

**Submission  
No 32**

## **INQUIRY INTO CORONIAL JURISDICTION IN NEW SOUTH WALES**

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## **Submission to the Select Committee on the Coronial jurisdiction in NSW, July 2021**

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### **Summary**

This submission documents insights from Elizabeth Jarrett gained through her experience providing intensive support to First Nations families negotiating the Coronial Inquest process after a loved one has died in police or prison custody. It outlines key problems with the Coronial jurisdiction including:

- The lack of support for First Nations families
- The lack of any consequences for those responsible for First Nations deaths in custody
- The conflicted role of police as the investigators of deaths in custody who provide briefs to the Coroner
- The lack of engagement with families in shaping either the investigation or the inquest
- The narrow terms of reference for inquests and the lack of consideration of structural issues that have contributed to deaths, particularly racism
- The failure to enact key recommendations following inquests or inquiries into deaths in custody
- The hostile environment of the Coroner's Court for First Nations families

### **My role supporting families through the trauma of the Inquest process**

My name is Elizabeth Jarrett and I'm a Gumbaynggirr, Dunghutti and Bundjalung woman who works to advocate for the families of Black people who have died in police or prison custody. I do this work as part of an advocacy project that I lead called JustUs. After many years of purely voluntary work I have recently attracted some philanthropic support for

JustUs. One of my main roles is to provide support at the Coroner's Court during the Inquest into the death of their loved one.

A lot of family members go to the court blindly thinking "This is our day. This is where we get justice. This is where we get real answers and accountability for what happened to our loved one." But that doesn't happen. As I will explain in this submission, families are treated like dirt and their loved one, their beautiful beloved child, brother, sister, uncle, cousin, is treated plainly and simply like just another statistic. The Coronial Inquest just creates more trauma and never delivers justice.

I started doing this work during the Coronial Inquest into the death of David Dungay Jnr, who was my cousin. Anyone in the world can type his name into their mobile phone and see a video of him screaming "I can't breathe" a dozen times, until his last breath. They can see all the guards assaulting him, holding him down and ignoring his cries. My family had to come back to court multiple times and waited so long, because there was never enough time for all the witnesses in the scheduled session. And after all that trauma from the inquest all the family was left with was a grave – they got no justice whatsoever.

I realised there was so much wrong with Coronial Inquests at that time. I contacted other families who have gone through the process and they told me the same story, that after the inquest they were basically told: "Go and suck eggs and cry over a grave". And so I said, "This is not right. I'm going to try and be there for the next Coronial Inquest for any family that would like my assistance". I help explain the process to families in common language. I am a shoulder to cry on. I help deal with lawyers, with the media, with the court itself. I help organise finances for travel, accommodation and food. I co-ordinate volunteers. I am there with them the whole time.

I make it clear to families that the process is going to traumatise them, that there will be legal eagles earning thousands of dollars while their loved one's name is thrown around like trash. I've assisted many families now over the past two years going through inquests. This includes the families of Tane Chatfield, Nathan Reynolds, Rebecca Maher, Bailey Mackander, Danny Whitton, Wayne Fella-Morrison and others.

## **The problem of police leading investigations**

There are many problems with inquests but a key one is that the initial investigation of a death in custody is done by the police. They are the ones on the scene calling the shots and then this information is provided to the Coroner.

Our families believe that the police are always going to protect their own. That's just the reality. Police are also going to protect the prison guards as they are part of the same system that locks up our people. We saw this in the Dungay case. Police did nothing to hold the guards who killed David accountable. The crime scene was cleaned up before the investigation. We have seen that too many times, cells cleaned up before the investigators arrive but there is never accountability for this. We saw it in the TJ Hickey case, young beautiful TJ. Witnesses saw a police vehicle hit that young boy's bike, sending him flying to his death to be impaled on a fence. Lots of that evidence was suppressed but the family knows what's true from witnesses on the ground.

Why aren't inmates brought forward as witnesses when there's a death in prison? Every now and then you might get some inmates who were captured on CCTV. But what about the inmates who know about how the beautiful person who passed away might have been feeling behind bars in the weeks or months before their death. Were they being taunted or abused by the guards? Were they battling demons with drug-related or mental health issues? This kind of thing is not prioritised by police in their investigations, and only rarely by the Coronial Inquest hearings that follow.

Police also can't deal with families appropriately or with respect. Like the case of Rebecca Maher. Her family wasn't told she had passed away for six hours after she died. She was locked up and the Custody Notification Service (CNS) was not used. That one little case there shows you how shady and how dark it can be around the Aboriginal person dying in a cell. In the Dungay case, my Aunty Leetona Dungay, David's mother, wasn't even directly notified. They told her son Ernie and he had to travel to his mother's house.

It should be Aboriginal people doing the investigating, completely independent of the police. We have smart and qualified people in our communities. They would be respectful and families would actually talk to them.

At the moment when our families find out that their loved one has died in custody, the last people they want to talk to is a white cop at your door poking round. Who knows what is happening for that family. People might have warrants, or DOCS might be involved, or they've been abused by police so they go running for the back door when police knock on the door.

The families often have important knowledge about the history or the state of mind of their loved one that has passed away but currently they are not included in the investigation. That needs to change. If there was an independent First Nations body doing the investigating, families could be right alongside in the process. If they see a Black face and it's not the police, they will be more willing to trust and we can get to the truth.

We can also have other non-Indigenous people involved if there is support needed for forensics, medical opinion or other experts. The important thing is that it's not the police.

Right now in Broken Hill we can see the problems with police investigating deaths in custody. Anzac Sullivan died during a police pursuit and the family still don't have any answers. They are in fact being targeted by the police. Police are coming there every second day. They have ransacked houses, made arrests. The family believes this is happening because they are standing up and asking questions about what happened to their loved one.

In small country towns you can be sure that every time a young person dies, then police will go on the attack against traumatised parents, siblings, children. This is still happening to the Dungay family. One nephew can't go to work without getting pulled over for RBT, RDT, whatever the hell they want. It's intimidation tactics. When they pull family members over, or stop them in the street, or come to their house, they comment that they know people are from the Dungay family.

If we could have an Aboriginal body to investigate what has happened when there's a death in custody, this trauma wouldn't be carrying on as brutal as it is now. And we might have some hope of justice.

### **The need for family involvement in Inquests**

One change I want to see is for our families to be far more involved in setting the whole terms of what will be discussed in an Inquest. There are big questions that relate to the issue of why their loved one is dead that never get considered - what were they doing in jail in the first place? Why were they criminalised? Why were they kept on remand for so long? Why were they denied rehabilitation and thrown in a cell?". All we get is the name thrown around like trash – violent offender, drug offender, criminal etc. This makes family members emotional and traumatised. Sometimes families react in a negative way, they start to emotionally implode inside the courthouse. Which then darkens things, makes the Coroner even more edgy.

To stop deaths in custody we need to put aside the stereotypical labels of our people. What in society is making our people statistics as being the highest incarcerated people in the world? The answer is colonisation and the system of racism that is enforced upon our kids every day. Black children are not safe to walk the streets in this society. They are in fear of being stolen by the government, of being harassed and abused by police. They are never given a chance. Sometimes when a system is bearing down upon our kids they react with "fuck this system". They're never going to be seen as anything more than a criminal anyway.

It's very important that families have an actual voice in the Inquests right from the start if we are going to really understand how their loved one ended up dead in a cell. And to stop this from happening.

### **The Coroner's Court is a hostile place for our families**

Our families are forced to turn up to a Coroner's Court that they do not understand and which can be a very hostile place to be. No one is there to greet the family to say, "Hey,

sorry for your circumstances. We're here to try our best to get you through this and so you understand what the process is about". That never happens.

They walk into court and suddenly everyone is talking about "the deceased" - but that's their beautiful child. I've actually been in cases where the family have had to request that the proper name of their loved one is used. Show some humanity please!

The families are supposed to have a legal representative to assist them through the process. But too often I have seen lawyers talk down to families and not respond to their concerns or what they want to see happen with an inquest. Maybe the lawyer hasn't bothered to actually take the family through the brief of evidence so everything is suddenly dumped on them when they are about to go to court. A family's own legal representative can really just be about reinforcing that this is a colonial system that's not here for you, it's here to traumatise and exclude you.

Sometimes the lawyers and Justice Health or Corrections staff all sit and snicker with each other, making snide remarks. This really hurts families who are there having lost their loved ones, often at the hands of these people. The message from that kind of professional behaviour from lawyers is "This is a colony. This is a white Australian way. Get over it".

I've witnessed racist security responses at the Coroner's Court. If it's just a few people from the family and maybe a few allies, there's usually no problem. But if you have a Black family that's really willing to turn up in big numbers, they turn up the security, they start searching people, putting more surveillance on, using metal detectors. That's just disgusting.

There is a really confusing and inconsistent system for financially supporting families who come to inquests. Sometimes we have been able to get money from Corrective Services to cover travel and accommodation. In some recent cases there have actually been Indigenous Corrections staff that have helped reimburse families for these costs. But sometimes I have had to put the money up myself, I have been promised reimbursement by Corrections and then it's never come. So this needs to be sorted out – there needs to be a clear process that is proactively offered to families for how they can access support.

The final point I'll make is about "recommendations". Families never get justice from an Inquest, no one is ever held accountable. The one thing they do hang onto sometimes is that there are recommendations made about changes in practice of Corrections or Justice Health. They hear that word "recommendation" and might think, "Yay! Some change!" But it's not like that. It's just like the Royal Commission into Aboriginal Deaths in Custody 30 years ago. There were so many recommendations that were made that could have saved lives but were never implemented. We see the same thing in the Coroner's Court.

One change we need is that people and agencies need to be held accountable for failing to implement recommendations. If RCIADIC or a previous Coronial Inquest recommended a change, it didn't happen and someone lost their life – someone needs to be punished for that.

I've walked with many families into the Lidcombe Coroner's Court with them, with the family thinking they are going through doors of hope. Now we're calling them the revolving doors of genocide. You walk in with hope and walk out with nothing but feeling gutted. And then the TV cameras are all there wanting a story. What story? One that repeats itself – go and cry over a grave. Go home and get drunk or on substances because you are so traumatised, so you can be the next statistic.