous Australians as offenders, and never as jurors – then the negative bias is yet more reinforced upon other jurors, witnesses, judges, magistrates, lawyers, barristers and JUSTICE staff including security – and it is a downward spiral that can reinforce negative bias, then prejudice/racist, then hate, then crime, then potentially murder (as has often been alleged by families who have had reason not to believe officers' accounts of the death of someone in custody. And when CCTV footage goes missing, the scene of death is cleaned up immediately before the police arrive, let along the police turning up to 'independently' investigate their colleagues, the JUSTICE press statement is issued saying the death is not suspicious before the police have even investigated and made their own statement – one does also have to question whether the full truth is being told with such a lack of transparency, independence and accountability.

This raises issue for deaths in immigration detention, as these cases do not involve individuals being held or incarcerated for justice purposes – but political purposes.
- and as we know Aboriginal and Torres Strait Islander people have – and are currently being held in in immigration detention.
Immigration detention is a form of political punishment by the Department of Home Affairs, indeed, both the current Immigration Minister and his 2 predecessors Dutton and Scott Morrison have both referred to Asylum Seekers as being illegal – when that is wrong.

Other issues of concern:

Not enough time allocated to the Coronial Process – pressure and distress on the families, lawyers, witnesses and ultimately the judge
- delays in arriving at the inquest – meaning witnesses forget things or claim to not remember.
Proceedings postponed for months…. So much ongoing distress, and additional expense for families and communities.

In once recent case, I attended a Coronial Inquest at Lidcombe – young children and their carers – plus others who could not fit into the Inquest Court room were sitting on the floor in a very small room. It was disgusting to see the lack of respect shown and when I raised this with staff, initially there was resistance and then they went into the room and asked a rhetorical question. But things were sort of fixed.
THERE IS NO WAY ON EARTH THAT WOULD HAVE HAPPENED to the family/community of a white family from the North Shore.

Get out of jail card for officers giving evidence - police officers have been able to frustrate investigations by invoking their privilege against self-incrimination. This really does need to be fixed.

Problems in the provision of information by police to the legal representatives of the families of persons who have died in police custody.

**The double jeopardy law should be reviewed with a view to amending it, as has been done in the UK.**

Definition - number of cases demonstrate features so akin to deaths in custody as to require detailed investigation as a matter of sound public policy:

It is certainly the case for other jurisdictions that even after 2 years and despite huge public campaigns, the recommendations were not followed – how do we know this is not happening in NSW?

Funding has long been an issue for the NSW courts as we are very low compared to other states. Latest figures from the Productivity Commission show NSW's recurrent expenditure on coronial services was $6.6 million in 2017-18, compared with $16.7 million in Victoria and $11.3 million in Queensland. Victoria has 11 fulltime coronial positions and Queensland has seven, compared with six in NSW.

https://www.lecc.nsw.gov.au/news-and-publications/publications/review-of-29-nswpf-critical-incident-investigations-june-2019.pdf

The unique experiences of women within the system requires further examination, and identifying and addressing the vulnerability of detained persons must be a priority.

Hanging has been the most frequent cause of deaths in prison custody since 1980, accounting for 40% of prison custody deaths nationwide and 39% in NSW. Between 2001 and 2009, NSW coroners commented on the Department's failure to remove or screen obvious hanging points — in breach of Recommendation 165 of the Royal Commission into Aboriginal Deaths in Custody — at more than 20 inquests and made formal recommendations urging the elimination of hanging points in 2002, 2004, 2005, 2006 and 2009. (**CRIKEY** JUN 15, 2011)

WHILST THIS INQUIRY HAS STATED THAT IT WILL NOT LOOK AT INDIVIDUAL CASES, HOW MANY DEATHS HAVE THERE BEEN IN NSW CELLS WITH HANGING POINTS SINCE 2011? CERTAINLY, IT IS QUITE CLEAR TO ME THAT THE STATE OF NSW IS RESPONSIBLE FOR TANE Chatfield dying in hospital two days after he was found hanging in his cell at Tamworth Correctional Centre on 20 September 2017. (THE CORONOER, ONLY THIS WEEK pressed the boss of NSW's prisons to urgently audit and remove all hanging points in the Tamworth cells.)

What is it going to take for NSW GOVERNMENT TO IMMEDIATELY AUDIT AND IMMEDIATELY REMOVE ALL HANGING POINTS IN ALL CELLS & HOLDING ROOMS?

IT HAS BEEN 29 YEARS! And at least 23 Indigenous deaths in custody where the NSW Coroner has commented on the NSW Department's failure to remove or screen obvious hanging points. (There have been more, but due to the poor reporting system on Deaths in Custody, it is difficult to know for sure.)

*JH was found hanged in his cell at the Junee Correctional Centre in NSW on 3 February 2018*
*Mr Wotherspoon, 31, was under constant video surveillance in a "safe cell" at Cessnock Correctional Centre's Mental Health Unit (MHU) at the time he was found unconscious with an apparent ligature around his neck on April 5, 2013 – ('There was a **hanging point** in his cell – a bolt on the back of the door')*

*If a google search can bring up (not comprehensive – this is the job of NSW Government, as per RCIADIC) newspaper reports of various NSW*

*Full communications and consultation between Corrective Services NSW and Justice Health and Forensic Mental Health Network and NSW Police Service*

*Even in June 2017, at both Newcastle and Parramatta court cells, there were obvious potential ligature or hanging points identified.*

*The inspection team found that the absence of specific protocols for court cells explains the many differences encountered between court cell locations. CSNSW have recently revised Operational Procedures which are accessible to staff at court cells. However, a standardised operating practice for court cells may provide staff with an additional level of confidence of inmate management, in accordance with CSNSW expectations. It was also apparent that some correctional officers were not up to date with the training requirements of their role, for a variety of reasons. The Security Operations Group in CSNSW coordinate and utilise field training officers to conduct firearms refreshment training for staff at court cells. Compliance with mandatory training requirements should be monitored. For example, correctional officers who handle weapons must complete an annual firearms refresher training course. It was also noted that some staff did not have up to date first-aid training. An audit is to be undertaken and first-aid training provided as required.*

*Other distressing issues – torture anyone – were identified, such as at other locations the lights are kept on 24-hours a day, making it difficult for inmates to sleep. Rule 43 of the UN Standard Minimum Rules for the Treatment of Prisoners prohibits the 'placement of a prisoner in a dark or constantly lit cell'. ('Rule 43', UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2015*

*http://www.custodialinspector.justice.nsw.gov.au/Documents/24-hour%20court%20cells%20in%20NSW.pdf*

**Is there a comprehensive list of all the various Inspections/Reviews/Inquiries, including NSW Parliamentary, and all resulting recommendations - into any of the items covered by the Terms of Reference of this Inquiry, and also Conditions of Custody, including Court and Other Cells in the JUSTICE System – applicable to NSW - since 1990? (including the 1991 RCIADIC.)**

Reporting – The Inspection Report does not list who is responsible for implementation of each Recommendation (perhaps in another document), it does not state to who the report is presented or tabled, and who has overall ownership over ensuing the recommendations are considered/implemented. Are comments, such as the following in the executive summary 'It is important for the agencies to work together to ensure that their respective polices are consistent and comply with legislative provisions.' – important, if so, should they also be listed in a specific section on their own, in a similar way to recommendations, so that they are not overlooked?

**What has the individual and cumulative cost of the above list of NSW Inspections/Inquiries/Reports – for NSW - been?**

**Has there been any monitoring of implementation of recommendation from the above, plus the 1991 RCIADIC – and publication of same?**

**Has NSW JUSTICE received any legal advice as to the duty of care/liabilities/potential civil costs and potential criminal proceedings against the State and/or Managers and Staff as a result of failures to implement any Coronial Recommendations, and recommendations from # above?**

**Publications – Responses by NSW Government (and others) to ICS (and other) Reports are undated as a document and also undated in their response columns. (this might have been acceptable practice in the 1990's, but I doubt any business would accept this as standard in the last 10 years or more.) Comments to the Recommendations are often vague with no reference given to vague action response (e.g. 'Review is underway')**

**Is there any formal monitoring of the Comments/Responses to Recommendations? There is no owner listed for the Responses.**

Some Comments in the above report do not make sense e.g.

Recommendation 59 - The Inspector recommends Juvenile Justice works with the NSW Ombudsman to develop a system of notification of pre-planned use of force of young people and strip searching of young people.

Comment - The NSW Ombudsman already has access to JJNSW's central electronic recording system, CIMS, that contains clear records and is easily accessible.

(Does the above comment mean that JJNSW's central electronic recording system, CIMS notifies the NSW Ombudsman of pre-planned use of force of young people and strip searching of young people?)

A couple of years ago at a church NRW event, whilst in a general conversation with a non-Indigenous lady, she confided to me that she had had to go to a Northern Sydney police station to pick up her teenage son who had been arrested with some other boys – he was released without charge. The first time he had ever been arrested. Whilst there she saw a police officer assault an Aboriginal boy. She said that she, and the family of the Aboriginal boy had been too afraid to make a complaint, as the Aboriginal boys were already being targeted/harassed by police, and that they didn't want it to get worse, and she in particular whilst being outraged by what she saw wanted to respect the other families wishes and also, she did not want her son to become a target for the police which she firmly believed would happen if she made a complaint.

I have no reason to doubt what she said – I believe she was telling the truth and find this situation to be abhorrent and reinforces social commentary on how the police target and harass Aboriginal youth.

When I saw that young man being slammed down on the pavement by an officer in Sydney a few months ago, I thought at the time, that wouldn't any person who is targeted, stopped and harassed by the police for no good reason get cross, angry and lippy towards the police? I mean – who is the adult in that conversation – a trained professional adult whose role is to deescalate situations and not infame them. For the police chief to explain it away by stating perhaps the officer was having a bad day is a complete disgrace and clearly shows that bias and prejudice, as well as a complete denial of the same, goes all the way to the top of the NSW Police Service. In fact, he gave carte blanch to his officers to continue abusing Aboriginal Youth without any accountability.

If officers behave like this when they know they are being filmed by mobile phones - what on earth are they doing behind closed doors?

I have been unable to find records/statistics of internal and external complaints against police/prison officers & staff, plus outcomes (including informal resolutions) and disciplinary proceedings against police/prison officers & staff – by non-Indigenous and Indigenous classifications.

What are the exit interview results of prisoners and staff within the JUSTICE system – again by classification of non-Indigenous and Indigenous people?

What are the promotion results of staff within the JUSTICE system – again by classification of non-Indigenous and Indigenous people?

In June, I had occasion outside a suburban police station to have a lengthy conversation with 2 senior police constables. I was quite surprised by the complete lack of awareness of Indigenous 'justice issues', what racism is and what unconscious bias is. He made comments that could have been taken as offensive, although I appreciated that it was ignorance and not intention on his part. Towards the end of the conversation, I asked them what specific training they had received in relation to First Nations' Cultural Awareness - they both replied none and when I questioned this, they stated that they knew that if they arrested an Aboriginal person they were to ring the Aboriginal Liaison Officer number when they got to the station.

I know that race relations and cultural awareness in the JUSTICE system in Australia is somewhat backwards. But this is 2020 – I have some knowledge of police training in other countries and can definitely state that multicultural training has been mandatory for well over a decade, if not two decades.

Professional training in other areas within the JUSTICE in the past has also been a complete disgrace and negligent. When I heard that prison officers in NSW Corrective Services did not know what positional asphyxia was, let alone be trained in it, I was aghast, even I as a civilian and non-medical person knew what that was. I knew that in the UK, police officers some 15-20 were not allowed to remain operational if they had not received refresher training in that and other things every 3 years. There were UK Home Office and US Police documents taking about requirements for positional asphyxiation, and even with regards for extra considerations if there were mental health issues present in a prisoner, some 15 years ago.

Lack of training appears to come up in nearly every Inspection Report/Recommendation in NSW JUSTICE system.

From the outside, it appears to me that there is a wilful ignorance within both the NSW Government and NSW Justice System – there appears to be no genuine will to improve the clearly unfair unjust and racist practices, systems, policies, procedures and behaviours – at times and by some - of those employed in the JUSTICE towards Aboriginal and Torres Strait Islander peoples.

It is completely abhorrent that NSW – one could say possibly, one of the most progressive (after ACT, and arguably Victoria) States in Australia – could be so draconian and ignorant and bigoted.

I reiterate that it will not be good enough to have a conclusion that fails to record the expedited implementation of all outstanding Coronial & RCIADIC Recommendations in favour of Further Investigation/Inquiries/Commissions.

All, such outstanding recommendations should – as a matter of urgency be implemented prior to 31/12/2020 and the Premier, her cabinet and all members of the government and NSW JUSTICE should make every effort to ensure that the resources are made available for this to occur.

My submissions on those is that it is clear from reading several Coronial Reports and listening to JUSTICE officers' public comments immediately after a death in custody is that there is an insidious pattern – an modus operandi, if you like, of the following – in general terms:

- It is often stated that the death is not suspicious (prior to any conclusion of police investigation)
- Blood and the scene of death is cleaned up prior to the police arriving
- Those present at the death or soon after are not separated and are allowed to talk to each other before the police interview the staff and/or obtain statements.

- Detailed written statements are not taken immediately.
- CCTV footage is not secured (and has previously been mislaid)
- Current policy and procedure documents are not taken as evidence
- In general, it appears the way a death in custody is investigated does not have the same rigour as other suspicious deaths (should they not be treated as suspicious until it is ruled not to be – the parents of a 'cot death' have been investigated more rigorously than officers who have clearly used unreasonable force on a prisoner that resulted in the prisoner's death.)
- **From the moment there is a death in custody – there appears to be – on occasion enough to be an issue, omissions in basic death in custody procedures. Often the body is moved and scene of death is completely wiped clean (in instances where there has been blood – for example, in the case of David Dungay Jnr), officers are allowed to get their story straight before being interviewed, proper statements aren't taken, before investigating officers have had time to think, the Corrections Service is oft found declaring it is not a suspicious death, some 18months – 2 years afterwards officers are unable to recall the circumstances surrounding the death. CCTV footage is misplaced. Training records cannot be found. The list of investigative and/or on procedural errors/contraventions appears endless.**
- **By far the biggest impediment to the implementation of justice surrounding First Nations deaths in custody is that police and prisoners appear to automatically receive a 'get out of jail free' card. A review of this situation is need to find a solution.**
- **The double jeopardy rule should be amended – similar to that in the UK, so that when there is compelling new evidence.**
- **Serious questions about the integrity, accountability and independence of death in custody investigations are still being raised by NSW coroners. Is there a pattern? Have these questions been collated, in order for them to be considered and addressed?**

It has been shown that when an Indigenous death occurs, that due to police bias/institutional racism, that the investigation is NOT as it should be, and that any black/Indigenous witnesses are often disregarded. This was the case with Stephen Lawrence in the UK, and no doubt there have been cases here.

Public confidence – myself included – with regards to treatment of First Nations' people by the police before during and after police/prison custody (including investigation of deaths in custody) is at an all time low and many, including myself have no confidence that for example an Aboriginal woman would et the same treatment as myself a white woman.

Power imbalance – given that Aboriginal and Torres Strait Islander people are most incarcerated on the whole planet, it is telling that a JUSTICE view of stakeholders is as follows:
Stakeholders The stakeholders in this review were identified as the Official Visitors, the former Minister for Justice (who had responsibility for appointing Official Visitors until March 2015), the Minister for Corrections, the Inspector of Custodial Services, Juvenile Justice NSW, Corrective Services NSW, and those in custody. (2015)

Given that generally, First Nations' people in custody - and even those not in custody – are often treated as being guilty until found innocent (if it were otherwise, why are there so many First Nations people on remand) – then presumably those in custody do not have much of a voice, in fact even a Coroner investigating a death in custody does not have much of a voice – otherwise their many comments & recommendations (e.g. at least 23 since 1991 relating to the removal of hanging points in cells, would have been listened to and addressed.)
What about the families, the communities, their lawyers, the Aboriginal Legal Service, the Ombudsman, the AHRC, prison chaplains, Sisters Inside, the shadow Minister for Corrections, and so on – I don't know all the relevant services and organisations who are invested in the JUSTICES.

Official Visitors (& MH) System – is there transparency – where is the reporting? Also where is the complaints/discipline/exit reporting for the 3 OVS programs?

Remand prisoners are held in custody before and during their trial on criminal charges. They may be in custody because: ■ They didn't apply for bail ■ They were refused bail ■ They couldn't meet the bail conditions ■ They didn't have the money or surety needed for bail
- money – poverty – if this is the reason there is a disproportionate amount of Aboriginal people not getting bail, then the NSW government should step in – they already owe compensation and reparations to First Nations people, so are in their debt anyway.

Bail conditions – if disparity – this needs to be looked at.

Stats on remand – young Aboriginal men are sometimes on remand for 2 years – is there disparity.

Bail conditions/amounts/ for Indigenous a& Non Indigenous people comparison

Location of detention and its effect on prisoner and family – stats on movement/transfers

Prisoners are responsible for telling family members that they've been transferred

While women are on remand they can't have children with them

"I would go and visit him the next morning, stay the whole day and then get the bus back to the city. It was pouring rain and there was only a bus shelter. The majority of the prisoners were Aboriginal and the bus shelter was filling up with women who had come from other parts of the state. They were waiting with me there in the rain with no proper shelter."

Alternatives to detention
- train the police properly and weed out the racists
- don't arrest youths for being lippy
-

Monitoring of visitation requests/denials
- stats

Debts
Housing
Travel costs

Taking Justice into Custody **Report - Ineffective participation in legal processes & systemic environment**

**'Tokenised, silenced': new research reveals Indigenous public servants' experiences of racism**
https://theconversation.com/tokenised-silenced-new-research-reveals-indigenous-public-servants-experiences-of-racism-141372

> *Research published in March 2020 by KWOOP found the number of women in NSW jails between March 2013 and June 2019 had risen by 33 per cent to 946. Almost a third of women prisoners were Indigenous despite making up less than 3 per cent of the population.*

*Aboriginal and Torres Strait Islander Social Justice Commissioner, June Oscar, said "urgent action" was needed. "It causes immense distress and disturbance to family and community life,"*

*The research found the growth in the number of women in prison was due to a 66 per cent increase in the proportion of women on remand, not a rise in crime. Indigenous women were on average waiting 34 to 58 days for bail, yet in the majority of cases women on remand were not given a sentence.*

*The Inspector of Custodial Services, Fiona Rafter, expressed concern in January that Indigenous women were 21 times more likely to be incarcerated than non-Indigenous women.*

*Both KWOOP and the Inspector of Custodial Care said there was an urgent need for greater access to lawyers, changes to bail legislation, early intervention for those at risk of incarceration, alternatives to imprisonment and support to reduce re-offending.*

*Ms Oscar has backed those calls, telling the ABC "urgent systemic reform" was needed "to provide the necessary supports for children, women, families and communities, and prevent entrenching these problems for the next generation".*

*"What's needed is a community-led, trauma-informed preventative approach that tackles the entrenched social and economic disadvantage behind most of the minor crimes our women are incarcerated for."*

*Of the 2,760 women released from prison each year about one third, or around 883, become homeless.*

*The research found homelessness was a major cause of women returning to prison within nine months of release.*

*Mr Speakman said he acknowledged the report's call for "greater scrutiny and review of sentencing practices, bail conditions and the role of police", as well as more government resources to reduce recidivism.*

**Statement from Richard Harvey, President of the Law Society of NSW**

***"The Law Society of NSW has repeatedly raised concerns on behalf of the state's solicitors in relation to the swelling numbers in the state's prisons, and the justice system as a whole.***

*"Figures released today by the NSW Bureau of Crime Statistics and Research (BOCSAR) show the NSW prison population rose by 3.6% or 470 people in 2019 to 13,635 and is approaching an all-time high.*

*"The high prison population is putting significant pressure upon an already struggling system resulting in a substantial and continually increasing backlog in our courts and delays in justice – all at a time when our legal aid system is under increasing pressure.*

*"The ongoing increases in the NSW prison population, as confirmed in these latest figures, coincide with a record investment in our state's prisons.*

*"Incarceration is also expensive with figures suggesting that the daily cost of keeping a person in custody is more than $180 per day.*

*"It's clear that instead of pouring money into the prisons, the NSW Government needs to invest in early intervention strategies, expand the NSW Drug Court to Dubbo, better resource community-based health treatment such as drug and alcohol rehabilitation centres and introduce further reforms to better enable courts to impose alternatives to full time imprisonment.*

*"We also need a coordinated national response from Commonwealth, State and Territory Governments to address the over-representation of Indigenous people in the criminal justice system."*

*Imprisonment rates are not driven solely by conditions external to the justice system. They are very strongly affected by factors such as policing, bail and penal policy.*

***We are at a state of emergency, we can't afford any more experiment.*— Shane Phillips, Tribal Warrior Association,**

Blinded by the White: A Comparative Analysis of Jury Challenges on Racial Grounds

- Thalia Anthony and Craig Longman1 University of Technology Sydney, 2016
- www.crimejusticejournal.com IJCJ&SD 2016 6(3): 25-46

*"… Related to this, Indigenous exclusion from juries, according to the courts, is due to Indigenous peoples' deficits rather than deficits in the legal system.*
*Because Australian courts, rather than the victims of racism, have claimed to be the authority on what racism looks like (namely, the existence of overt racist acts), they do not pursue inquiries into why the Indigenous defendant perceives bias when presented with an all-white jury and how this may relate to racial divisions outside the courtroom.8 This lack of inquiry reinforces the colour-blindness of the system and escalates Indigenous community perceptions of jurors' racial prejudice. This section has demonstrated that whiteness is upheld by the courts in three respects. First, courts claim that the jury system accommodates cultural diversity through formal mechanisms. Second, courts regard Indigenous exclusion as a natural consequence of non- Indigenous people being better placed to serve on juries and Indigenous deficit in 'education, lifestyle and attitudes' (Binge v Bennett 1989 42 A Crim R 93: 105). Third, courts perceive the legislated jury process as giving rise to impartiality. These whiteness-privileging approaches normalise whiteness and treat it as preferable.*

*Given the level of ignorance of Aboriginal Justice issues in the non-Aboriginal community—and the level of hatred of Aboriginal Rights in the non-Aboriginal community—and the nationwide saturation media publicity* on the coat of arms theft shock horror by the non-Aboriginal community, it will be impossible for Kevin Buzzacott, Arabunna, to receive a fair trial from a jury of non Aborigines [sic]. (R v Buzzacott 2004: 327)
*However, weeding out individual white jurors alone is unlikely to nullify Indigenous perceptions of all-white jury prejudice. By rejecting challenges to the array of all-white juries across Australia, the United States and Canada, courts maintain the whiteness of the jury institution and colour- blind assumptions that jury selection processes are neutral and fair for Indigenous people. They fail to address the appearance of partiality against Indigenous defendants, and Indigenous victims of a white accused, that flows from the systemic underrepresentation of non-white jurors on jury panels.*

*By dismissing the possibility of unconscious bias, courts reinforce the racial fault lines that systemically favour white people."*

**Kids do not belong in Jail**

***New research from the Australia Institute and Change the Record shows that most Australians agree children as young as 10 years old do not belong in prison, and that Australia's age of criminal responsibility should be increased from 10 years of age to the global median of 14 years of age, or higher.***

***Key findings:***

*> Across Australia, the age of criminal responsibility – the age at which a child can be locked up in prison – is 10 years old, which is out of step with the global median of 14 years old.*

*> Almost three in every four Australians (73%) think the age of criminal responsibility is greater than 10 years.*

*> More than one in two Australians (51%) think the age is 14 years or greater.*
*Only a very small minority of Australians (7%) correctly identify 10 years old as the age of criminal responsibility.*

*> More than one in two Australians (51%) support raising the age of criminal responsibility to 14 years, which is twice as many as those who oppose raising the age to 14 years (26% oppose).*

*"Our research shows most Australians are unaware that in Australia today, children as young as 10 years old can be sent to prison due to Australia's low age of criminal responsibility," said Bill Browne, researcher at the Australia Institute.*

*"10 year old kids belong in primary school, not prison. In fact, more than one in two Australians support raising Australia's criminal age of responsibility to 14 years of age.*

*"Australia's age of criminal responsibility being set at 10 years old is out of step with the rest of the world, where 14 years is the median age of criminal responsibility. This is backed by the Australian Medical Association, Law Council of Australia and Royal College of Australian Physicians, among others, who agree the age of criminal responsibility should be raised to 14 years.*

*"With Aboriginal and Torres Strait Islander children 17 times as likely to be detained as their non-Indigenous peers, justice requires that as a nation, Australian policymakers needs to rethink how to tackle youth offending," Mr Browne said.*

*"We can all agree that children need care, love and support as they are growing up, not handcuffs and prisons. Locking up children as young as ten years old can cause serious harm to a child's health and development and makes it more likely that they will get stuck in the quicksand of the criminal justice system," said Sophie Trevitt, Executive Officer at Change the Record.*

*"The Australia Institute's research shows that not only do most Australians have no idea that such young children can be locked up in youth prisons, but that the majority of Australians agree with the medical science we need to change the laws to keep these kids out of prisons," Ms Trevitt said.*

*On Monday 30th November 2015, the Change the Record Coalition launched a 'Blueprint for Change', This is the first time a broad range of Aboriginal and Torres Strait Islander and non-Indigenous organisations have come together with a concrete plan for Federal, State and Territory Governments to change the record on soaring Aboriginal imprisonment rates and high levels of experienced violence.*

*The Blueprint calls for a whole of government strategy, the setting of justice targets, and a commitment to work in partnership with Aboriginal and Torres Strait Islander communities, their organisations and representatives to drive solutions. (A* ***new approach, which focuses on greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety, address the root causes of violence against women, cut reoffending and imprisonment rates, and build stronger and safer communities.)***

*Many of the solutions are already there. Now we need to make it happen, and do so in a way that empowers Aboriginal and Torres Strait Islander people, communities and services to drive these solutions.*

**PATHWAYS TO JUSTICE—INQUIRY INTO THE INCARCERATION RATE OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES** (Judge Matthew Myers AM, Australian Law Reform Commission Report 133, 2017)

*I, Senator the Hon George Brandis QC, Attorney-General of Australia, refer to the Australian Law Reform Commission, an inquiry into the over-representation of Aboriginal and Torres Strait Islander peoples in our prisons.* ***It is acknowledged that while laws and legal frameworks are an important factor contributing to over-representation, there are many other social, economic, and historic factors that also contribute.*** *It is also acknowledged that while the rate of imprisonment of Aboriginal and Torres Strait Islander peoples, and their contact with the justice system - both as offenders and as victims - significantly exceeds that of non-Indigenous Australians, the majority of Aboriginal and Torres Strait Islander people never commit criminal offences.*

***ALRC should identify and consider other reports, inquiries and action plans including but not limited to: a. the Royal Commission into Aboriginal Deaths in Custody, b. the Royal Commission into the Protection and Detention of Children in the Northern Territory (due to report 1 August 2017), c. Senate Standing Committee on Finance and Public Administration's Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services, d. Senate Standing Committee on Community Affairs' inquiry into Indefinite Detention of People with Cognitive and Psychiatric impairment in Australia, e. Senate Standing Committee on Indigenous Affairs inquiry into Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities, f. reports of the Aboriginal and Torres Strait Islander Social Justice Commissioner, g. the ALRC's inquiries into Family violence and Family violence and Commonwealth laws, and h. the National Plan to Reduce Violence against Women and their Children 2010-2022.***

Doing Time - Time For Doing: Indigenous youth in the criminal justice system

Monday 20 June 2011, the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs tabled the report of its inquiry into the high level of involvement of Indigenous juveniles and young adults in the criminal justice system entitled ***Doing Time - Time For Doing: Indigenous youth in the criminal justice system.***

The National Deaths in Custody Program (NDICP) – e.g. on their website is a **Recent Statistical Report**

Deaths in custody in Australia 2017-18 – published on **20-02-2020.**

**In September 2020, I would expect to see a report (we are after all talking statistics) for 2018-2019, not a report that is 20 months old.**

Circumstances of custodial period In 2017–18, 17 of the 21 deaths in police custody occurred while police were in the process of detaining or attempting to detain the individual (see Table B2). Of these, one involved an Indigenous person and 12 involved non-Indigenous persons. Indigenous status was unknown in four of these 12 deaths. The remaining four deaths occurred in institutional settings, including a police watchhouse cell and a psychiatric hospital. Two of these were Indigenous deaths and two were non-Indigenous deaths. In each year since 1992–93, deaths occurring while police were in the process of detaining an individual have been more frequent than deaths in any other type of custody (see Table C30). – I do not know if this is applicable for NSW, as the table does not show this.

Gannoni A & Bricknell S 2019. *Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody*. Statistical Bulletin no. 17. Canberra: Australian Institute of Criminology. https://www.aic.gov.au/publications/sb/sb17

NDICP data show Indigenous people are now less likely than non-Indigenous people to die in prison custody, largely due to a decrease in the death rate of Indigenous prisoners from 1999–2000 to 2005–06. Coinciding with this decrease in the death rate of Indigenous prisoners is a decrease in the hanging death rate of Indigenous prisoners.

- actual data used was between 1991–92 and 2015–16. Excluded from the analysis are the small number of youth detention deaths recorded during the reference period

More recently, there has been a narrowing in this gap, largely due to an increase in the death rate of Indigenous prisoners (up 63% since 2013–14)

The majority of Indigenous prison deaths from 1991–92 to 2015–16 were due to natural causes (58%; n=140), followed by hanging (32%; n=78; Table A1).

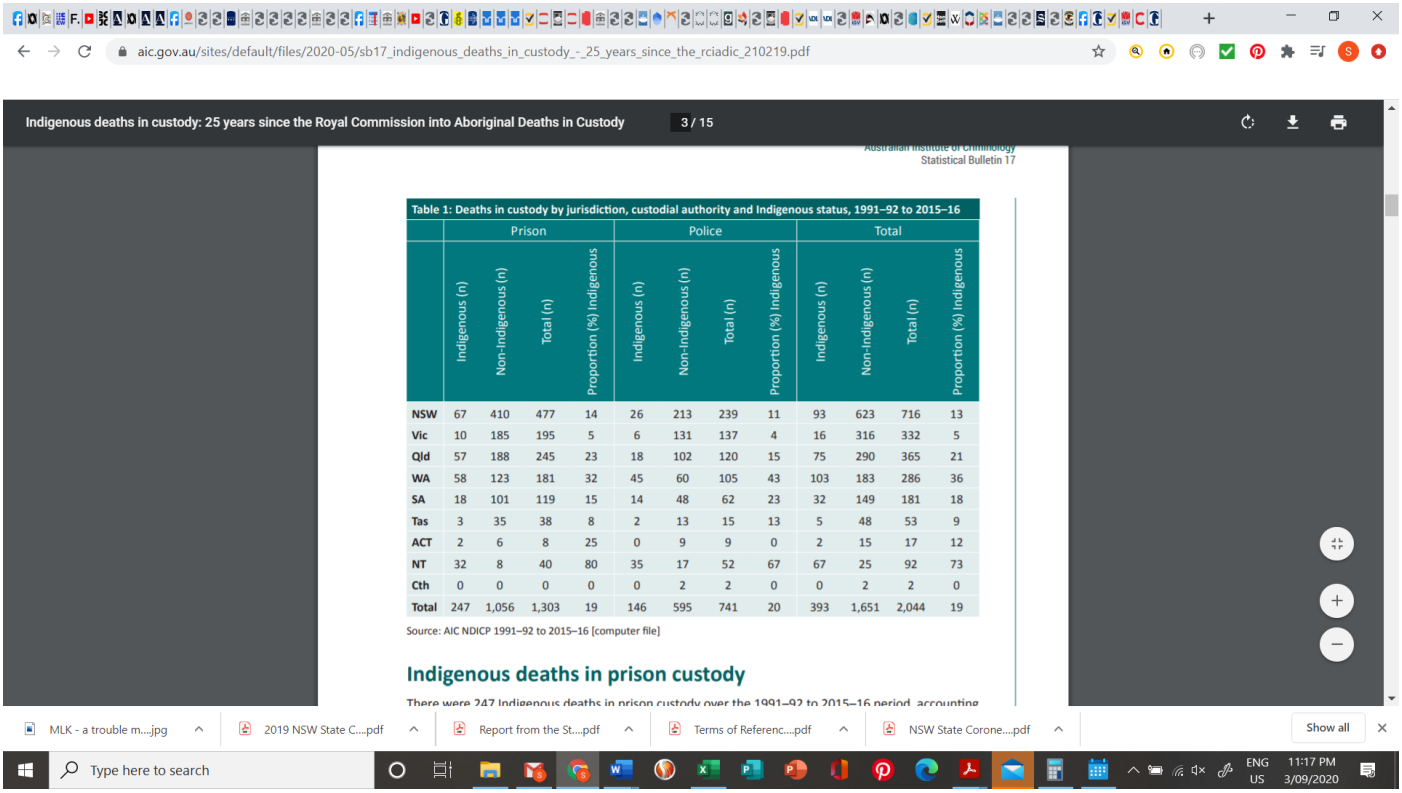
The majority of Indigenous prison deaths from 1991–92 to 2015–16 were due to natural causes (58%; n=140), followed by hanging (32%; n=78; Table A1).

Nearly all self-inflicted deaths among Indigenous prisoners over the period 1991–92 to 2015–16 were due to hanging (90%; n=77). Four were due to external/multiple trauma (5%) and three were due to drugs and/or alcohol (3%). Therefore, trends in self-inflicted deaths largely parallel trends in hanging deaths as described above. Almost half of Indigenous self-inflicted deaths (47%; n=40) during the 1991–92 to 2015–16 period were of persons who had previously attempted suicide, and almost one in three (30%; n=26) were of persons who had been identified as being at risk of self-harm or suicide.

Indigenous deaths in police custody It should be noted that it is not currently possible to calculate rates of death in police custody, due to the absence of reliable data on the number of people placed in police custody each year and the number of people who come into contact with police in custody-related operations.

some clear patterns have emerged. Between 1991–92 and 2015–16, 146 Indigenous deaths in police custody occurred, representing 20 percent of all deaths in police custody.

Table 1: Deaths in custody by jurisdiction, custodial authority and Indigenous status, 1991–92 to 2015–16 Prison Police Total Indigenous (n) Non-Indigenous (n) Total (n) Proportion (%) Indigenous Indigenous (n) Non-Indigenous (n) Total (n) Proportion (%) Indigenous Indigenous (n) Non-Indigenous (n) Total (n) Proportion (%) Indigenous NSW 67 410 477 14 26 213 239 11 93 623 716 13




Recommendations were made in 39 coronial inquests (25 related to police shootings and 14 related to self-inflicted shootings). Most of these recommendations were directed to police agencies and were related to eight main themes: internal policies, training, audio and video recordings of police interactions, internal communication, communication with external parties (including relatives of victims and the media), critical incident procedures, post-incident procedures and investigative integrity. Recommendations were most frequently made in relation to mental illness (36%, n=14).

Despite well intentioned efforts and investments to reduce Indigenous over-representation in the criminal justice system, the gap has widened and Indigenous Australians are now more over-represented in detention and prison populations than they have been at any point in history

Indigenous children are over-represented at each stage of the criminal justice system, being between three and 16 times more likely to be charged by police and seven to 10 times more likely to appear in children's

court than non-Indigenous children (Allard 2011). Indigenous children are 17 times more likely than non-Indigenous children to be under community supervision and 23 times more likely to be in detention, while Indigenous adults are 12 times more likely to be incarcerated than non-Indigenous adults (Australian Institute of Health and Welfare 2019; Productivity Commission 2018). Reducing this over-representation makes sense on social justice and economic grounds.

**Across Australia, children as young as 10 are charged, brought before a court, sentenced and locked up behind bars.**

Despite overwhelming evidence from health experts, social workers, Indigenous leaders, legal experts and human rights organisations, Australian Governments are choosing to lock up children as young as 10 – and ignoring **tested community solutions** that actually help kids.
Kids in prison are less likely to access what they need to grow up resilient, such as education, mentoring and community support. Health experts, social workers, Indigenous leaders and legal experts all have **overwhelming** evidence of the harm prison does – the very last thing we want for kids.

Instead of putting kids this young behind bars, governments can fund Indigenous-led solutions and community programs which have better outcomes for children and communities.

Right now in our state children between 10 and 13 years olds are locked up in prison.
Medical experts say that children's brains are still developing, especially the parts that regulate judgement, decision-making and impulse control. This means that kids cannot foresee the consequences of any action and cannot fully understand the criminal nature of their behaviour.
The UN Committee on the Rights of the Child has called on countries to raise the age to at least 14 years old. China, Russia, Germany, Spain, Sierra Leone, Azerbaijan, Cambodia and Rwanda have taken this step and we must do the same for Australian kids.

***immediately and urgently raise the age of criminal responsibility to at least 14 years old.***
The Australian Capital Territory's Legislative Assembly has voted to raise the age of criminal responsibility from 10 to 14, making it the first Australian jurisdiction to bring its laws in line with United Nations standards.

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*Third, there is considerable churn in the system, with many individuals having repeated contact. On average, each individual who was classified as Indigenous and who was in the early onset (chronic) group had seven finalised youth court appearances. In the adult court, those identified as Indigenous who were in the adolescent onset and early onset (chronic) groups had an average of nine and 21 finalised adult court appearances respectively. Individuals in the chronic offender groups also spent considerable time being supervised on orders. In the chronic offender groups, those identified as Indigenous spent an average of 10 years and those identified as non-Indigenous*

*spent an average of four years on community-based orders and in detention and/or prison between the ages of 10 and 31.*

*Finally, considerable economic benefits would result from reducing offending by those identified as Indigenous in the adolescent onset group and by those identified as Indigenous and non-Indigenous in the early onset (chronic) groups. When the direct criminal justice system costs of individuals in these groups are projected into the future, individuals within these groups account for nearly half of police costs (49%), just over half of court costs (57%) and the vast majority of youth justice (91%) and adult corrections (85%) expenditure for the entire cohort. On average, each Indigenous early onset (chronic) offender will cost $380,097 over their young adulthood, while each non-Indigenous early onset (chronic) offender will cost $74,798 over this period. Each adolescent onset Indigenous offender will cost an average of $57,806 over young adulthood. When the adolescent onset and early onset groups are combined for those in the identified Indigenous cohort, which account for over one-half of that cohort, the average cost of each individual is $208,026. In total, individuals in these three groups represent four percent of the cohort and account for 74 percent of the total cohort costs, with costs primarily related to youth justice and adult corrections expenditure.*

*Implications for policy and practice The project has two main implications for policy and practice. First, the unit cost estimates and the estimates for the trajectory groups that were developed can both serve as key inputs or enablers for cost–benefit analyses or business cases that estimate the costs of changes to current responses in the criminal justice system, or that assess the benefits of prevention programs, interventions targeted at preventing reoffending, or innovative approaches such as justice reinvestment or payment by outcome. These estimates may be particularly useful for programs and approaches that aim to reduce Indigenous over-representation in the criminal justice system, given the relatively high levels of costs associated with the Indigenous offending cohorts.*

*The estimates therefore represent the net present value of future costs and can be used to assess the likely benefits that may result from alternative criminal justice system pathways, programs and approaches.*

*Second, there is a need to reduce Indigenous over-representation in the criminal justice system by ensuring equitable processes at each stage of the criminal justice system and by better identifying the causes of over-representation. This would enable more focused efforts not only to prevent the onset of offending but also to encourage desistence from offending by Indigenous young people (Allard 2011). Indigenous people accounted for three percent of the cohort but 40 percent of total criminal justice system costs. The large proportion of those classified as Indigenous people who were in the adolescent onset and early onset (chronic) groups and the small proportion of individuals classified as non-Indigenous in the early onset (chronic) group would be ideal candidates for prevention activities.*

*Innovative approaches including justice reinvestment and payment by outcome may prove to be effective investment frameworks. There are also a range of early-intervention, community-based, situational and criminal justice activities that could be considered which would reduce the risk factors for offending and enhance protective factors to prevent offending or reduce its reoccurrence (Allard 2011, 2010; Allen 2011; Clear 2011; KPMG 2018; Little & Allard 2011; Little et al. 2011; Ogilvie & Allard 2011). Indeed, the findings provide some support for innovative initiatives that are currently being provided in Queensland by the Department of Child Safety, Youth and Women which may reduce offending such as the Our Way strategy, The First 1000 Days, and Aboriginal and Torres Strait Islander Family Wellbeing Services*

*Conclusion Understanding the offending patterns over the life course of the different trajectory groups promotes long-term thinking about appropriate responses to offending and encourages the use of potentially more resource-intensive early-intervention and criminal justice system programs to prevent offending and reoffending. Multiple intervention points (including intergenerational interventions such as working with the children of prisoners) can be identified to prevent the initiation of offending or— once an individual has engaged in offending—to prevent reoffending and encourage desistence of offending. These intervention points are not restricted to early intervention and can occur at all points in the life cycle; however, there are clearly social and economic benefits to reducing the harms of offending early in life, not only for victims and offenders but also for broader society. In addition, many of these interventions may not directly target offending but may instead target risk factors outside the criminal justice system that are known to be associated with offending, such as mental health, child protection, and school engagement programs. While many of these programs and interventions may appear costly, they may be cost-effective when the magnitude of long-term systems costs are considered.*

*Allard T, McCarthy M & Stewart A 2020. The costs of Indigenous and non-Indigenous offender trajectories.* Trends & issues in crime and criminal justice *no. 594. Canberra: Australian Institute of Criminology. https://www.aic.gov.au/publications/tandi/tandi594*

The costs of Indigenous and non-Indigenous offender trajectories

2016 report - their imprisonment rate has increased significantly since 2012. In particular, Aboriginal women are vastly over-represented in prison and their imprisonment has increased at a greater rate than the rest of the NSW female population.

"I hope that the statistics in this report will be useful in informing the debate about where changes are needed and how we might achieve them, in order to ensure that both women and men feel equally safe and have confidence that justice and service systems will provide them with the support they need." Pru Goward Minister fr Women

**- what debate has happened in the last 4 years, what action has occurred?**

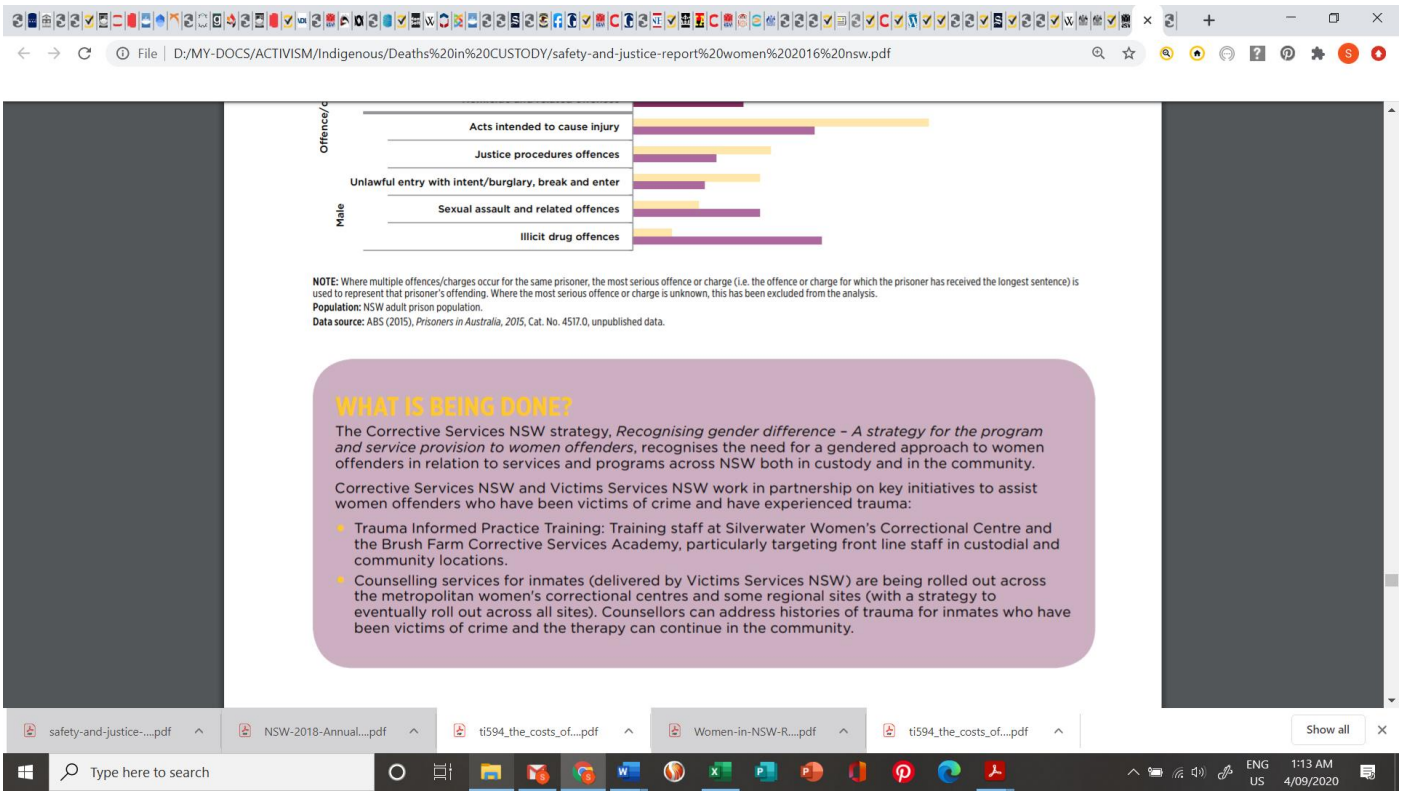
*Since 2012, women's imprisonment rate has increased by an average of 7.2% per year Aboriginal women account for more than one-third of all women prisoners, and are 16.2 times more likely than non-Aboriginal women to be in prison*

*In NSW, as at June 2015, there were 18 girls and 289 boys in custody. Of girls in custody,20 72.2% were Aboriginal, compared with 54.0% of boys.*

*As at 30 June 2015, there were 302 Aboriginal women in NSW adult correctional centres, accounting for just over one-third of all female inmates in NSW. Aboriginal women were 16.2 times more likely than non-Aboriginal women to be in NSW adult correctional centres (the age standardised imprisonment rate for Aboriginal women in 2015 was 411.7 per 100,000, compared to 25.4 per 100,000 for non-Aboriginal women). The over-representation of Aboriginal women in NSW prisons is even higher than that of Aboriginal men—in 2015, Aboriginal men were 11 times more likely to be in prison than non-Aboriginal men of the same age in NSW. In the period 2005–2015, the age-standardised imprisonment rate for Aboriginal women increased by an annual average of 4.4%, compared to 0.5% for non-Aboriginal women (Figure 26). The imprisonment rate for Aboriginal men increased by an average of 3.4% per year during the same period, compared to 0.4% for non-Aboriginal men of the same age in NSW (Figure 27).*

*The top three most common offences or charges for which Aboriginal women were imprisoned in NSW were: acts intended to cause injury; offences against justice procedures, government security and government operations; and theft and related offences (Figure 29)*

**WHAT IS BEING DONE? The Corrective Services NSW strategy, Recognising gender difference – A strategy for the program and service provision to women offenders, recognises the need for a gendered approach to women offenders in relation to services and programs across NSW both in custody and in the community. Corrective Services NSW and Victims Services NSW work in partnership on key initiatives to assist women offenders who have been victims of crime and have experienced trauma: • Trauma Informed Practice Training: Training staff at Silverwater Women's Correctional Centre and the Brush Farm Corrective Services Academy, particularly targeting front line staff in custodial and community locations. • Counselling services for inmates (delivered by Victims Services NSW) are being rolled out across the metropolitan women's correctional centres and some regional sites (with a strategy to eventually roll out across all sites). Counsellors can address histories of trauma for inmates who have been victims of crime and the therapy can continue in the community.**




**2016 Safety and Justice Report**

CRIKEY - **Deaths in custody: sweeping changes, but coroners critical of inquiry JUN 08, 2011**

***"Serious questions about the integrity, accountability and independence of death in custody investigations are still being raised by NSW coroners***

*Coroners openly criticised either the standard of post-death investigations in 13 separate inquests in the past nine years, according to a Crikey analysis of NSW Coroner's annual reports into deaths in custody. **Police investigations were criticised in six separate inquests** and the **Corrective Services' internal investigations unit in 10 inquests.** Missing, damaged and altered evidence, insufficient*

*allocation of resources, and failure to follow proper procedure were among the most common complaints.*

*As recently as December last year, at the inquest into the death of Craig Behr, deputy state coroner Malcolm MacPherson criticised Corrective Services NSW for "the disappearance of certain segments" of key evidence produced under subpoena. He further added: "I strongly suspect that there has been an attempt made … to sanitise/obliterate certain entries" made on documents submitted as evidence to the inquest. He made a formal recommendation directing Corrective Services to immediately release control of all relevant documentation to NSW Police upon a death in custody.*

*Three months earlier, in September 2010, deputy state coroner Paul MacMahon found that NSW Police had not allocated sufficient resources to the investigation into the death of Long Bay prisoner Desmond Walmsley and critical evidence had been lost. Formal recommendations regarding the preservation of physical evidence were made to both the Commissioner for Corrective Services and the Commissioner of Police.*

*These flare-ups between coroners and investigating agencies point to a deeper conflict of interest, says Charandev Singh, a human rights advocate and paralegal with nearly 20 years' experience working on deaths in custody.*

*"There is no form of independent investigation of deaths … It's still police investigating police or corrections investigating corrections or police investigating corrections … and so the coroner, who is meant to be independent, relies on an investigation that has no independence at all or partial independence at best," he said. "It's an intractable conflict of interest that's been allowed to fester. It's one of the reasons why deaths continue — because it confers a level of impunity that perpetuates the conditions … that give rise to deaths in custody."*

*The Department of Corrective Services' internal investigations unit, which investigates deaths in custody, is mainly comprised of ex-police and ex-correctional officers. The branch co-operates closely with the police assigned to investigate deaths in custody and makes recommendations aimed at helping the departments to avoid similar deaths in the future. However, former DCS investigator-turned-whistleblower William Beale says the department's internal investigations "could have been done a lot better".*

*"[The unit], unfortunately, didn't make much of a contribution to the improvement of the department, in my view," he said. "There were instances myself and other investigators were told to take stuff out of reports … [and] we were never told [whether or not officers were disciplined for breaches of procedure]. We'd do a brief, it went up and that was it. We had no feedback whatsoever, which I thought was a bit strange."*

*Moreover, the unit's recommendations were rarely implemented, he said: "A death in custody doesn't happen in a vacuum. There are generally issues involved somewhere and, generally, the investigations would make a recommendation about improving systems … [However] very few of those recommendations for change were ever reflected."*

*Beale resigned from the Internal Investigations Branch in November 2007 after discovering that his report into the death of Aboriginal inmate Adam Shipley had been "buried" and replaced with a less critical one. Beale's report, examined at the 2009 inquest into the death, pointed to a number of systemic failures on the part of Corrective Services.*

*"It just lacked complete integrity … [My] recommendations — reasonable recommendations, I thought they were — were canned in a cover up to protect the Department. There would have been no other reason," Beale said.*

*"The whole issue was more important than the minister. It was more important than Corrective Services. It was more important than my boss and more important than my job. It was a matter of lives being at risk."*

*Catriona McComish, a former senior assistant commissioner with Corrective Services NSW, says it is unsurprising that the department would change, bury or otherwise ignore the reports of its own investigators.*

*"The internal investigations unit, like every other area of the department … [is about] furthering the image of the department or protecting the department … You only investigate if you know exactly what's going to be written and what the outcome will be," she said. "There wouldn't be feedback on their reports and recommendations wouldn't be followed because they're just there to protect an image and serve a purpose … [O]pen and honest inquiry is not what's wanted and certainly won't be appreciated."*

*McComish said the unit serves a political purpose that is at odds with what investigators such as Beale may believe is their job: "When something is going to a coroner's inquest, there is a tremendous amount of work put in to second-guess what the coroner's likely to say and to put things in place so that it isn't a headline when the coroner's inquiry comes out … [It's] about ensuring there's no political damage and that the organisation can be seen to be responsive."*

*The strategy works. Numerous written findings from the past nine years document coroners' decisions not to make formal recommendations based on the strength of the internal investigation unit's recommendations and the department's assurances that faults have been, or are being, remedied. Breaches of Recommendation 165 of the Royal Commission on the removal of hanging points in jail cells are a common example. Between 2001 and 2009, NSW coroners investigated more than 40 hanging deaths in NSW jails yet the issue of hanging points was raised in the written findings of less than half the inquests and formal recommendations made in only seven cases.*

*Commentators, lawyers and families say coroners are failing to deliver on the grave responsibilities set out in Royal Commission Recommendation 13, "that a coroner inquiring into a death in custody be required to make findings … and to make such recommendations as are deemed appropriate with a view to preventing further custodial deaths".*

*"There is no other organisation in Australian society that is responsible and has the powers to investigate an avoidable death … to call people to account, to get witness statements, to get documents, to get reports, to get into the truth of the matter and … [do] something to avoid death in the future," said Ray Watterson, a coronial law expert and adjunct professor at La Trobe University. "And yet [the coronial system] is … incredibly under-appreciated and incredibly under-utilised."*

*The Royal Commission was unequivocal about the vital importance — as well as the appalling failures — of post-death investigations. "In very few cases prior to the establishment of the commission was the investigation into death other than perfunctory and from a narrow focus and the coronial inquest mirrored the faults in the investigations," commissioner Elliott Johnston wrote in the final report. "It must never again be the case that a death in custody, of Aboriginal or non-Aboriginal persons, will not lead to rigorous and accountable investigations and a comprehensive coronial inquiry."*

*The commissioners made 34 recommendations calling for a major overhaul of the entire system for investigating deaths in custody. Several recommendations were concerned with ensuring the coroner had the power and authority to direct investigations rather than being reliant on the police or corrections. While this power has been legally recognised in a few states and territories, in other jurisdictions it is "a matter of custom and practice", says Singh.*

*"Some coroners are more interventionist; some are not interventionist at all. In my experience there's routinely very little direction of police in the course of their investigation," he said. "Effective direction of an investigation is being there on the ground every day … Coroners haven't fought for the infrastructure and resources required to undertake effective and independent investigation of deaths in custody."*

*Similarly, recommendation 12 — that coroners "be required by law to investigate not only the cause and circumstances of the death but also the quality of the care, treatment and supervision of the*

*deceased prior to death" — has been incorporated into the Coroners Act in only two jurisdictions: the ACT and, recently, Victoria. In jurisdictions where the responsibility of the coroner to look at underlying causes is not incorporated in law, it is up to individual coroners to decide how deeply to investigate.*

*"The Victorian legislation [which came into force in November 2009] … made it very clear that underlying causes and recommendations for prevention were of primary importance in the coronial process, along with finding the true cause of death. We don't have in NSW or many other jurisdictions … Cultural change is taking place in all the jurisdictions throughout Australia, including NSW, but it's been ad hoc and piecemeal," Watterson said.*

*Perhaps more alarming than the reluctance of the government and courts to enforce the coroner's preventative role is what happens to coroners' formal recommendations.*

*"[N]obody knows what happens to them," Watterson said. Most simply disappear.*

*Watterson and the NSW Aboriginal Legal Service published the first and only national study of the implementation of coroners' recommendations in 2006. The study found that less than half of the 500 recommendations made by NSW coroners in 2004 had been implemented, placing NSW among the worst jurisdictions in the country.*

*A disturbing number of coronial recommendations seem to have been lost in transition, Watterson said: "We made a number of enquiries to government agencies only to be told that they didn't know what we were talking about — that is, they didn't know that there was a coronial recommendation."*

*In June 2009, the NSW government issued a premier's directive requiring all government departments to respond to coronial recommendations within six months. They are under no obligation to respond to recommendations made before the directive came into force.*

*"It's a step in the right direction, but really just a first step," said Watterson. What is urgently needed is a national mandatory reporting scheme for all coronial recommendations — precisely what the Royal Commission called for 20 years ago, he says.*

*"As the Royal Commission showed, the question of deaths in custody is a national question. All avoidable deaths are a national question … At the end of the day, it really comes down to how important governments think people's lives are."*

***Cover up?***

*The 2009 inquest into the death of Aboriginal inmate Adam Shipley raised serious doubts about the integrity and accountability of Corrrective Services' internal investigations branch.*

*Former DCS investigator-turned-whistleblower William Beale resigned from the branch in November 2007 after discovering that his report into Shipley's death was "buried" and replaced with a far less detailed and comprehensive report.*

*NSW State Coroner Mary Jerram compared the Beale's report and its replacement in her written findings: "Mr Beale's report is detailed, relevant in the main, and compassionate … In it, he is critical of the fact that there was no evidence of a co-ordinated, ongoing and proactive management of (Adam) as someone at risk. He makes a number of (apparently unwanted) suggestions and recommendations for an improved plan for such inmates."*

*By contrast, Jerram describes the substitute report by Beale's colleague, Investigator Paul Coyne, as "of narrow focus, and silent upon many relevant issues concerning the treatment and lack of care of Adam, as well as upon any systemic issues whatsoever".*

*She added that Coyne "did not interview any personnel involved in the matter at all … nor had he read the report of the 'Royal Commission Aboriginal Deaths in Custody'."*

*But the problems displayed in Coyne's report were not isolated to this instance, Jerram found. "The report format required by the Investigations Branch of the DCS is in my view inadequate in that it elicits very little information other than the utterly basic," the findings continue.*

*"For [the director of the unit] to have preferred the cursory and repetitive report of Mr Coyne defies belief that there was any real desire on the part of the DCS to explore the circumstances of Adam's death."*
*Although she declined to make any finding as to Beale's allegations of a cover-up, Jerram made strong recommendations that the department undertake a review of its internal investigations branch and the requirements of its investigators' reports.*
*"The question is raised … of the usefulness of [the department's] own Investigation Branch and its protocols. If investigatory reports are not to look at all aspects of a death and to make recommendations, for whose good are they? Of what use? How do they assist in the reduction in future deaths?"*
*She noted that it would be "improper … to make any finding relating to [the reports], and that the matter had been referred to the Independent Commission Against Corruption".*
*ICAC has refused to confirm whether or not it is investigating, or even if it has received the matter at all. Neither Beale nor Shipley's mother, Lynette, have heard from the commission.*
*"In the light of Adam Shipley and those grave disclosures, you'd have to be very concerned … [N]one of us know in the community know for how long and how deeply those practices have gone on. In how many other deaths … have those practices shaped the kind of evidence that's been provided to families and coroners and made their way into findings?" said Charandev Singh, a paralegal who has worked extensively on deaths in custody.*
*https://www.crikey.com.au/2011/06/08/deaths-in-custody-sweeping-changes-but-coroners-critical-of-inquiry/*

"That's the problem with corruption and maladministration — you don't know how deep it goes."

***From* https://www.familymatters.org.au/because-of-them-we-must-tony-mcavoy/**

**Australia's first Indigenous Senior Counsel, Tony McAvoy SC is a Wirdi man who is Co-Chair of the Indigenous Legal Issues Committee of the Law Council of Australia, and has recently assisted the Royal Commission into Youth Detention in the Northern Territory:**

*"My roles as Co-Senior Counsel assisting the Royal Commission into the Protection and Detention of Children in the Northern Territory in 2016-17 and a lifetime working in the legal and government sector as a Wirdi man have pressed deeply on me the need for a fundamentally different approach to child protection as it relates to Aboriginal children.*

*The primary constitutional responsibility for children in Australia rests with the states and territories. However, as with many other areas of legislative responsibility, there are overlaying international obligations that relate to children arising from the United Nations Convention on the Rights of the Child. In addition, the Commonwealth bears the international responsibility for compliance with the International Convention on the Elimination of all forms of Racial Discrimination, and conformity with the international norms set out in the United Nations Declaration on the Rights of the Child.*

*It is my personal view that the Federal Parliament could, in exercise of its external affairs powers, regulate the child protection space in much the same manner as the Canadian parliament has regulated youth criminal justice. Indeed, given the growing number*

*Indigenous child protection notifications and removals amongst the Australian states and territories, and their failure to implement or fully implement most recommendations from the most recent round of inquiries, there is a strong case that the Federal Government should intervene.*

*National child protection legislation could provide for:*

- *Accreditation of state and territory processes, including those to ensure that the Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP) is applied;*
- *Development of minimum standards;*
- *Access to the Federal Courts system if in the absence of accreditation or compliance with standards; and*
- *An Aboriginal and Torres Strait Islander Children's Commissioner.*

*A strong case can also be made for national standardisation of the youth criminal justice system.*

*Enabling Aboriginal and Torres Strait Islanders communities*

*Recommendations from every inquiry and report into child protection and child detention since the Royal Commission into Aboriginal and Torres Strait Islander Deaths in Custody in 1991 have in some manner been directed at the empowerment of the communities in which the children live. There is no need for any other inquiry to tell government this message.*

*Contrary to this message being delivered by Aboriginal and Torres Strait Islander communities and spokespeople – as well as national and international child development experts, various government and non-government policy experts, and being reinforced in international human rights norms – federal, state and territory governments have consistently disempowered Aboriginal and Torres Strait Islander communities and attempted to mainstream and minimise those services.*

*If Aboriginal and Torres Strait Islander communities are not enabled and empowered to achieve community and family health and wellbeing then all other measures to address the over-representation of Aboriginal and Torres Strait Islander children are doomed to failure.*

*Aboriginal and Torres Strait Islander Child Placement Principle (ATSICPP)*

*The ATSICPP was designed to redress the disproportionate rate of Aboriginal and Torres Strait Islander children being adopted or placed in out-of-home care with non-Indigenous carers, and to reinforce the centrality of culture in the safety and wellbeing of our children, and to increase the self-determination of Aboriginal and Torres Strait Islander peoples in child welfare. It provides a basic mechanism by which decisions about the placement of Aboriginal and Torres Strait Islander children in need of out-of-home care could be made with the family and communities to which the child belongs. The mechanism relies upon being able to seek the advice of the child's community (however that may be represented), before determining where to place the child. For this to operate effectively, some community infrastructure is required. With the exception perhaps of the arrangements between the Victorian Government and the Victorian Aboriginal Child Care Agency (VACCA), this*

*infrastructure does not exist at the community level where it is required, and state and territory governments have failed to support its establishment.*

*The failure to achieve this fundamental element of the ATSICPP allows decisions to be made on an ad hoc basis and removes any prospect of consistent and transparent process, exacerbating existing trauma.*

*The way forward*

*There are many changes that need to be made to the child protection systems in place in Australia, including many that are cost neutral and could be described as fine-tuning aspects of the systems that are operating effectively. However, the problems that have led to the huge disparity in notifications and consequential interactions with the child protection system are structural, and require structural responses.*

*The removal of Aboriginal and Torres Strait Islander children from their families is also political. No matter whether it is cloaked in the mantra of* ***child safety****, the impoverishment and disempowerment of Aboriginal and Torres Strait Islander people is inextricably linked to the circumstances in which our communities and children exist. Culturally appropriate solutions must be found, not the removal of our children based upon a failure to comply with the norms and values of western culture – one which has led to the impoverishment and disempowerment we now see."* **Tony McAvoy SC**

**MENTAL HEALTH SERVICE PLANNING FOR ABORIGINAL PEOPLE IN NEW SOUTH WALES -**
**By the New South Wales Auditor-General https://apo.org.au/node/256681 - A U G . 2 0 1 9 extracts:**

*Mental illness (including substance use disorders) is the main contributor to lower life expectancy and increased mortality in the Aboriginal population of New South Wales.*

*In acknowledgement of the significant health disparities between Aboriginal and non Aboriginal people, NSW Health implemented the NSW Aboriginal Health Plan 2013 2023 (the Aboriginal Health Plan). The overarching message of the Aboriginal Health Plan is 'to build respectful, trusting and effective partnerships with Aboriginal communities' and to implement 'integrated planning and service delivery' with sector partners. Through the Plan, NSW Health commits to providing culturally appropriate and 'holistic approaches to the health of Aboriginal people'.*

*The NSW Health network includes 15 Local Health Districts and the Justice Health and Forensic Mental Health Network that provide care to patients during acute and severe phases of mental illness in hospitals, prisons and community service environments. This includes care to Aboriginal patients in the community at rates that are more than four times higher than the non Aboriginal population. Community services are usually provided as follow up after acute admissions or interactions with hospital services. The environments where NSW Health delivers mental health care include: …*

- *custodial mental health services in adult prisons and juvenile justice centres.*

*The NSW Government is reforming its mental health funding model to incrementally shift the balance from hospital care to enhanced community care. In 2018–19, the NSW Government committed $400 million over four years into early intervention and specialist community mental health teams.*

***Conclusions:***

- ***NSW Health is not meeting the objectives of the NSW Aboriginal Health Plan, to form effective partnerships with Aboriginal Community Controlled Health Services and Aboriginal communities to plan, design and deliver mental health services.***
- ***There is limited evidence that existing partnerships between NSW Health and Aboriginal communities meet its own commitment to use the 'knowledge and expertise of the Aboriginal community (to) guide the health system at every level, including (for) the identification of key issues, the development of policy solutions, the structuring and delivery of services' 3 and the development of culturally appropriate models of mental health care.***
- *NSW Health is planning and coordinating its resources to support Aboriginal people in acute phases of mental illness in hospital environments. However, it is not effectively planning for the supply and delivery of sufficient mental health services to assist Aboriginal patients to manage mental illness in community environments. Existing planning approaches, data and systems are insufficient to guide the $400 million investment into community mental health services announced in the 2018–19 Budget.*
- ***NSW Health is not consistently forming partnerships to ensure coordinated care for patients as they move between mental health services. There is no policy to guide this process and practices are not systematised or widespread.***

*NSW Health provides limited support to assist Aboriginal people with mental illness on release from prison Aboriginal people diagnosed with mental illness are not consistently supported by Justice Health to transition to the community with prescribed medications, a discharge summary or a referral to a mental health service after release from prison. Justice Health staff in larger prisons with more than 100 inmates have difficulty following up on patients. When inmates are released from prison without notice, usually straight from court, there is no pre-planning to support their release. In some instances, communication with Corrective Services staff is not occurring and Justice Health are not aware of pending court dates. In other instances, Justice Health staff report that they have competing work priorities and are unable to follow-up on patients after release. That said, in respect of Justice Health's role: • there is no key performance indicator (KPI) requiring Justice Health to report on the numbers of patients receiving discharge summaries and medications within seven days of their release • Justice Health has not directed resources to support the transition of adults to community mental health services post release • patient medical records and discharge summaries are held for two weeks at the prison where the patient was released. After the two-week period, patient records are not available to external medical agencies to ensure continuity of medications and care in the community.*

**ARE THEY ON TARGET???**

*2. Recommendations, in partnership with Aboriginal mental health clinicians and policy experts, NSW Health should:*

***2. Finalise and publish an Aboriginal mental health policy framework that includes:***

*new key performance indicators and performance reporting on follow-up actions that: support information sharing and referrals of Aboriginal people to community-based mental health services ensure follow-up actions to support mental health patients on release from prison so that they receive seven days of medication, referrals and discharge summaries.*

*Mental illness in custodial environments*

*Aboriginal people are significantly overrepresented in prisons, constituting approximately 25 per cent of the adult prison population of New South Wales. They are more than 13 times more likely to be incarcerated than non-Aboriginal people. According to Justice Health patient surveys, 80 per cent of incarcerated Aboriginal women and 66 per cent of incarcerated Aboriginal men had been diagnosed with a mental illness in 2015, compared to 78 per cent of female and 63 per cent of male inmates in the general prison population. Diagnoses included schizophrenia, psychosis, alcohol and drug dependence, and post-traumatic stress disorder**. In 2015–16, Aboriginal young people were 24 times more likely to be in juvenile detention in New South Wales than non-Aboriginal young people.** These rates have been escalating since 2009–10, when the rate of Aboriginal young people in custody was 19 times that of other young people. Rates of mental illness amongst Aboriginal young people in custody are higher than rates of non-Aboriginal detainees. In 2015–16, 87 per cent of Aboriginal young people in juvenile detention had a diagnosed mental illness compared with 79 per cent of all other young people. Diagnoses include psychological, behavioural, attentional and substance use disorders*

*1.2 Responsibility for delivering mental health services*

*The New South Wales mental health service network - NSW Health delivers a range of mental health services in a complex sector that also includes Commonwealth and non-government mental health providers. NSW Health delivers mental health services including:*

*• custodial mental health services in adult prisons and juvenile justice centres for the general prison population*

*• specialised mental health services for Justice Health patients requiring psychiatric inpatient care in forensic hospitals and other hospital care for self-harm or addictions.*

*The Justice Health and Forensic Mental Health Network (Justice Health) is a statewide health service for adults and juveniles in custody. Justice Health provides services for over 30,000 patients annually. There are 17 psychiatry clinics providing services in approximately half of the New South Wales prisons. The remaining prisons use video conferencing to connect patients with psychiatry services.*

*Appropriate mental health care for Aboriginal people Aboriginal people face significant barriers in accessing mental health services. A key factor influencing the level of access to mental health care is the cultural appropriateness of care. Most publicly funded mental health care in New South Wales is based on Western therapeutic models. Services are short term and generally provide support during a crisis situation. With the exception of the Aboriginal Community Controlled Health Services, the mental health sector is predominantly staffed by non-Aboriginal people. As part of this audit, we sought advice from Aboriginal mental health clinicians and policy makers about what constitutes appropriate mental health care for Aboriginal people. They advised that appropriate mental health care for Aboriginal people is: 1. culturally safe, allowing Aboriginal people to draw strength from their identity, culture and community 2. person centred and focussed on individual needs 3. delivered by culturally competent staff with no bias 4. holistic, trauma-informed and focussed on*

*early intervention where possible 5. delivered in places that are appropriate including outreach to homes and communities 6. welcoming of the involvement of local Aboriginal community and connected to local knowledge and expertise including totems and kinship structures. Throughout this report, assessments about the 'appropriateness' of NSW Health mental health care are based on these six principles and the strategic directions of the NSW Aboriginal Health Plan 2013-2023 that apply to appropriate Aboriginal health care at Appendix two. Section Four of this report describes appropriate care in more detail*

*An Aboriginal mental health clinician from one Local Health District described the lack of policy impacts on the workforce in the following terms: 'There's no overarching, strategic process that drives a plan for mental health. No advice cascading down from the executive. No formalised, coordinated approach to how we do business. No identification of what's working where and no standardising of practice across Districts. There's no literature review, no project plan, and no coordination. It's not sustainable. All practice is at the whim of individual clinicians. It's one-off, not written up and not used to provide an evidence base.' NSW Health advises that they are developing a new Aboriginal mental health policy, though there is no timeframe for its completion.*

*2.3 Planning mental health services for Aboriginal people in prisons*

*Justice Health delivers mental health services to the general population of adults and juveniles in prisons as well as specialist mental health services in forensic and prison hospitals. Justice Health receives block funding from the Ministry based on prison population data. Growth funding is based on Corrective Services projections of future bed expansions. The Justice Health service model is based on a core staff profile at each prison, generally a small number of nurses and a GP for a few hours a week. Those prisons with infrequent access to a GP use video conferencing for doctor and specialist services.*

***Insufficient data to inform and plan mental health services in prisons*** *- Justice Health does not have sufficient data to effectively plan for patient mental health needs or predict future service requirements. Justice Health has a hybrid medical record system (electronic and paper based) which does not include electronic management of patient medications. Patient health information is recorded on multiple systems including the Justice Health electronic Health System (JHeHS), paper files, the Patient Administration System (PAS), and other databases such as the Community Health Information Management Enterprise (CHIME). 18 NSW Auditor-General's Report to Parliament | Mental health service planning for Aboriginal people in New South Wales |*

***Mental health service planning***

> ***While there are extensive individual patient files, Justice Health does not have reliable aggregate data on the mental health conditions or the medications of its patients across the New South Wales prison system****. The most recent New South Wales data on patient mental health diagnoses and medications in prisons is from the Aboriginal Network Patient Health Survey conducted in 2015. The multiple information management systems do not provide reliable information about the demand for mental health services in prisons, the needs of patient cohorts, and the broader patient medication profile across New South Wales. Justice Health is not able to aggregate patient information by frequency of patient interactions, treatment types, or prescribed medications. The limitations of patient information are further compromised by the fact that as many as 1,500 inmates per day are moved between the 39 adult prisons in New South Wales to be close to courts, or to assist with population management across the prison network. Adults incarcerated in prisons and young people in custody do not have access to Medicare.*

*Justice Health does not access patients' Medicare numbers or other linking information that could be used to track medical records information in the community. This impedes the ability of Justice Health to follow patient journeys or to evaluate the effectiveness of their services.* ***The complex and hybrid nature of this data management system seriously impedes the ability of Justice Health to share health information across the prison network and plan for current and future service demand.***

***More planning is required to improve wait times for health services in prisons***

*Wait times for health services in prisons can vary depending on the acuity of the patient and the size of the prison population. In one custodial facility, the current wait time for a mental health nurse is 88 days. In another custodial facility, the wait time is 170 days for semi-urgent mental health care. The longest reported wait time for non-urgent mental health care is over one year. In large prisons with more than 100 inmates, wait times for non-urgent health services are generally longer than in smaller prisons, where patients are more likely to receive treatments within a matter of weeks. Justice Health policy specifies that patients with non-urgent medical needs require attention within 14 days to three months. While long wait times may not always breach policy guidelines, Justice Health staff report that long wait times are not optimum for patient health. At each prison, Justice Health staff record the average wait times for health services with categories based on clinical priority (urgency and acuity).*

*This information is aggregated centrally by Justice Health, but is not used to plan staffing ratios or resource levels across the prison network. The ratios of nurses to patients differ significantly across New South Wales prisons. Some prisons have a full-time health nurse per 30 patients while other facilities have ratios that approach one nurse per 100 patients. This unequal distribution of services creates inequity of access across the prison network. Justice Health does not have a fixed formula to guide its staffing ratios. There is no nurse to patient ratio in prison health centres. Justice Health advises that nurse staffing is calculated on the size of the prison, the acuity of patients and rural and remoteness factors…*

*3.2 Coordinating mental health care for Aboriginal people in custodial environments*

***Intake processes are not providing timely access to mental health services*** *- When a person first arrives at a custodial facility, they undergo a lengthy intake process. A Corrective Services officer completes several identification and security assessments and records any known information about an inmate's mental health. Corrective Services must advise Justice Health staff immediately if an inmate has: • immediate health concerns • drug or alcohol issues • a Mandatory Notification Form (MNF) in relation to self-harm or suicide • been detained under the Mental Health Act 2007 • a specific court or Parole Board request for psychiatric and/or medical attention.*

> *Justice Health staff also complete an assessment of the patient on intake and list any medications and pre-existing conditions that are disclosed during the process. In urgent cases, when the patient has symptoms of acute mental illness or significant distress, Justice Health may use video conferencing to connect with a psychiatrist or a GP for further assessment and potential medication prescriptions. If the patient's needs are not urgent, Justice Health lists known medications on the patient's file and waitlists the patient for further assessment. Prescriptions for medications are not filled until Justice Health receives a response to their 'Request for Information' from external health providers. This process usually takes 24 to 48 hours but can take significantly longer, depending on the external health provider. In the case of young people in custody, timeframes are also impacted by the requirement for a parent or caregiver to consent to administer medications. Once the*

*information arrives, the patient must wait for an available appointment with a GP or specialist before the medication can be prescribed. Interim medications or services can be provided at any stage via telephone orders to a General Practitioner. For some patients, there can be significant delays in receiving appropriate treatments and medications for mental illness. The factors that impact on access to treatment include: • whether the patient disclosed medications during the intake screening process • information sharing with external services • the wait times for mental health services at the custodial facility • the acuity of the patient • patient movements around the prison network at the discretion of Corrective Services • access to patients in the custodial environment. While more acute patients are likely to receive timely care, less acute patients can be waiting for a follow-up health appointment for weeks or months.*

***Poor access to patients exacerbates wait times for non-acute health services in prisons***

*Factors outside the control of Justice Health can exacerbate wait times for health services. Justice Health relies on Corrective Services staff to bring patients to health appointments. Justice Health has no authority to require that patients be brought to the health centre. Factors that can impede access to health services include security lock downs, poor communication or cooperation between Corrective Services and Justice Health staff, and the movement of inmates for security or operational reasons. According to Justice Health staff from 75 per cent of surveyed custodial centres, the factor that is most likely to improve Aboriginal mental health care is greater access to patients. Justice Health is working with Corrective Services to improve access to patients through benchmarking activities.*

***Adults with mental illnesses are unlikely to be supported on release from large prisons***

*On release from larger prisons with more than 100 inmates, Aboriginal people with mental illness diagnoses are not always supported to transition to the community with prescribed medications, a discharge summary or a referral to a mental health service.*

*According to Justice Health staff at one prison, the 'majority' of mental health patients do not receive medications on release from large prisons, including reception prisons where people are on remand and waiting to be sentenced. Staff at one prison estimated that 50 per cent of patients are released with no medications. At another prison, staff reported that as many as 90 per cent of patients are not provided with medications or discharge summary reports on release. The reasons for poor transitional support on release include: • some inmates are released without notice, usually straight from court and there is no pre-planning to support release • while Justice Health is mandated to complete patient discharge summaries, compliance is inconsistent. There is no key performance indicator (KPI) requiring Justice Health to report on numbers of patients with a discharge summary and medications within seven days of release • Justice Health staff have limited capacity to support the transition of adults to community mental health services and there is limited funding for this role • patient records are held for two weeks at the prison where the patient was released. After the two-week period, records are not always available to external medical agencies. Justice Health does follow information sharing protocols when patients are released from prison on Community Treatment Orders.*

*Mental health support is available on release from small prisons and juvenile justice centres*

*Aboriginal adults released from smaller prisons with less than 100 inmates are supported on transition to the community with medications and discharge summaries. Even in cases where patients are released without notice, Justice Health staff are able to follow-up due to a manageable*

*caseload. Young people released from Juvenile Justice facilities have access to support services provided by the Community Integration Team. This is a voluntary program offering three months of support for young people as they transition to the community on release. Justice Health staff prepare post-release medications and discharge summaries and the Community Integration Team assist in connecting young people to mental health or drug and alcohol services in the community.*

> *Exhibit 5: Case study on coordinated care - In-reach to correctional centres and post-release planning*
>
> *An Aboriginal Family Health Worker on the New South Wales South Coast is providing fortnightly in-reach and holistic case management to Aboriginal women in custody. The service is available for Aboriginal women at three correctional centres in Sydney and their family members. The service is also available to women who have contact with the legal system in the community. The Health Worker assists women to overcome challenges including access to mental health services, drug and alcohol services, family violence or housing services or any other matters where support is required. The Health Worker develops post-release plans for women approaching release and makes connections and referrals to community-based services to support women following release. In 2017–18 the Health Worker supported over 300 women by providing referrals, advocacy and support in accessing programs, services and crisis intervention as needed. The service provides a culturally safe avenue for Aboriginal women to develop support networks to assist in the transition from prison to the community. Since 2013, Justice Health have provided funding for this initiative to the South Coast Women's Health and Welfare Aboriginal Corporation, Waminda. This partnership is formalised via a memorandum of understanding.*

*While visual representations of Aboriginal culture can send welcoming messages to the Aboriginal community,* ***there is limited evidence that models of mental health care have been designed to reflect the cultural and healing requirements of Aboriginal patients.***

***Aboriginal clinicians and policy experts describe the limitations to existing models of mental health care as:***

- ***not person-centred or designed to address the individual circumstances of each patient***
- ***not holistic or trauma informed***
- ***too Westernised and unobservant of Aboriginal culture***
- ***not cognisant of Aboriginal history and trauma.***

***Despite consultations with Aboriginal stakeholders, most mental health care in hospitals and the community is designed on a Western biomedical model of care.***

*In recognition of the need for culturally appropriate care, the Ministry recently published a training resource entitled Working with Aboriginal People: Enhancing Clinical Practice in Mental Health Care. This resource is not a policy directive. It is intended to assist clinicians to provide culturally informed care.*

***The New South Wales mental health workforce lacks culturally informed mental health assessment tools and models of mental health care.***

*In instances where Aboriginal models of care have been implemented, they are a one-off initiative or a short-term trial. The case study at Exhibit 7 is one example of a healing initiative with high levels of attendance by Aboriginal people.* ***There is no plan to expand this type of service model on an ongoing basis, or to trial other culturally informed models of mental health care for Aboriginal people.***

***Limited research into culturally informed models of Aboriginal mental health care***

***Aboriginal staff improve mental health care but there are insufficient staff in most services***

*Appendix one – Response from agency – 'NSW Health provides a suite of services to assist Aboriginal people with mental illness on release from prison'* **– bearing in mind the comments in the above AG/Audit Report above – it appears from this response that NSW Health is not cognisant of its own shortcomings.**

**Why prisoners reoffend: An inside story**

Michael Woodhead (Creative Spirits)

- **No rehabilitation programs. Prisoners get no programs, no education and no training.**
- **No mental stimulation. Prisons offer few books, have no internet access and ban educational material from the outside. Almost all NSW prison teachers were sacked in 2016. Prisoners on remand have no access to anything educational. "There's nothing to do in prison except drugs, play cards or work out in the yard."**
- **Undemanding jobs. Prison jobs are often unskilled and undemanding, making prisoners yearn for "intense enough" jobs to help pass time.**
- **Us-versus-them regime. Prisoners stick together against the "blues" (prison guards). This means the role models and mentors are gang members, bikies and fraudsters, who impress their attitudes and knowledge on young prisoners. This will be what they take to the outside on release day.**
- **Condescending attitudes. The prison system often regards inmates as "oxygen thieves" and treats them as criminals who will never change, with no hope of reform.**

**56% of released prisoners in NSW reoffend and re-enter jail within two years.**

**Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates**

47% Percentage by which the number of Aboriginal people in prison in NSW increased between 2013 and 2020.

Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

Many factors work together and some of them include the following: [37]

**Why are prison rates so high?**

- **Stolen Generations.** Those taken away from their families as a child are twice as likely to be arrested than their peers. Some courts at sentencing don't consider when offenders are traumatised, for example being a victim of domestic abuse. [26]
- **Disconnection from land.** When Aboriginal people are not able to live on their traditional lands they are more likely to come into conflict with the law.

We cannot flee persecution to another country because we are spiritually connected to our own ancestral lands. So jails and mental institutions are full of our people.— *Wadjularbinna Nullyarimma, Gungalidda Elder and member of Aboriginal Tent Embassy [38]*

- **Police behaviour.** Police might act racist, violently or inappropriately (see below for more on this).
- **Offence criminalisation.** Aboriginal people are 15 times more likely to be charged for swearing or offensive behaviour than the rest of the community.
- **Social and economic situation.** Poverty and unemployment, particularly for young Aboriginal people or in rural and remote areas ('crimes of need').
- **Inadequate legal representation.** Legal representatives have little time with their clients and Aboriginal defendants are sometimes unsure whether their lawyer is friend or foe. [11]
- **People's attitude.** Some police and community members have a "law and order" attitude.

We need to be clear, when they talk about 'tough on crime' they mean 'tough on Aboriginal people'.— *Vickie Roach, Yuin Nation, Women's prison rights advocate [26]*

- **Lack of language skills.** Some Aboriginal people are sentenced to jail without them fully understanding the court process because English is not their first language. [39][11]
- **Foetal alcohol syndrome.** Many children enter the justice system because their mother drank too much alcohol during her pregnancy. Her children are often unable to appreciate the consequences of their actions [30] and do prostitution or theft, or both. [40]
- **Health problems.** Life expectancy and overall health are linked to prison and incarceration. Particular health issues drive imprisonment rates, notably mental health conditions, alcohol and other drug use, substance abuse disorders and cognitive disabilities. [41]
- **Family breakdown and violence.** "You can do whatever you like [to help a young offender]," says Queensland barrister Cathy McLennan, "but if they're going home and getting bashed at night, if they're going home and they are starving, they're going to reoffend. That is the reality." [40]
- **Disintegration** seems to manifest in deliberate attempts to strip away Aboriginal culture in some communities. [15]
- **Lack of accommodation.** The Children's Court is often being told imprisonment was the only option. [15]
- **Inflexible funding.** Bureaucracy prohibits progress when programs cannot go ahead due to red tape. [15]
- **Reoffending.** Across Australia more than 70% of prisoners (Aboriginal or non-Aboriginal) reoffend. 38% are back in prison 2 years after their release. [42] This is why Aboriginal incarceration is called 'cyclical'.
- **Inflexible sentencing Acts.** Sentencing options in most, if not all, sentencing Acts are limited and lack flexibility, leading to a high rate of recidivism. [11]
- **Lack of community services.** According to The Medical Journal of Australia, "there is increasing evidence that many people in prison are there as a direct consequence of the shortfall in appropriate community-based health and social services, most notably in the areas of housing, mental health and well-being, substance use, disability and family violence." [21]

- **Childhood trauma.** Leading child psychiatric expert Stephen Stathis observed how lasting and profoundly damaging effects of trauma on children up until the age of three – which in some cases causes permanent brain damage – is connected to adolescent criminal offending. [40]

There's no doubt that prison has a ripple effect on every family, especially if the member in prison was

supporting the family.— *Justice Valerie French, chairman Prisoners Review Board*

Source: Aboriginal prison rates - Creative Spirits, retrieved from

https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

William Bugmy, an Aboriginal man from Wilcannia NSW, first entered juvenile detention when he was 12 years old. [44]
He has a history of domestic violence and separation from family and placements in foster care. He also has mental health and health issues and started using drugs and alcohol from age 12, self medicating for years to "block the voices out".

Mr Bugmy never been to residential rehabilitation, despite requesting it. He self-harms. He does not read or write. He has not had much education.

He spent most of his teenage years 'inside' before transitioning into the adult system often because of altercations with the police.

He has never had an adult birthday in the community. He is 31 years old and from a community where the average life expectancy for a man is 37. Many of his family members are already deceased.

"First jailed at 12 years of age for a six week stint, Mr Bugmy's life thereafter **shows the destructive effect of prison on people**, families and communities," says Solicitor Stephen Lawrence.

Source: Aboriginal prison rates - Creative Spirits, retrieved from
https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

**Non-Aboriginal people are indifferent**

The other side of why Aboriginal prison rates are high appears to be through the indifference of non-Aboriginal people.

Australian governments rely blindly on their departments to find a solution without guiding them. In the past, however, many departments have learnt to exploit this freedom to protect their own interests, rather than those of incarcerated Aboriginal people. They become self-protective and self-preserving.

Police remain hard-hearted and indifferent to prison rates and, in some cases, Aboriginal prisoners themselves. Recommendations of the Royal Commission Into Aboriginal Deaths in Custody were cherry-picked for those that could be accepted without too much change occurring [45].
Aboriginal educator Chris Sarra believes Australians should stop seeing Aboriginal people as a separate group. He writes in *The Guardian*:
"There are mainstream Australians, and then there are the 'other' Australians. Casting Indigenous Australians as a negative and despised form of 'other' explains how we can tolerate or completely ignore

such dreadful incarceration rates. Against this background it is very simple to make such pious and ill-considered statements as, 'If they don't want to go to jail, they shouldn't break the law!'" [46]

You have government departments who say, 'just lock them up. that will solve the problem'.— *Joan Baptie,*

*Magistrate and convenor of the Youth Drug and Alcohol Court of New South Wales*

Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

**"Incredibly trivial offences"**

There is a persistent feeling among Aboriginal communities and legal experts that police treat Aboriginal people differently for trivial offences.

Would you be going to jail for any of these things:

- **Did not receive court mail.** Some Aboriginal people end up in jail because they did not get the postal notifications of court dates after which bench warrants are issued and bail is unlikely. [47]
- **Can't make it to court.** Others simply cannot make it to a court date due to funerals or health problems and courts are too inflexible to change the date. [48]
- **Unpaid fines.** A young Aboriginal woman was held for four days because she hadn't paid her parking fines. [49] Tragically, in this case, the woman died a short time after. According to one Western Australian prison attendant, their prison receives "seven or eight [new inmates] a day" because of unpaid fines, most of them women. [50] An average unpaid fine is about $3,000 with much of it additional fees and charges. [8] (The WA government eventually passed legislation to prevent the imprisonment of fine defaulters in June 2020.)
- **Driving unlicensed.** Youth who might never have seen a traffic light or a freeway have difficulties getting a license because remote communities lack trainers and facilities, and the language used for driving tests is inappropriate. When they then get caught repeatedly driving unlicensed, uninsured and unregistered--a common "trifecta" on court lists--they end up in jail [51]. In many Aboriginal communities only one person holds a drivers license.

  In New South Wales, the Local Court is required to add a further 5-year disqualification period under the Roads and Traffic Authority Traffic Act's Habitual Offender Scheme introduced for people who commit 3 serious traffic offences in 5 years [52]. This means some people who collected too many offences in their youth might get disqualified from driving until they are for example 50 years old. This has dire consequences for the standard of living, finding work and managing children.

Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

- **Disorderly conduct. "Every day of the week we act for Aboriginal people who've been charged with disorderly conduct," says Peter Collins, Legal Director of Aboriginal Legal Services in Western Australia (ALSWA). [54]**

  **"Their crime: To swear at the police. They use the F word, they use the C word. Often they're drunk or affected by drugs or both, or they've got a mental illness or they're homeless or whatever. But it seems to me the only people in this day and age who are offended by the use of the F word and the C**

**word are police. And so these [Aboriginal] people are hauled before the courts for these incredibly trivial offences." In Wickham, Western Australia, Aboriginal people have been arrested for 'shouting'. [55] Many times, police challenge Aboriginal people into such behaviour.**

**Australia has decriminalised abortion, but continues to regard swearing as an offence.**

**Victoria and Queensland are the only states in which a person can be arrested for being drunk in public.**

**In all my years of research in criminal justice, I can tell you it would be very difficult to find a white person charged with shouting or swearing.— *Dr Brian Steels, restorative justice researcher, Murdoch University***

**Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates**

- **Being "selected" by police. Police locking up Aboriginal people for swearing is widespread and known as *selective policing*. Training about Aboriginal culture and awareness could assist police to find better responses.**
  **According to Western Australia Police Commissioner Karl O'Callaghan police are not prejudiced against Aboriginal people or any other racial group. This, however, is a statement which meets little love among Aboriginal communities, and little validation by statistics.**
  **Criminologist Chris Cunneen knows that Aboriginal people are more heavily policed and let off less under discretionary powers. Higher imprisonment rates are not reflective of higher crime rates but harsher sentencing, bail laws, and a move away from alternative sentencing measures. [26]**

**I've spoken to somebody who was arrested because he stole a [piece of] fruit. And another one who was [arrested for] sleeping in the trash bin.— *Victoria Tauli-Corpuz, UN Special Rapporteur, in 2017***

**Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates**


Justice is no longer blind. Dozens of Aboriginal teenagers in north-western NSW were put in jail, compared to just a few non-Aboriginal teenagers [

Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates

**Provocation by police. "There have been a number of instances where our men and women have been flogged or abused by police... When they're going off because of the abuse that's happened to them, they're being put down the back and they've got no support," says Marianne McKay, Co-deputy Chair of the Deaths in Custody Watch Committee of Western Australia [57].**

**Source: Aboriginal prison rates - Creative Spirits, retrieved from https://www.creativespirits.info/aboriginalculture/law/aboriginal-prison-rates**