

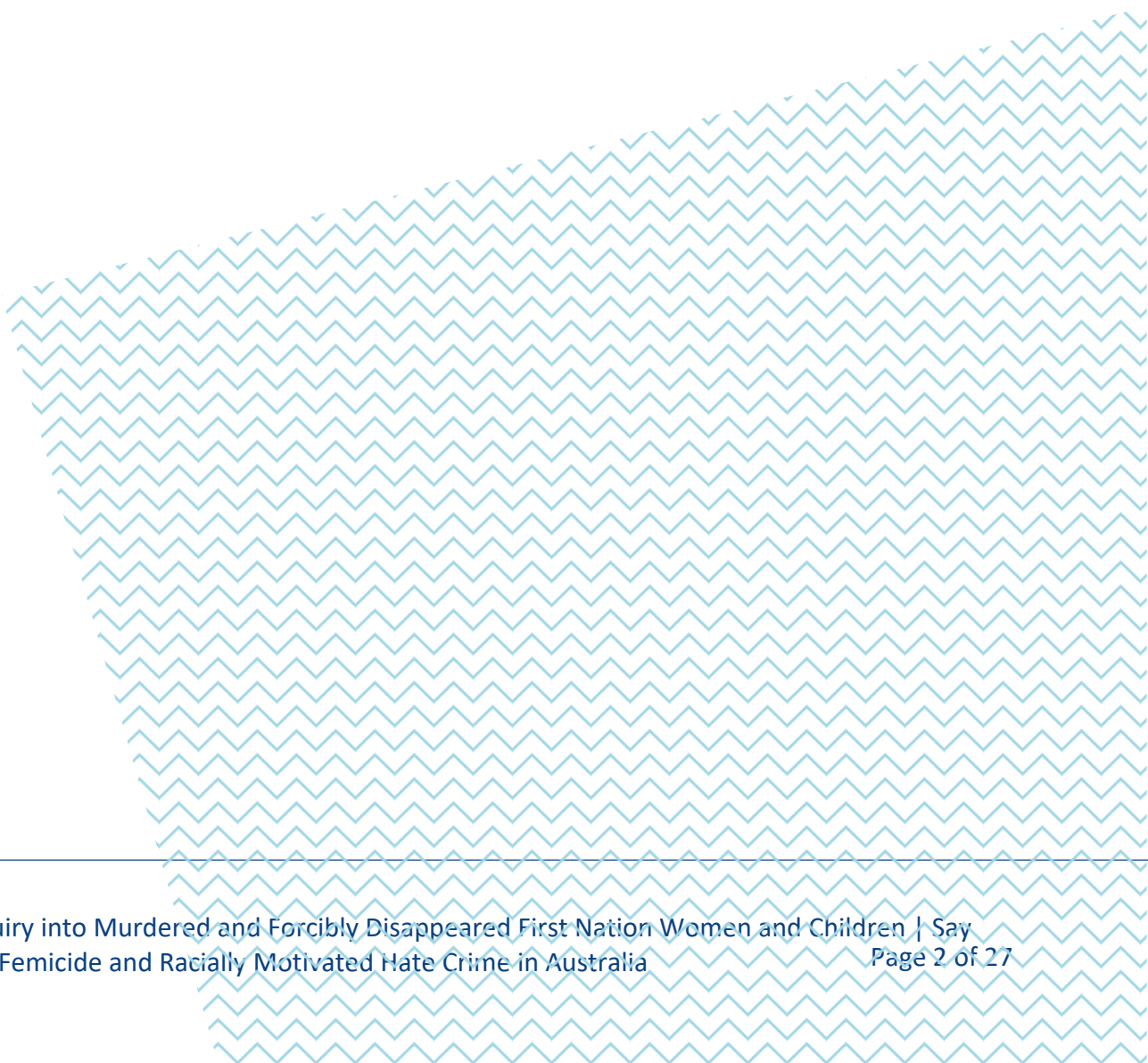


Senate Inquiry into Murdered and Forcibly Disappeared First Nation Women and Children

Say Her Name: Femicide and Racially Motivated Hate Crime in Australia

Indigenous Law and Justice Hub, Melbourne Law School

12 December 2022





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Content Warning

The following report contains names and images of people who have died. It also contains strong themes including genocide, apartheid. The author wishes to convey their sincerest condolences, love and solidarity with First Nation families and communities who have lost loved ones due to racist, colonial and patriarchal violence in Australia.

Introduction

Thank you for the opportunity to contribute to the Senate Inquiry into Murdered and Forcibly Disappeared First Nation Women and Children. Thank you also for your intellectual and political leadership in establishing this long overdue Senate Inquiry into the emergency of racially motivated hate crimes in Australia.

In this submission I examine **femicide**, **hate crime** and **cold cases** in Australia. The issues of genocide and femicide are deeply and inextricably intertwined and represent a state of emergency and crisis, as reflected in the **Black Lives Matter** and **Say Her Name** social movements.

Aboriginal and Torres Strait Islander families and advocates have long emphasised that First Nation women and children do not simply “go missing”. In the words of respected Darumbal and South Sea Islander journalist Amy McQuire:

There is a comfort that comes with the word ‘missing’, because to be ‘missing’ implies that perhaps they have left on their own accord; that there are no perpetrators or violence enacted against them.¹

To say that First Nations women and children “go missing” is problematic for a few reasons. First, it erases, minimises and sanitises the violence experienced by First Nation peoples and communities. In this sense, it erases the criminal violence and crimes committed against First Nation women and children. Second, it obscures the focus away from those who commit violence against First Nation women and children, most frequently white men and white state entities (such as the police, child protection). Third, it flattens and erases the agency of the white men and white state entities who commit this violence.

Some cases involve **racially motivated hate crimes**. This has been the case in the deaths of Elijah Doughty, Cassius Turvey, Mr Ryder among countless other **cold cases**.

Some cases involve **police under-protection** or the **police failure to protect** victims of hate crime, murder, rape and domestic and family violence. For example, in the case of

later died in police custody. The coroner described her treatment as ‘appalling’ and ‘unprofessional and inhumane’.² **Tiffany Paterson**, an Aboriginal woman who was violently assaulted after the police failed to protect her from an attack, sued the Northern Territory Police on the grounds of negligence and settled on confidential terms.³

All cases share certain features in common: they are cases where First Nations people have been the **victim** of serious crime, **but where the police investigation into the victim’s death has been severely impacted by systemic oversights and shortcomings, and indifference by the police**. This has been the case in the death _____ who died in suspicious circumstances in January 1988, among countless other examples.

¹ Amy McQuire (2022) ‘The Act of Disappearing’ Meanjin Quarterly (Summer 2022). Available at: <https://meanjin.com.au/essays/the-act-of-disappearing/>

² Ros Fogliani (2016) *Inquest into the Death of Ms Dhu* (Perth, Coroner’s Court of Western Australia), at [880, 883].

³ Damien Carrick (2014) ‘Civil actions against police by crime victims’ *The Law Report* (18 March 2014). Available at: <https://www.abc.net.au/radionational/programs/lawreport/civil-actions-against-police-by-crime-victims/5325170>

Given the countless number of cases involving hate crime, femicide, near misses against First Nation people, the purpose of my submission is to merely sketch the **genocidal dimensions of this national emergency**.

I have addressed the questions raised by the call for submissions in turn below.

1. The number of First Nations women and children who are missing and forcibly disappeared;

It is impossible to comprehensively calculate or quantify the number of murdered and forcibly disappeared Aboriginal and Torres Strait Islander peoples, including women, children, young people, trans, non-binary, Sistergirls and Brotherboys. Some of the reasons for this include:

- **Impartiality of police and state records generally.** This is especially true in settler colonial societies without a treaty, such as Australia.
- **Lack of publicly accessible statistics and police records.** Australian policing institutions are notoriously opaque and insular institutions. This means that research into institutional racism (eg, racial profiling, direct/indirect racial discrimination and police failure to protect) and hate crimes has been hampered by the failure of Australian policing institutions to collect and make public data on racial profiling, missing and murdered persons. In the United States and the United Kingdom, by contrast, police regularly release and make publicly available rates of arrest and stop and search by Race and Ethnic Status.⁴
- **Incompleteness of police records and statistics.** For example, there is no official database or statistical record keeping in relation to the number of deaths in police or prison custody according to Indigenous or gender status. There is no official database for hate crimes and missing persons by Indigenous status.
- **Lack of publicly accessible statistics and records** of missing and murdered children and young people in child protection agencies.
- **The absence of in-depth academic and policy research** on racially motivated hate crimes against First Nation people.
- **Racism and control in the settler legal system.** Settler colonial laws and regulatory frameworks such as **suppression orders, non-publication orders** and **contempt of court** serve to further silence and gatekeep truth-telling by First Nations bereaved families about the death of their loved ones at the hands of state agents and white supremacists, and the injustice experienced before the settler legal system—including the police, the coronial and criminal justice systems.
- **Racism in the Australian mainstream media.** There is an absence of in-depth investigative journalism and news coverage within the Australian mainstream media. When First Nation people are victims of crime, the Australian mainstream media

⁴ Critically, however, research produced *within and by the police* (i.e. by in-house police research units) suggests some acknowledgement of this problem. For example, the Western Australian Police Service's in-house research unit found that Aboriginal drivers received three times more fines from the police than white drivers. The report was based on data collected over five years and produced by in-house police research units has acknowledged a "clear ethnic disparity" in police-initiated traffic stops. See Western Australia Police (2020) at 8.

rarely sees this as “newsworthy”. By contrast, when a white person dies or goes missing, as was the case with baby Cleo or Daniel Morcombe, there tends to be:

- i. a lot of coverage in terms of volume (volume)
 - ii. in terms of content analysis the news coverage tends to be on the front page with accompanying visuals such as photos of family members (content)
 - iii. the language and analysis of journalists tends to be sympathetic (discourse)
- **Indifference of the Australian public.** The stories of First Nation victims of crime, rape and murder have brought to public attention only thanks to First Nation leaders, families and advocates – including Senators Cox and Lidia Thorpe, Distinguished Professor Larissa Behrendt,⁵ Allan Clarke,⁶ Amy McQuire,⁷ Martin Hodgson,⁸ Hannah McGlade,⁹ and ABC journalists Bridget Bennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman¹⁰ among many others.

For all these reasons and more, my submission is incomplete. In the following section I seek to merely sketch the genocidal dimensions of this national emergency and to highlight key themes and points of commonality. These caveats aside, *some* examples of cold cases include:

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At the time, QPS Assistant
Commissioner Mike Condon acknowledged shortcomings in the initial investigation:

⁵ Larissa Behrendt (2014) *Innocence Betrayed* (Lavarch Productions).

⁶ Allan Clarke (2021) *The Bowraville Murders* (Jumping Dog Productions).

⁷ Amy McQuire (2018) ‘The cases of missing and murdered Aboriginal people need to be heard’ *Medium* (28 May 2018). Available at: <https://medium.com/@amymcquire/the-cases-of-missing-and-murdered-aboriginal-people-need-to-be-heard-88de81041a1b>

⁸ Martin Hodgson (2021) ‘Disappeared and Murdered Aboriginal Women and Girls’ *Curtain the Podcast* (see 75 episodes generally). Available at: <https://podcasts.apple.com/au/podcast/disappeared-and-murdered-aboriginal-women/id1164804753?i=1000551470353>

⁹ Hannah McGlade, Bronwyn Carlson and Marlene Longbottom (2021) ‘An open letter in response to the lack of concern or response to the killings of Aboriginal and Torres Strait Islander women’. *Croakey Health Media* (9 March 2021). Available at:

<https://www.croakey.org/an-open-letter-in-response-to-the-lack-of-public-concern-or-response-to-the-killings-of-aboriginal-and-torres-strait-islander-women/>

¹⁰ Bridget Brennan, Suzanne Dredge, Brooke Fryer and Stephanie Zillman (2022) ‘How Many More?’ *ABC News* (24 October). Available at: <https://www.abc.net.au/news/2022-10-24/murdered-and-missing-indigenous-women-four-corners/101546186>

¹¹ Amy McQuire (2021), ‘Forty years in an unmarked grave: family of murdered woman Queenie Hart fight to bring her home,’ *The Guardian* (3 July 2021). Available at: <https://www.theguardian.com/australia-news/2021/jul/03/forty-years-in-an-unmarked-grave-family-of-murdered-woman-queenie-hart-fight-to-bring-her-home>

"Clearly, there were a lot of loose ends the prosecution couldn't tie up to ensure that a strong case [could] go to court".¹²

- In

Monica Kelly, says:

We have reason to believe there was foul play. He had a loving, caring family. He was an all-round sportsman, just got his L's, was traveling to America for tennis... So there was no reason for him to take his own life, not at all. ... All we want is for the truth to come out because it's not going away. As a family, we have fought and fought. We want justice.¹⁵

- In

Donald

Craigie says:

It's been almost six months since I last spoke to them [police investigators], they have my contacts, they could have spoken to me anytime. I'm hoping the detective might come out and explain to us

¹² Paula Doneman (2021), 'Queensland police close case investigation into Queenie Hart's murder as new details emerge,' *ABC News* (15 October 2021). Available at: <https://www.abc.net.au/news/2021-10-15/qld-queenie-hart-murder-investigation-police-close-cold-case/100535272>

¹³ Amanda Porter and Alison Whittaker (2019) 'Missing and murdered Aboriginal children: apologies offer little in the face of systemic police failures' *The Guardian* (20 August 2019). Available at: <https://www.theguardian.com/commentisfree/2019/aug/20/missing-and-murdered-aboriginal-children-apologies-offer-little-in-the-face-of-systemic-police-failures>

¹⁴ No author, "'We Need Answers': Search for the truth continues of families' *NITV Online* (24 November). Available at: <https://www.sbs.com.au/nitv/article/we-need-answers-search-for-the-truth-continues-for-lewis-buddy-kellys-family/2ogey3bi3>

¹⁵ *Ibid.*

¹⁶ Allan Clarke (2018) *Unravel: Blood On The Tracks*. Available online (Season 1-7) at: <https://www.abc.net.au/radio/programs/truecrime/blood-on-the-tracks/>

all. We all have a right to know what happened to this young 17-year-old boy that came from this community. ... As we've always maintained, we knew our boy and this was right out of character for him, and we believed then—as we still maintain today—that he has met with foul play. If that's the case, there's people running around these streets, possibly anywhere in Australia, responsible for this crime.¹⁷

- In

Stephen's

father, Stephen Smith Senior, stated:

It [the investigation] happened really quickly and nothing came of it, it's like everyone forgot about it, case closed. We just want to know what happened to Steve.¹⁹

- In the early 1990s in the township of Bourke

Sister

Kerrie Smith says that:

We need to find out what really happened to give us some peace, but the police failed us all the way. What happened to my sister was unforgiveable and no-one has ever been held accountable. If a Blackfella did that to two white girls, they would have gone to gaol.²¹

- In 1991, three Aboriginal

¹⁷ Caitlin Fulong (2019) 'Family calls for new inquest 31 years after death of teenager Mark Haines' (17 January 2019) at: <https://www.abc.net.au/news/2019-01-17/mark-haines-anniversary-prompts-calls-for-new-inquest/10719912>

¹⁸ Allan Clarke (2021), *Cold Justice*. SBS OnDemand. Available at: <https://www.sbs.com.au/ondemand/news-series/cold-justice>

¹⁹ Allan Clarke (2018), 'Stephen Smith: Police open fresh investigation into Quirindi teen found dead on rail tracks in 1995' *ABC News* (16 February), Available online at: <https://www.abc.net.au/news/2018-02-16/police-appeal-for-information-about-aboriginal-teen-death/9455960>

²⁰ Amanda Porter and Alison Whittaker (2019), 'Missing and murdered Aboriginal children: apologies offer little in the face of systemic police failures,' *The Guardian* (20 August 2019). Available at: <https://www.theguardian.com/commentisfree/2019/aug/20/missing-and-murdered-aboriginal-children-apologies-offer-little-in-the-face-of-systemic-police-failures>

²¹ Marina Trajkovich (2022) 'Inquest into deaths of two Indigenous girls killed in 1980s reopened' *Nine News* (23 July). Available at: <https://www.9news.com.au/national/inquest-into-deaths-of-two-indigenous-girls-killed-in-1980s-reopened/6532ee8d-de23-452c-8dad-9cc36cb9d373>

In August 2016, then-NSW police commissioner Andrew Scipione delivered a formal apology to the Bowraville families for inadequacies in the initial police investigation. Speaking to families in Bowraville, he stated: 'I want to publicly acknowledge that the NSW Police Force could have done more for your families when these crimes first occurred and how this added to your pain, as a grieving community. And for that I am sorry.'²² The Bowraville families appeal for special leave was rejected by the High Court of Australia in May 2019. The family's ongoing fight for justice has been captured in two feature length documentaries, *Innocence Betrayed*²³ and *Bowraville*.²⁴ Former detective Gary Jubelin says that, 'mistakes were made in the initial investigation because the disappearances were looked at in isolation. The warning signs of a serial killer should have been spotted, but they weren't because the police assumed the kids had gone walkabout. Looking at the evidence now, it would be ludicrous to suggest the crimes weren't linked.' Jasmine Speedy, Clinton Speedy-Duroux's cousin, says that:

Clinton's nickname was 'Bubby'. He was a beautiful, gentle soul who made everyone laugh. Kids were drawn to Clinton, and he always had a line of little ones trailing him. I still remember hanging off his leg while he tried to walk around. I was four when Clinton was murdered, but I'll never forget the day he went missing or the day his body was found. I can still see my family wailing and crying as they watched the news and saw his remains being wheeled from the bush in a body bag. Those scenes replayed in my mind in 2006 when Jay Hart was acquitted of Clinton's murder. My grandmother lost her shit outside the court. It was the same reaction we had when Clinton's body was found: grief, anger, trauma. I've been involved in the fight for justice for 20 years: attending inquiries, marching in rallies. My sons are 17 and 14, and they've joined me at the protests. My boys are about the same age as Clinton was when he was murdered, and they're dealing with the intergenerational trauma of that. What happened to Clinton is always in the back of my mind. If my son doesn't answer his phone, I automatically think the worst.²⁵

- In 1998, 38-year-old Aboriginal woman and mother of two

²² SBS News (2016), 'Andrew Scipione pledges to find justice for families of murdered Bowraville children' (11 August 2016.) Available online at: <https://www.sbs.com.au/news/article/andrew-scipione-pledges-to-find-justice-for-families-of-murdered-bowraville-children/yi62fjzr2>

²³ Larissa Behrendt (2014) *Innocence Betrayed* (Sydney, Lavarch Productions).

²⁴ Allan Clarke (2021) *The Bowraville Murders* (Jumping Dog Productions).

²⁵ Alley Pascoe (2021) 'Investigating the Bowraville Murders: One of Australia's Worst Unsolved Serial Murder Cases' *Marie Claire* (4 November). Available at: <https://www.marieclaire.com.au/the-bowraville-murders>

Rhoda Roberts,

Lois' twin sister and renowned actor, states:

I told [the police] I was going to do my own media about Louis' disappearance because they had done nothing. That freaked them out and they finally did something, did an appeal. They really didn't care about a missing Aboriginal woman. They thought she had gone off with a man or gone walkabout.²⁷

- In 2003,

Ms Binge's

sister, Elizabeth Bartholomew, states:

I do not believe a thorough police investigation was carried out. There are people still alive who know the truth and they need to come forward and have the guts to tell the police what they know. They [the police] certainly never searched one particular person's house... why did that person buy a brand new mattress and sofa only to be seen throwing it out at the tip several days later, who does that? Everyone knows it was him. Even the white folk in town believe he murdered my sister. It was a Mickey Mouse investigation where everything was swept under the carpet. I have no doubt in my mind that if my sister was a white girl then her murder would have been solved by now and justice would have been served.²⁸

- In 2011,
murdered by two white men, Adrian Attwater and Paul Maris, on Yaegl Country in far north coast New South Wales.

The investigation and decision to prosecute was initially marred by political inaction and indifference. Although the NSW Director of Public Prosecutions twice declined to prosecute in relation to Daley's death, an investigation into the circumstances of her death in May 2016 on ABC television promoted public awareness which eventually led to a review

²⁶ Allan Clarke (2021) *Cold Justice*. SBS OnDemand. Available via: <https://www.sbs.com.au/ondemand/news-series/cold-justice>

²⁷ Rhoda Roberts cited in Allan Clarke (2017) 'Aboriginal people are victims of violence too, it's time to bring the perpetrators to account' *NITV* (18 December). Available at: <https://www.sbs.com.au/nitv/article/aboriginal-people-are-victims-of-violence-too-its-time-to-bring-the-perpetrators-to-account/dib1w62z3>

²⁸ Elizabeth Bartholomew cited in A. Davies (2015) 'Sister fights to have killer finally brought to justice' *Courier Mail* (29 September). Available at: <https://www.couriermail.com.au/news/queensland/warwick/sister-fights-to-have-killer-finally-brought-to-justice/news-story/361b53bc7b4652709b30a9fb66ca928c>

of the decision, a trial, and an eventual conviction.²⁹ This is a less typical outcome. Lynette's stepfather, Gordon Davis explains that Lynette was just a statistic with the DPP and racism was likely a factor:

They didn't care about her... You know, it was just another Indigenous girl, we'll sweep it under the carpet. You know, they're a dime a dozen, this happens all the time, we'll let it go. I was wondering, if it would've been two Aboriginal boys had done that to a white girl, I reckon they'd be still in jail. There'll be no closure, but at least the court has ended. We know where they are now, we know they won't do it to anyone else. The DPP has a lot to learn about Aboriginality and Aboriginals. You just can't sweep everything under the carpet, the way it was dealt with. If it was two Aboriginal boys and they had done that to a non-Indigenous person, they would've been in jail ages ago, and that's the difference.³⁰

- In 2017,

We can't live without knowing what happened to her. We've had it, you just need to tell us. Let her rest in peace for fuck's sake. They thought they were going to get answers but no, there's no answers. They've got to go through that agony and pain and keep waiting. There's no justice.³³

- In 2018, coroner Greg Cavanagh delivered an inquest with scathing comments about the substandard investigation carried out by the Northern Territory Police in relation to the murder of _____ who was brutally stabbed to death in Tennant Creek. The case was not declared a major crime, and it took police more than two years to meet the coroner's request for an investigation file. Cavanagh said that

²⁹ ABC News (2017), 'Lynette Daley death: Adrian Attwater and Paul Maris jailed for brutal attack' (8 December 2017). Available at: <https://www.abc.net.au/news/2017-12-08/lynette-daley-justice-with-attwater-and-maris-sentenced-to-jail/9239312>

³⁰ Gordon Davis cited in Adrienne Tam (2022) 'Lynette Daley was raped and murdered in 2011. It took six years for her killers to be sent to prison' *Mamamia* (30 September). Available at: <https://www.mamamia.com.au/lynette-daley/>

³¹ Cheryl Goodenough (2022), 'Coroner to probe Qld bones-in-bag death,' *The Canberra Times* (21 June 2022). Available at: <https://www.canberratimes.com.au/story/7789313/coroner-to-probe-qld-bones-in-bag-death/>

³² Talissa Siganto (2022), 'Three years after Constance Watcho's bones were found in a bag in Kangaroo Point, there are 'still no answers' to her suspected murder,' *ABC NEWS* (21 June 2022). Available at: <https://www.abc.net.au/news/2022-06-21/qld-constance-watcho-inquest-bones-in-a-bag-kangaroo-point/101170310>

³³ Tarita Fisher cited in Talissa Siganto (2022) 'Man living with Constance Watcho and her partner tells inquest he loaned her the bag her bones were found in' *ABC News* (10 September). Available at: <https://www.abc.net.au/news/2022-09-10/qld-constance-watcho-inquest-man-gave-her-bag/101424984>

they developed an “irrational preoccupation” that Green had killed herself, despite there being no evidence of self-harm.³⁴ Coroner Cavanagh ultimately concluded that,

The investigation was undertaken by inexperienced officers in an incompetent fashion. It was so poor that prosecution would only have been possible if the killer confessed. ... There is no doubt that incompetent management of this case from all levels contributed to this very poor outcome.³⁵

- In

Jesse Edward’s mother Christine Donaczy states:

I’m ropeable. My son is just so, so upset and my daughters who were out that night, they’re blaming themselves. I can’t bring myself to read it [the 700 page police report] because it’s too upsetting to me and my family. I can’t let my kids look at it. The family is not travelling well at all. We can’t get over the grief of what’s happened.³⁶

These are not isolated cases. They reflect **innumerable deaths in which the alleged perpetrator, often a non-Indigenous person, remains at large and for which justice has never been secured.** Few of the above cases have received a coronial inquest. The stories of Bowraville and Kempsey bear similarities to countless other regional and remote townships. At present there is no comprehensive state records or database for First Nation victims of racially motivated hate crime in Australia.

All cases share common themes and issues. Most notably, the initial police investigation into each of the above deaths was characterised by various failures and shortcomings on the part of state entities, including but not limited to the state police. This included failure to follow up on crucial leads and the delay in collection of evidence due to racial assumptions made by investigating police officers because of the victim’s Aboriginality.

³⁴ *Australian Associated Press*, ‘Incompetent: inquest critical of Northern Territory police murder investigation’ (22 June 2018). Available at: <https://www.theguardian.com/australia-news/2018/jun/22/incompetent-inquest-critical-of-northern-territory-police-investigation>

³⁵ Greg Cavanagh (2018) *Inquest into the death of Sasha Loreen Napaljarri Green* (Coroner’s Court of the Northern Territory), [122] & [136]. Available at: https://justice.nt.gov.au/__data/assets/pdf_file/0006/525417/A00592013-Sasha-Green.pdf

³⁶ Madeline Hayman-Reber (2019), ‘Three men charged following the death of Jesse Edwards’ *NITV Online* (8 October 2019). Available at: <https://www.sbs.com.au/nitv/article/three-men-charged-following-death-of-jesse-edwards/izmyoewwk>

2. the current and historical practices, including resources, to investigating the deaths and missing person reports of First Nations women and children in each jurisdiction compared to non-Indigenous Australians;

To understand the long history of racist, colonial and patriarchal violence against First Nation people, it is important to understand the history of the development of the Australian police and Australian history generally. As Wiradjuri philosopher and activist Kevin Gilbert wrote back in 1978, 'the real horror story of Aboriginal Australia today is locked in police files and child welfare reports. It is a story of private misery and degradation, caused by a complex chain of historical circumstance, that continues into the present.'³⁷

The **foundations of Australian policing was forged on genocide, femicide and white violence.** Australian police officers were directly involved in countless massacres and rapes of Aboriginal and Torres Strait Islander peoples and polities. The function of Australian policing was and remains **the protection of white people, white property, and the expansion of the white colonial frontier.**

A history of Australian police's direct involvement in genocide (eg, the mounted, the border and native police) and role in implementing policies built on institutional racism (eg, Aboriginal child removal and protection legislation more generally) is widely recognised.³⁸ This history dates to the invasion of Bidjigal Country of the Eora Nation and the unlawful arrival of British settlers at *Kamay* (known to the Crown as "Botany Bay") in 1788.

The **history of state violence** continues today in the form of the violence of policing and the **police failure to protect** First Nations women and children. This racist and misogynist violence continues in the form of deaths in police and child protection custody, racially motivated hate crimes, cold cases, near misses, discrimination, harassment, intimidation, and excessive use of force.

The **under-protection** of Indigenous peoples in police and prison custody has continued despite countless royal commissions, national inquiries and inquests, with this year marking the thirty-year anniversary of RCIADIC. Today, almost one in twenty First Nations adult males are in prison³⁹ compared to one in 300 non-Indigenous adult males.⁴⁰

Racist and sexist representations of First Nations peoples are part of Australian settler colonialism. These racist stereotypes are well known and have been well documented in reports such as the National Inquiry into *Racist Violence*. These include among many others:

³⁷ Kevin Gilbert (1978) *Living Black* (Penguin) at 2.

³⁸ Chris Cunneen (2001) *Conflict, Politics and Crime* (Sydney, Allen & Unwin); National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children (1997) *Bringing Them Home* (Sydney, HREOC); Chris Owen (2016) *Every Mother's Son is Guilty: Policing the Kimberley Frontier of Western Australia* (Crawley, UWA Publishing); Tony Roberts (2005) *Frontier Justice: A history of the Gulf Country to 1900* (St Lucia: UQP); Jonathan Richards (2008) *The Secret War: A Trust History of Queensland's Native Police* (St Lucia, UQP).

³⁹ Australian Bureau of Statistics, *4512.0 - Corrective Services*, Australia, March Quarter 2020 <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/4512.0>>.

⁴⁰ Greg Jericho, 'No, Australia is not the US. Our shocking racial injustice is all our own', *The Guardian* (online on 7 June 2020) <<https://www.theguardian.com/business/grogonomics/2020/jun/07/no-australia-is-not-the-us-our-shocking-racial-injustice-is-all-our-own>>.

- Race crime association
- Racist stereotypes of Aboriginal people as “drunken”, “lazy”, “dependent”
- Racist stereotypes of Aboriginal women as “easy” as reflected in racist language such as *Lubra*

One of the primary reasons for this is due to **racism and sexism in the workplace culture** in Australian state entities, especially the police, prisons and protection industries.⁴¹ While there is no publicly available information, it is highly probable that less money is allocated to First Nation missing persons is substantially less than white victims of crime. For example, it was only following the release of critically acclaimed documentaries by Larissa Behrendt and Allan Clarke that the New South Wales Police increased the reward for information in relation into the murder of teenager Clinton Speedy-Duroux.⁴²

A workplace culture of racism and sexism directly contributes to police failures to address domestic violence against Indigenous women. Research by ANROWS found that of the 27 women murdered by an intimate partner in Queensland, 12 had been previously identified by police as the perpetrator in a domestic dispute and issued with a restraining order or formal charge). In focus groups for the ANROWS study, “numerous” Queensland police officers told researchers that body language at domestic disputes informed their judgement about which party required protection – a response the researchers said was “concerning when considered alongside the gendered and racialised attitudes that may inform some police decision-making”.⁴³

This means that Aboriginal and Torres Strait Islander women’s experience of police and domestic violence services is vastly different to those of white Australians. As Dr Marlene Longbottom writes, ‘Indigenous women will not attend a local police station for support in times of violence due to the racialized and gendered experiences at the time of reporting. This is when or if they do report violence’.⁴⁴ As Cathy Pereira of Aboriginal and Torres Strait Islander Women’s Legal Services North Queensland explains:

In multiple cases, the primary perpetrator is a non-Indigenous male. On police arriving, he is calm and gives an account to police which is coherent. The Aboriginal and Torres Strait Islander woman is highly distressed – in some cases she has been

⁴¹ Janet Chan (1997) *Changing Police Culture: Policing in a Multicultural Society* (Cambridge University Press).

⁴² New South Wales Government (2022) *Reward increased to \$1 million for information over Bowraville murder of Clinton Speedy-Duroux*. Available at:

[https://www.police.nsw.gov.au/can_you_help_us/rewards/1000000_reward/reward_increased_to_\\$1_million_for_information_over_bowraville_murder_of_clinton_speedy-duroux](https://www.police.nsw.gov.au/can_you_help_us/rewards/1000000_reward/reward_increased_to_$1_million_for_information_over_bowraville_murder_of_clinton_speedy-duroux)

⁴³ Australia’s National Research Organisation for Women’s Safety (2020), ‘Accurately identifying the ‘person most in need of protection’ in domestic and family violence law: key findings and future directions,’ *Research to Policy and Practice*, 23 (November 20), 72. Available at: <https://www.parliament.nsw.gov.au/lcdocs/other/13997/>

⁴⁴ Marlene Longbottom (2021) *Indigenous Perspectives on Family and Domestic Violence: Address to Queensland Police Service Annual Conference* (Brisbane, QPS).

the victim of life-threatening assaults or repeated emotional abuse. Police accept the male's version. He is more coherent, and it is easier to record.⁴⁵

Debbie Kilroy, who has represented women charged with 'reactive violence,' notes other reasons that Aboriginal and Torres Strait Islander women are hesitant to contact police services, including fear of child removal, mistrust of authorities and culturally unsafe practices implemented by mainstream services.⁴⁶ There can also be a lack of urgency in police responses to Indigenous women victims. The report on the death of Indigenous woman Elsie Robertson in 2013 outlined what police themselves concluded was 'an unreasonable delay' of more than an hour between a call for assistance and officers attending the address in Cairns.⁴⁷

For these reasons among others, **the police have never been appropriate frontline responders to domestic and family violence involving Aboriginal and Torres Strait Islander women and children.** In June 2022, the Western Australian government apologised to the

Some recent examples of racist workplace culture regarding Indigenous women and children include:

- In a widely reported news story in 2021, approximately 1,700 current and former QPS officers were members of a private Facebook group, Defend the Blue, which regularly posted racist and sexist material.⁴⁹
- QPS police data recently released by Queensland Police Minister Mark Ryan shows that of the 3689 young people held in prison custody who spent one hour or more in a watch house, 71 per cent (n=2635) were Indigenous.⁵⁰
- In her judgment for *Wotton v Queensland Police Service* [2016] FCA 1457, Mortimer J identified nine areas in which police had engaged in acts of racial discrimination. Mortimer J commented on Wotton's arrest: "I am satisfied that armed, masked SERT officers would not have forced their way into houses occupied by unarmed families, including young

⁴⁵ Ben Smee (2021) 'Coercive control laws could harm vulnerable women, advocates in Queensland warn' *The Guardian* (7 May 2021). Available at: <https://www.theguardian.com/australia-news/2021/may/07/coercive-control-laws-could-harm-vulnerable-women-advocates-in-queensland-warn>

⁴⁶ Smee (2021) 'Coercive control laws could harm vulnerable women'.

⁴⁷ Harry Clark (2015) 'Police delays and domestic violence order failures in Cairns coronial inquest,' *Cairns Post* (24 October 2015). Available at: <https://www.cairnspost.com.au/news/crime-court/police-delays-and-domestic-violence-order-failures-in-cairns-coronial-inquest/news-story/d84b5ed39e3b43a8ca7dd52f78b3bb3f>

⁴⁸ Cameron Myles, Tim Dordin (2022), 'Apology, pardon, for WA Aboriginal mother who endured the unthinkable,' *The Guardian* (22 June 2022). Available at: <https://www.theage.com.au/national/western-australia/apology-pardon-for-wa-mother-who-endured-the-unthinkable-20220622-p5avv9.html>

⁴⁹ Kate McKenna (2021) 'Facebook group to be closed as racist, homophobic comments by Queensland police officers investigated,' *ABC News* (13 July 2021). Available at: <https://www.abc.net.au/news/2021-07-13/qld-police-investigate-racist-homophobic-facebook-comments/100289770>

⁵⁰ Elise Williams (2021) 'Shock Stats: Most kids in police custody are Indigenous' *Courier Mail* (31 October 2021). Available at: <https://www.couriermail.com.au/news/queensland/shock-stats-most-kids-in-police-custody-are-first-nation/news-story/8a60d15ab5392428717baf32dd23bde9>

children, and pointed assault rifles at them, yelling at them to lie down and not move, making those families think they were in danger of being shot”.⁵¹

3. the institutional legislation, policies and practices implemented in response to all forms of violence experienced by First Nations women and children;

There has been little if anything by way of institutional legislation, policies and practices to respond to this emergency.

This year marks the 31st anniversary since the tabling in parliament of the royal commission into Aboriginal deaths in custody, which remains to date the most extensive and systematic investigation into Aboriginal and Torres Strait Islander deaths in police and prison custody. The royal commission examined the individual circumstances of 99 Aboriginal deaths in custody and made 339 recommendations in relation to state reform.

Since this time, well over 500 further deaths have occurred in police or prison custody. These numbers are conservative because not all femicides and infanticides receive a coronial inquest. Despite the recommendations of the royal commission and countless subsequent national inquiries, royal commissions and coronial inquests, the rate of incarceration and the correlated risk of death in police or prison custody remains unacceptably high.

The reaction on the part of successive state and federal governments can only be described as one of political inaction and callous indifference.

If anything, the last three decades since the RCIADIC has seen the implementation of policies and practices that further harm First Nations peoples and communities. A great example has been the rise of carceral feminism. That is, white feminists who have been advocating for the expansion of police powers, resources and the creation of new criminal offences such as the criminalisation of coercive control.

Across all jurisdictions (perhaps with the sole exception of the Australian Capital Territory) there has been an increase in police and prison budgets. For example, over the past decade the annual budget for the Victoria Police doubled from AU\$1.95 billion in 2011 to AU\$3.78 billion in 2021. We have also witnessed the expansion of police powers and the introduction of draconian ‘reverse onus’ provisions in the *Bail Act 1977* (Vic). These expansive police powers and measures impact have a net-widening effect across all low socio-economic and minoritized populations generally **and for Aboriginal women and children especially.**

Aboriginal women have been adversely impacted by the 2018 amendments of the *Bail Act 1977* (Vic) such that they are more likely to be remanded in custody: Aboriginal women have been disproportionately affected by the 2018 Victorian bail reforms, as discussed above. To recap, the 2018 reforms included the overly complex and restrictive ‘reverse onus’ provisions which has been associated with spiralling remand and incarceration rates across Victoria, and especially of

⁵¹ *Wotton v Queensland Police Service* [2016] FCA 1457 at 5 (per Mortimer J).

Aboriginal women. A longitudinal criminological study on Victorian remand rates found that unsentenced Aboriginal women entering prison rose by 440 per cent over the past ten years.⁵²

4. the systemic causes of all forms of violence, including sexual violence, against First Nations women and children, including underlying social, economic, cultural, institutional and historical causes contributing to the ongoing violence and particular vulnerabilities of First Nations women and children;

The systemic causes of all forms of violence against First Nations women and children include genocide, apartheid, racial discrimination, and racism which is rampant both within state institutions and Australian society.

There is an absence of academic and policy literature into the issue of missing and murdered Indigenous women and children. Australian national inquiries and royal commissions have tended to focus on Aboriginal deaths in police and prison custody or include Aboriginal people as an intersecting experience of other kinds of violence like violence in care, institutions or in family settings. This is not to deny the reality of substandard police investigations into Aboriginal missing persons and murdered Aboriginal young people, which represents the other side of the same genocidal coin. In Australia a coronial inquest is issued whenever a person, Indigenous or non-Indigenous, dies in state custody. Perhaps for this reason, Australian inquiries and commissions have tended to focus on Indigenous deaths in police and prison custody, out of home care and other forms of institutional state violence.

The *Royal Commission into Aboriginal Deaths in Custody (RCIADIC)* remains to date perhaps the most comprehensive document on the systemic causes of all forms of violence against First Nations women and children. Although First Nations women and children make up a significant number of the total individual deaths in custody, gender is not examined by any of the commissioners, all of whom are non-Indigenous and all of whom are male. These shortcomings aside, the RCIADIC contains several 'underlying issues' reports both nationally and by jurisdiction which provide some analysis on the systemic causes of violence against First Nation peoples.

The RCIADIC examined 99 individual deaths in custody.⁵³ Since that time, there has been countless deaths.⁵⁴ Nine of the 11 female deaths in custody examined in the RCIADIC were in police custody at the time of their death and many of the women were themselves victims of family and domestic

⁵² Russell *et al* (2021) 'It's a Gendered Issue, 100%: How Tough Bail Laws Entrench Gender and Racial Inequality and Social Disadvantage' *International Journal for Crime, Justice and Social Democracy* 11(3).

⁵³ Les Johnston (1991) *National Report* (Canberra, Royal Commission into Aboriginal Deaths in Custody).

⁵⁴ Laura Doherty (2021) *Deaths in Custody in Australia 2020-2021* (Canberra, Australian Institute of Criminology).

violence.⁵⁵ All eleven women were in custody or remand for minor, victimless offences such as fine default, public drunkenness, or offensive language. The only sentenced female prisoner was incarcerated on motor vehicle related offences. One young Aboriginal girl was in custody for trying to escape the welfare authorities. More than half the women who died in custody had been removed from their families as children.

By contrast, there is a considerable body of academic and policy literature on genocide, femicide and racially motivated hate crime of Indigenous peoples in Turtle Island/North America. For example, a 2018 National (Canadian) Inquiry into Missing and Murdered Indigenous Women and Girls, *Reclaiming Power and Place*, was delivered to the Canadian federal government.⁵⁶ That inquiry considered the testimonies of 2,380 family members, consisting of two volumes and 231 recommendations. The national inquiry revealed a persistent and deliberate pattern of human rights abuses and characterised the issue of missing and murdered Aboriginal women and children in terms of genocide. The report follows a series of inquiries and systemic reviews into substandard police investigations into missing persons cases. A recent example includes the *Final Report into the Thunder Bay police service* which found that the police consistently “devalued Indigenous lives, reflected differential treatment and were based on racist attitudes and stereotypical preconceptions about Indigenous people”.⁵⁷

For example, respected Navajo scholar Professor Cheryl Redhorse Bennet explains the systemic causes of hate crime in the following terms:

Hate crimes against Native Americans have their roots in colonization. The racist ideology that ignited hate crimes against Native Americans began with Native American genocide. This anti-Indian ideology has justified colonisation, genocide and theft of land. Indian hating is the vilification of Native peoples in the United States to justify racist policies, genocide, theft of land and current day hate crimes.⁵⁸

The concept of “intersectionality”, associated with the work of critical race theorist Professor Kimberlé Crenshaw, is also useful when considering the systemic causes of hate crime. The concept refers to the compounding impacts of multiple discrimination on the grounds of race, gender, class and so on. In the 1980s, Crenshaw focused on sexual and racial discrimination cases involving African American women before the legal system. Her scholarship analyses the ways in which racism and sexism is pervasive in Black women’s encounters at interpersonal, institutional, and structural levels.

⁵⁵ L.F. Wyvill (1990) *Report of the Inquiry into the Death of Barbara Denise Yarrie* (Canberra, Royal Commission into Aboriginal Deaths in Custody); Wyvill LF (1991) *Report of the Inquiry into the Death of Fay Lena Yarrie* (Adelaide: Royal Commission into Aboriginal Deaths in Custody); Les Johnston (1990) *Report of Inquiry into the Death of Joyce Thelma Egan* (Canberra: Royal Commission into Aboriginal Deaths in Custody); L.F. Wyvill (1990) *Report of Inquiry into the Death of Deirdre Abigail Short* (Canberra, Royal Commission into Aboriginal Deaths in Custody); Wyvill (1991) *Report into the Death of Muriel Binks* (Canberra: Royal Commission into Aboriginal Deaths in Custody) Wyvill, LF (1991) *Report of the Inquiry into the Death of Barbara Ruth Tiers* (Adelaide, Royal Commission into Aboriginal Deaths in Custody).

⁵⁶ National Inquiry into Missing and Murdered Indigenous Women and Girls (2018) *Reclaiming Power and Place: The Final Report of the National Inquiry into Missing and Murdered Indigenous Women and Girls*. Available online at: <https://www.mmiwg-ffada.ca/>

⁵⁷ Gerry McNeilly, Independent Police Review Director (2018) *Broken Trust: Indigenous People and the Thunder Bay Police Service*. Report of the Office of the Independent Police Review Director. Available online at: <https://oiprd.on.ca/wp-content/uploads/OIPRD-BrokenTrust-Final-Accessible-E.pdf>

⁵⁸ Cheryl Redhorse Bennett (forthcoming) ‘Anti-Violence Efforts and Native American Communities’ in Porter, A. et al (Eds) *Routledge Handbook on Decolonising Justice* (London).

Other helpful explanations can be found in the collected life works of First Nations activist scholars, including Cheryl Redhorse Bennett, Cindy Blackstock, Tracy Bear and Laura Harjo⁵⁹ among many others. In Australia, useful references include the collected life works of First Nations activist scholars such as Kevin Gilbert, Gary Foley, Distinguished Professor Larissa Behrendt, Professor Hannah McGlade, Dr Marlene Longbottom, Dr Crystal McKinnon, Alison Whittaker among many others.

The systemic issues are compounded by legal barriers and racism within state entities. This submission has already discussed laws such as non-publication orders, suppression orders, gag orders on settlements, contempt of court. Other examples include the laws of double jeopardy, which posed a significant barrier to the families of three Aboriginal children who were likely killed by a white man in a series of racially motivated hate crimes in Bowraville. Former Detective Inspector Gary Jubelin documents the racism in the Homicide Squad of the New South Wales Police Service in his memoir.⁶⁰

5. the policies, practices and support services that have been effective in reducing violence and increasing safety of First Nations women and children, including self-determined strategies and initiatives;

6. the identification of concrete and effective actions that can be taken to remove systemic causes of violence and to increase the safety of First Nations women and children;

Community action against genocide, femicide and hate crimes has a long history dating back to the invasion. In the absence of protection from the police and other state entities, First Nations communities have developed a range of **anti-violence community safety initiatives**. For a handy introduction, see the Australian Law Reform Commission's *Report on Aboriginal Customary Law*.⁶¹

First Nations anti-violence initiatives are Indigenous governance structures based on the following principles:

- anti-violence
- promoting Indigenous community safety
- a consensual basis of operations
- cultural authority

⁵⁹ Tracy Bear (2017) Commemorating the Victims of the Highway of Tears (ABC Speaking Out). Available at: <https://www.abc.net.au/radio/programs/speakingout/tracey-bear-&-laura-harjo/8352230>

⁶⁰ Gary Jubelin (2020) *I Catch Killers: The Life and Many Deaths of a Homicide Detective* (Harper Collins). See also Dan Box (2018) *Bowraville* (Penguin Viking).

⁶¹ Australian Law Reform Commission (1986) *Report on the Recognition of Aboriginal Customary Law*.

- Indigenous sovereignty
- Independence from state entities, especially police and child protection

For example, the Yuendumu night patrol workers are fluent in local languages, frequently up to seven or eight languages. Patrol workers solve problems in culturally appropriate way using cultural authority, communication skills, persuasion and strategies in de-escalation and importantly, **not force**.

Anti-violence initiatives might include such things as: night patrols, shelters, front line responses to domestic violence such as Djira, Aboriginal community controlled organisations in health and law, among many others. Here I focus on the example of night patrols, though I wish to emphasise the breadth of other examples of First Nations governance.

Night patrols are community-controlled safety initiatives that are concerned with the promotion of safety and resolving conflicts in a culturally appropriate way. Night patrols are grounded in Indigenous sovereignty and are an example of Indigenous safety governance. Indigenous night patrols encompass a diverse range of localised initiatives with formal agendas that focus on preventing contact between individuals and the state police as well as promoting practices which maximise safety and wellbeing of Indigenous community members more generally.

Given that night patrols evolve in response to local problems, there is naturally a degree of variety in terms of the functions, objectives, funding arrangements, composition and style of each unique initiative. So whereas the Yuendumu Women's Night Patrol (in central Northern Territory) is run by female Warlpiri Elders and developed as part of a drive to get tough on alcohol and family violence issues, the Redfern Streetbeat seeks to minimise contact between the state police and Indigenous young people in urban Sydney. In other communities, patrols have emerged to fill a vacuum in state service delivery.

The earliest patrols to be documented in archival and secondary written accounts seems to be the 'Security Men' patrol at Roper River (NT), the 'Ten Man Committee' in Roebourne (WA), the 'Community Council' at Yirrkala (NT), the 'Julalikari Council Patrol' in Tennant Creek (NT), The 'Redfern Patrol' (NSW) and the 'Yuendumu Women's Night Patrol' (NT).⁶² Many of these patrols were staffed by Elders, community leaders and other respected community members who set up a patrol in response to a perceived need within the local area. These accounts suggest patrol services solved disputes using local knowledge (insights into issues facing the community and problem solving), and in a way that is sensitive of rules and protocols, family connections.⁶³

Part of the functions of the early night patrols involved encouraging people to bring their complaints to the councillors on patrol, rather than taking them to the police. Councillors similarly discouraged the state police from attending disturbances without the presence or permission of councillors to explain the problem to them and act as a safeguard. It was the perception of local residents that the police simply arrested people, sometimes the wrong person, without solving the problem which had contributed to an open dispute requiring police attendance (Australian Law Reform Commission, 1986). Having councillors call the police on behalf of town camp residents meant that

⁶² Australian Law Reform Commission, above n 61. Mosey, 1999; Langton, 1992 Higgins, 1997

⁶³ Australian Law Reform Commission, above n 61.

heavy-handed surveillance by the state police was minimised, and that police attending complaints were met by councillors who explained the problem.

A self-policing initiative similarly operated in Barunga (formerly known to the Crown as 'Beswick Station, Northern Territory') located on the traditional lands of the Jawoyn people. Operating from at least the late 1970s through to the early 1980s, the self-policing initiative consisted of a council, made up of elected community members, would try to solve small incidents or matters arising in the community. The workers would rely on the support of family leaders and Elders and would at times request a member of the troublemaker's extended family to assist in the resolution of disputes. More serious incidents or matters of a continuing concern were raised at council meetings and people were requested to keep family members in order. When the Law Reform Commission visited Barunga ('Beswick Station' as it was known to the settler commissioners in 1981), community members present at the public hearing expressed the opinion that they were happy with the way the system operated and did not see any need for police presence.⁶⁴

Aboriginal patrol workers were able to operate in a culturally safe manner. In the words of a Tangentyere patrol worker, 'we know if there is something brewing, and will talk to people in an attempt to prevent an incident. We know who's associated and where they should be going [to stay safe]' (unnamed patrol worker, cited in Elek 2007: 24).

The RCIADIC commented favourably on Night Patrols and other safety initiatives that reflect the principle of Aboriginal self-determination. As discussed above, positive reference was made to the Julalikari night patrol in Tennant Creek, Northern Territory, which brought the idea of night patrols to the attention of academics, policy-makers and the wider public (Johnston 1991: Vol 4, 29.2.25). In particular, the RCIADIC made two recommendations concerning government policy regarding night patrols (Johnston 1991). Recommendation 220 states:

That organisations such as Julalikari Council in Tennant Creek in the Northern Territory and the Community Justice Panels at Echuca and elsewhere in Victoria, and others which are actively involved in providing voluntary support for community policing and community justice programs, be provided with adequate and ongoing funding by governments to ensure the success of such programs. Although regional and local factors may dictate different approaches, these schemes should be examined with a view to introducing similar schemes into Aboriginal communities that are willing to operate them because they have the potential to improve policing and to improve relations between police and Aboriginal people rapidly and to substantially lower crime rates.

Recommendation 221 of the RCIADIC reads:

That Aboriginal people who are involved in community and police-initiated schemes such as those referred to in Recommendation 220 should receive adequate remuneration in keeping with their important contribution to the administration of justice. Funding for the payment of these people should be from allocations to expenditure on justice matters, not from the Aboriginal Affairs budget.

⁶⁴ Hawke (1981) cited in Australian Law Reform Commission, above n 61.

The RCIADIC hence brought the existence of night patrols to the attention of a broader public than the earlier reports, which until this point had been scattered across subjects as diverse as customary law⁶⁵ and health care.⁶⁶

Following RCIADIC, several state and territory governments sought to replicate patrols as a political program. Aboriginal Patrols as an alternative policing model were adapted and transplanted to diverse locations across Australia. In New South Wales, an Aboriginal night patrols pilot project began in 1998 headed by the NSW Department of Justice and Attorney General in partnership with the Department of Aboriginal Affairs, the Department of Community Services and the NSW Police Service. The pilot program established four Aboriginal Community Patrols in Kempsey, Dareton, Narrandera and Forster. The four NSW patrols were provided infrastructure and financial support to operate on the same volunteer basis. Each patrol was provided with \$15,000 as a one-off payment to cover the cost of a vehicle and maintenance costs for 12 months. Of the four patrols, only one operated on a totally volunteer basis, with patrol workers on the remaining three patrols primarily relying on the contribution of Community Development and Economic Projects (CDEP) workers.⁶⁷ The original pilot project was externally evaluated in 2000, the cumulative report produced entitled 'the Impact of Aboriginal Night Patrols as a Juvenile Crime Prevention Strategy'.

Indigenous first line response initiatives face challenges such as:

- **State funding in police and prison industries**
- **Under-funding**
- **Draconian laws such as the Northern Territory Emergency Response**
- **Co-option and control by state entities:** The problems of co-option and control is magnified by the impacts of draconian law and order policy, for example, the NTER. Distinguished Professor Larissa Behrendt (2017: [online](#)) offers perhaps the most succinct summary of the problem of co-option: “you can’t write a policy for Aunt”.

7. the ways in which missing and murdered First Nations women and children and their families can be honoured and commemorated; and

The Australian public remain deeply ignorant of racist, colonial and patriarchal violence. This is due to several reasons—among them including the opacity of police records, the whitewashing of Australian policing history, the indifference of the Australian mainstream media. It is only thanks to Aboriginal and Torres Strait Islander journalists, activists and senators that the issue of missing and forcibly disappeared First Nation people has received any attention at all.

⁶⁵ Australian Law Reform Commission, above n 61.

⁶⁶ Sputore et al (1998).

⁶⁷ Blanchard and Lui-Chivitze (2000).

There is a long history of resistance and activism in response to genocide, femicide and hate crime in Australia. The ways in which missing and murdered First Nations women and children and their families have been commemorated and honoured include:

- **Protests**
- **Vigils**
- **Artwork**
- **Travelling interactive and multimedia exhibitions** such as *Walking With Our Sisters* and *Sorry For Your Loss*
- **Documentary making** as truth telling in the absence of treaty, accountability and justice: for example documentaries such as *Who Killed Malcolm Smith?*, *Innocence Betrayed* and *the Bowraville Murders*.
- **Repatriation campaigns** such as Dr Amy McQuire's crowd-funder to return Queenie Hart to Country and pay for a funeral.

8. any other related matters

Aboriginal and Torres Strait Islander peoples have been custodians of Country for over 60,000 years and continue to practice law and culture today. First Nations cultures are **matriarchal**.⁶⁸ First Nations law is not recognised by the non-Indigenous legal system, with few exceptions including native title and Indigenous adoption. At present, there are no treaties between Aboriginal nations and the settler state.

Ecocide and Genocide

There is an emergency facing Aboriginal and Torres Strait Islander peoples and polities in Australia. This crisis is embodied in the Black Lives Matter and Say Her Name social movements. Indigenous peoples in Australia are incarcerated at among the highest rates of any population in the world.⁶⁹ At present, Aboriginal and Torres Strait Islander peoples are incarcerated at the rate of 2,325 per 100,000.⁷⁰ Australia is one of the few settler colonial societies not to have a treaty between the state and Aboriginal and Torres Strait Islander polities.

For Aboriginal and Torres Strait Islander peoples, settler law and especially the police and child protection represents perhaps the most significant site of ongoing colonisation. From the state-sanctioned massacres of the Border Police through to the extraordinary police powers granted under the *Aboriginal Protection Act 1869* (Vic) and comparative state and territory jurisdictions, the police and settler law enforcement have long been synonymous with racial and frontier violence, past and present. As Gomeroi poet and legal scholar AJ Whittaker observes, 'the settler justice system is nothing but a long queue of First Nations women holding photos of their dead kids'.

⁶⁸ Larissa Behrendt (1993) 'Aboriginal Women and the White Lies of the Feminist Movement and its Implications for Aboriginal Women in Rights Discourse' *Australian Feminist Law Review* 1(1).

⁶⁹ Don Weatherburn (2014) *Arresting Incarceration*. Canberra: AIATSIS Press; Eileen Baldry, 'FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth?', *The Conversation* (online on 6 June 2022) <<https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528>>.

⁷⁰ Australian Bureau of Statistics (2021) *Corrective Services Australia*. December Quarter 2021. Available at: <https://www.abs.gov.au/statistics/people/crime-and-justice/corrective-services-australia/latest-release>

This racism is imbued in the foundation of state apparatus (including the police, the judiciary, prisons and state entities such as child protection, hospitals and psych wards) and continues to permeate all aspects of Australian society today. The racism imbued in the police, prisons and child protection agencies is exacerbated and enabled by the white judiciary and the settler legal system. There is not one case where any semblance of “justice”, “fairness” or “impartiality” could be said to have occurred. For example, the rejection of the granting of special leave by the High Court of Australia as brought by the Bowraville families against the only white suspect. Martin J’s sentenced the white man who killed Elijah to just several months in prison. The five white killers of Mr Ryder in Alice Springs were all let off with several months in prison. Meanwhile First Nations women who are victims of crime (such as Ms Dhu among countless others) are treated as perpetrators and die in police custody.

First Nations peoples and polities continue to assert their sovereignty and collective right to self-determination and self-governance, especially in the ‘justice’ context. Recent examples include the advocacy of the Koori Justice Caucus, which has resulted in the establishment of the Koori Courts and the Aboriginal Justice Agreement (currently in its 4th iteration), and campaigns to ban spit hoods and decriminalise public drunkenness.

Research and Truth-Telling in the Absence of Treaty

There has been a crisis of hate crime in Australia. The police tend to write these crimes off as an accident or misadventure—very few if any receive a full investigation. While there has been some political gains in LGBTQI hate crimes, to date there has been nothing by way of a search light on police actions and how they have dealt with femicide and racially motivated hate crime since Invasion, and especially over the last thirty years.

In the absence of a treaty, there is an urgent need for truth telling including:

- The re-opening or review of **all judicial decisions involving racially motivated hate crimes** for racial bias on the part of the judiciary.
- The need to subpoena **police cold case boxes** in all state and territory jurisdictions for discrimination on the grounds of racism, sexism, homophobia and ablism.
- The need to subpoena **child protection cold case boxes** in all state and territory jurisdictions for discrimination on the grounds racism, sexism, homophobia and ablism.
- The need to **subpoena police statistics** in all state and territory jurisdictions for discrimination on the grounds of racism, sexism, homophobia and ablism.

Thank you for the opportunity to contribute to this inquiry. I welcome the opportunity to discuss my research on hate crimes and cold cases and racism within state entities—especially child “protection”, police, prisons and psychiatric “care”.

Sincerely,

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