

**Submission
No 39**

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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SUBMISSION TO THE INQUIRY INTO CLOSING THE GAP – OVERCOMING INDIGENOUS DISADVANTAGE

Submission prepared by Simon Luckhurst¹, with advice and input from Mr Arthur Murray², Mrs Rose Hancock³ and Mr Brad Trindall⁴.

This submission will look primarily at the experiences I have reported in regarding three Aboriginal families, with particular regard to:

The impact of incarceration and the criminal justice system on the current (Aboriginal) lifetime expectancy gap (as described in 1(b)(vi) of the committee's Terms of Reference), and opportunities for strengthening cultural resilience within Aboriginal communities in New South Wales with particular examination of the importance of cultural identity and self-determination, ie aspects of 1(e) of the Terms of Reference.

1- Overview of Submission

The interaction of the NSW Police Service and Aboriginal people has been the subject of formal inquiries previously⁵, however many Aboriginal people still regard the police service as little more than state-operated instruments of oppression. Although there are some local initiatives which contribute to the reconciliation process, in a large-scale sense significant progress has yet to be made in this area. Aboriginal representation within the criminal justice system remains alarmingly high, deaths in custody are as prevalent as in the decade preceding the Royal Commission into Aboriginal Deaths in Custody, and the level of trust between police and many Aboriginal people remains highly problematic.

While it can be argued that Aboriginal deaths in police custody themselves contribute to premature mortality amongst Aboriginal people, this submission will argue that there are flow-on effects of deaths in custody and interactions with many Aboriginal people and police and the justice system which may also need to be examined, as in this author's opinion, these effects contribute to premature mortality amongst Aboriginal people.

Firstly, great stress is placed in the family of those who die in custody, particularly if it is felt that the post-death investigative and compensatory processes are lacking or inadequate. This stress has a direct causative link to some diseases (including periodontal

¹ Simon Luckhurst is a writer and researcher who is the author of *Eddie's Country*, a book which looks in detail at the Eddie Murray case. Simon has also written articles for the *Koori Mail* on the Wendy Hancock matter and is currently writing the biography of Stolen Generations member Pauline McLeod.

² Arthur is a Kamilaroi elder, well known in NSW Aboriginal communities for his work in the 1980s promoting the need for a Royal Commission into Aboriginal Deaths in Custody. Arthur lost his son, Eddie Murray, in Wee Waa Police Lockup in 1981.

³ Rose is a Kamilaroi elder, who lost her daughter, Wendy Hancock in Mullawa Women's Prison in 2004

⁴ Brad is a Kamilaroi man, who spent x years as a police officer based in several north-western NSW country towns. Brad won cases in the Federal Magistrate's court in his attempts to overcome systemic racism within his workplace and to have his value as a cultural representative of his people recognized by the NSW Police Service. Brad subsequently left the Police Service.

⁵ For example the Aboriginal Strategic Direction - NSW Police Force, Inquiry into the Progress Towards National Reconciliation, Inquiry into Legal Aid and Access to Justice, Inquiry into issues relating to Redfern/Waterloo, Brewarrina Riot: the Hidden History

diseases, multiple sclerosis, cardio-vascular disease and many others⁶) and also contributes to stress-relieving behaviour which may include 'self medication' with (and overuse of) alcohol, tobacco and other substances. There is also anecdotal evidence to suggest that there are flow-on effects from Aboriginal deaths in custody and (from the perspective of Aboriginal people) dissatisfying experiences between Aboriginal people and police⁷, and the Criminal Justice System (CJC) in general, which infuse some Aboriginal people with a distrust against *all* non-Aboriginal initiatives, including those that portray positive health messages.

Distrust in the state and the legacies of the cycle of removal (whether to foster homes, juvenile placement infrastructure or adult jails) all contribute to drug and alcohol abuse, which then contributes to both further incarceration/ substance abuse episodes as well as premature mortality events.

2- Case 1: Attempts at Finding Justice

Eddie Murray was 21 when he died in 1981. Since that time the Murray family and their legal representatives have attempted to find out the manner of Eddie's death, and the matter was one of the first looked at by the Royal Commission into Aboriginal Deaths in Custody, which the Murray family contributed to establishing.

Despite police incontrovertibly lying at the inquest and at the Royal Commission, officers have never been charged, or even investigated, for contempt of court charges,⁸ and the onus was put on the Murray family to itself gather more evidence in the case if further investigations were to be carried out by the state. The family made the emotionally difficult decision to request the exhumation of Eddie's remains, where significant new evidence appeared to have emerged. No full investigation was instigated, however the NSW Police Integrity Commission carried out a 'preliminary inquiry' which took over three years and failed to produce a public report. Although assurances were made by the Police Minister in 2000 that a failure by the PIC to investigate the matter 'would not be end of the road' the Murray family is still waiting for further action. A recent proposal was made to the NSW Parliament's General Purpose Standing Committee #3 to inquire into the government's handling of the matter (under its mandate to report on Law and Justice and Aboriginal issues), however it took a year-and-a-half for GPSC#3 to decide it

⁶ See, for example, A Review of the Relationship Between Psychosocial Stress and Chronic Disease for Indigenous and African American Peoples at http://www.crcah.org.au/publications/downloads/A_Review_of_the_Relationship.pdf

⁷ In 2001 one in five of all Aboriginal men in NSW had some contact with the CJC.

⁸ None of the four officers on duty at the time of Eddie's death has ever admitted to writing the Occurrence Pad entry for the day of Eddie's death, similarly none of them admitted to assisting the ambulance office remove Eddie's body from the cell- so at least one officer definitely lied to a Royal Commission). The NSW DPP didn't investigate this despite submissions that it should do so, and the Royal Commissioner's findings that other aspects of police evidence in this case given to the Royal Commission were dubious at best, and further examples of lies at worst.

wasn't the appropriate body to examine the case⁹, further undermining the Murray family's faith in the justice system.

Significant discrepancies exist in the matter of Eddie's death, as at least one police officer, if not more, lied to a Royal Commissioner, yet the matter remains unresolved. As a retired lawyer with great knowledge of the case, Noel Olive, put it to the ABC's *Messagestick* program, 'The family doesn't know why their son died in police custody and why they're the only ones who have to pay for it...'

The stresses of the case appear to have contributed to Leila Murray's early death at the age of 62 when she suffered from a sudden attack of kidney failure in 2003. Leila was a confirmed non-drinker who smoked only occasionally, yet the years of fighting and sense of injustice contributed to her ill-health.

This stress of the unresolved nature of Eddie's death also appears to have contributed to the poor health of some of the Murray children. One son is a heroin addict who is in repeated contact with the CJC. Another son is a regular drinker. Of the daughters, only one has retained custody of her children. Others have also had contact with the CJC, and some abuse drugs. All are insistent that the case of their brother has brought them pain and offered them a sense of injustice and lack of faith with white authorities- and these factors all contribute to their ill-health.

While finding an undeniable causative effect for substance abuse and contact with the CJC may be difficult, this author who has intimate knowledge of these people based on comprehensive research¹⁰ and a two-decade long relationship with the family, believes the lack of resolution in the Eddie Murray case has contributed greatly to the ill-health of both parents and children (which is now manifesting in the behaviour of some grandchildren). Many in the family have a lack of faith in the justice system and a lack of belief in the need for Australian laws generally. When Arthur Murray was arrested for public drunkenness in 2004 he demonstrated vocally that this was the case by asking 'whose law' he was being arrested under, and claiming 'there's two laws in this country, one for whites and one for blacks.'¹¹

3- Case 2: *A Lone Voice*

Rose Hancock speaks bitterly of her daughter's death in Mullawa prison in 2004. Wendy died at her own hands despite being in a 'safe' cell. There should have been no hanging points, yet there were hanging points. Her underwear should have been removed so she did not have a means of suspension, however she was able to wear underwear which she later used to put around her neck. She should have been observed every couple of minutes, instead twenty minutes went by where she was not watched.

⁹ The submission to GPSC#3 was made by this author. GPSC#3 did not suggest who would be the appropriate body to investigate...

¹⁰ See the author's history of the Murray family and account of the case, *Eddie's Country* published by Magabala Books, 2006.

¹¹ Quote as described to the author by Arthur Murray.

Wendy's death in her early thirties should not have occurred. This author has calculated eight recommendations made by the Royal Commission into Aboriginal Deaths in Custody were not followed through with, and these omissions all contributed to Wendy's early death.

Rose Hancock, whose life is forever saddened by the loss of her daughter, is struggling with an attempt to seek further legal redress in the matter, not for any sense of demanding compensation, although that may eventually be the form justice she has to accept,¹² but because she wants the state to accept some responsibility for her daughter's death. She wants other mothers, and other families, to be spared the pain that she now knows. She is now suffering the stress of a prolonged legal battle with little organised support.

The state has acknowledged responsibility for Wendy's death only to the extent of holding an inquest, and by the 'counselling' of eight prison officers. No fines were offered, no rigid disciplinary action, no sacking, let alone charges (manslaughter?) against those who were supposed to care for her vulnerable and psychologically damaged child.

Rose says that both she and her remaining family will never be the same again, and many experience feelings of anxiety, depression and stress as a result of losing Wendy.

Wendy's death has contributed to the 'gap' between Aboriginal and non-Aboriginal life expectancy, however without the resolve of the state government to prevent them, the litany of deaths in police and prison custody will continue. Hundreds of millions of dollars were spent on the Royal Commission, and 339 recommendations were made, which looked to care for people who were in custody, and prevent them going into custody in the first place, yet the high rate of Aboriginal deaths in custody continues.

4- Case 3: Attempts to 'Work Within The System'

Brad Trindall was an Aboriginal police officer who was keen to implement Aboriginal-based initiatives within the areas of the north-west NSW that he worked in. Brad readily acknowledged the need for a police presence in cases where it was required, but looked at ways to remove people from the CJC before formal or serious contact ensued.

Brad was known to exit his police vehicle and sit on its bonnet to establish contact with young Aboriginal people on the street, rather than talk to them from the interior of the vehicle. He attempted to instigate programs for bored youths. He examined arrest statistics and asked whether police powers were being used to bring youths in contact with the CJC before it was necessary. He noted, for example, that high rates of Aboriginal youths-being fined for not wearing bicycle helmets which later prevented them from obtaining driving licences if the fines (often accumulated and incurring late

¹² This stress is probably known also by the family of James Brindle, who died in Long Bay Jail in the mid-1990s, as well as many others. The NSW Coroner found prison officers were derelict in their duties in this case, as well.

payment penalties) had not been paid. No driving licences contributed to a lessening of job opportunities and, for some, consequent 'driving without a licence' charges. Brad felt bicycle helmet wearing was important yet asked whether supplying helmets might be a better remedy for the situation rather than fines for not wearing them.

Towards the end of this time in the Police Service Brad was placed on 'restricted duties' for approximately five years. His immediate superiors claim this was for a medical condition, yet Brad had disclosed this condition at the time he joined the police force. His own doctors, and the police medical examiner, approved his application to return to full duties, yet his immediate superiors did not let him do so, nor would they authorise further tests by a doctor approved of by the NSW police force to provide advice on such a matter. This situation left Brad quite demoralised at times.

Brad was held in high regard by a large section of the local Aboriginal community, and had been pro-active in ensuring that relations between Aboriginal people and NSW police officers were positive. He was not able to perform that role in the time he was on restricted duties.

Then, in what appeared to be a relatively minor altercation involving race, Brad was charged with verbal 'assault.' The alleged offence occurred while Brad was on duty, and the alleged victim was another officer. Eventually proceeding to court, no attempt was made by Brad's superiors to resolve the matter 'in house,' either by inquiry or by counselling. The matter was lodged late to the DPP. Several witnesses of the alleged event (other police officers on duty) were not questioned over the incident, nor were their statements taken. Although promising Brad the support of the NSW Police Force, the Local Area Commander then appeared to act in a contrary fashion, ensuring that the matter went to court. At the same time, another officer in this area, of Anglo-Saxon origin, smashed several windows of a local hotel, committed some assaults and threatened other people. Yet he was counselled by his superiors, received disciplinary action in the form of a short period of restricted duties, and then returned to full duties. To Brad, this appeared to be a blatant case of double standards.

Brad subsequently won two cases against the NSW Police Service at the Federal Magistrate's Court, and has now left the force.

Local Aboriginal people were extremely disappointed in the treatment meted out to Brad by many of his colleagues and superiors. That Brad had made comments relating to the 'massaging of statistics' and 'racial profiling' which he perceived within his Local Area Command should have been opportunities for institutional change rather than a cause for personal vilification, which Brad and many others believe happened.

There is a flow-on effect in Brad's case, due not to the stress experienced by him and his family while he was in the police force, but in the level of distrust many in the Aboriginal community now hold to the police service. This distrust doesn't confine itself to issues relating only to police and the CJC. It grows and becomes distrust to any non-Aboriginal initiative, including health messages, employment schemes and educational

opportunities. In extreme cases it may also contribute to localised violent episodes, whether isolated racially-motivated bashings or spontaneous protests based on CJC issues such as the full-scale riots which occurred in Brewarrina in 1987 and Redfern in 2004.

5- Why Justice contributes to Closing the Gap

It is common sense to acknowledge that removing people from the CJC is different from not punishing people for crimes (although it is worth noting that over 50% of Aboriginal people are incarcerated for terms of less than six months, suggesting punishment for relatively minor crimes is rampant). It seems more appropriate that that relevant programs should be put in place to divert people from the CJC prior to them coming in contact with it. More support for family programs (to prevent abuse and exposure to substances), education, housing and opportunities for training and real jobs will all contribute to a lowering of number of those within the CJC. A greater number of diversion programs aimed at rehabilitation rather than pushing people through the revolving door of recidivism should also be created (arguably for *all* prisoners, although this proposal falls outside the scope of this submission) will also lower the number of those in prison, which will contribute to 'lessening the gap'.

It is becoming accepted knowledge that money spent on intervention programs is often vastly less than the money spent if the early intervention doesn't take place, and is later spent on imprisonment, victim's compensation and legal costs (not to mention higher insurance premiums in some areas.) The NSW Government has recently been the recipient of criticism for failing to act on the 2006 Breaking the Silence: Creating the Future report. If interventions don't take place, situations will once again be set up which will inevitably lead to people coming into contact with the CJC. Trust in the government declines, and with increasing distrust, comes the inability to form positive relationships with any tier of government, now matter how well intentioned.

6- Conclusion: Where to go from here

Aboriginal people in north-west NSW are familiar with the three cases presented in this submission- but there are many others. This author understands that these cases are just the tip of the iceberg in terms of the interaction between Aboriginal people and the CJC. Without justice being perceived to be present in them, how can faith in the CJC- and consequently many other services and departments-be restored?

There appears to be a strong need to resolve these interactions if the NSW Government is to be successful in 'closing the gap' between indigenous and non-indigenous premature mortality rates. While the initiatives and strategies to be undertaken will need to involve a myriad of proposals and programs, it is this author's belief that NSW needs to hold a Truth and Justice Commission.

Such a Commission would provide a forum for grievance to be aired, for positive initiatives to be generated, and to oversee the policies and procedures that will need to be

put in place. At some stage, responsibility must be taken by the NSW Government if it is really serious about 'closing the gap, and it must take into account the wrongs of the past. Only then can trust start to be restored.