Submission to Australian Law Reform Commission Inquiry into the Over-Representation of Indigenous People in Prison

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27 October 2017

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General principles for reforms to reduce over-incarceration of Indigenous Australians

1. **Strengthening the role of Indigenous communities in decision-making, and enhancing Indigenous capacity to promote safety and wellbeing**

Over the past decade, government policies and practices towards Indigenous Australians have taken the form of top-down control. These have directly and indirectly discriminated against Indigenous people. Federal legislation such as the *Northern Territory Emergency National Respect Act 2007* (Cth) (now *Stronger Futures in the Northern Territory Act 2012* (Cth)) is a critical example of the restriction of Indigenous rights (Brown & Brown 2008), and the 'betrayal' of Indigenous contributions to policy debates on the wellbeing and safety of their children (Anderson 2016: 149). The impact of such legislation is increased incarceration of Indigenous adults and children (which has approximately doubled) and the removal of children from Indigenous families (which has tripled) (Anthony 2010, Anthony & Blagg 2013, Gibson 2017). Since the late 1990s, and especially as a result of the abolition of the Aboriginal and Torres Strait Islander Commission in 2004 (Anthony 2005), Indigenous programs have been mainstreamed or otherwise bureaucratised, such as through the Indigenous Advancement Strategy. This has made it difficult for Indigenous-owned oganisations to compete with non-Indigenous organisations for funding and has threatened the survival of key Indigenous community-owned programs (see Behrendt 2015, Altman 2015, Davis 2016).

Federal policies over the past decade that have sought to disempower Indigenous communities have contributed to higher incarceration rates for Indigenous Australians, especially Indigenous women and children. Indigenous Australians now constitute the most imprisoned people in the world (Anthony 2017).

In order to redress this incarceration crisis for Indigenous people, there needs to be a paradigm shift in government policy and practice towards recognising Indigenous **strengths** and supporting **self-determination**, and away from punitive and discriminatory measures. Self-determination has many guises, which include building the capacity of Indigenous nations, communities and organisations to manage their own affairs and empowering them in decision-

making in local, state and national governments. Self-determination also requires the engagement of Indigenous people with lived experience (such as in the criminal justice system) in decisions that affect them. They need to be part of debates on diversion, justice reinvestment and Indigenous programs (see Questions 9-1, 13-1, 5-1 and Proposal 5-1 in the ALRC Discussion Paper). The Royal Commission into Aboriginal Deaths in Custody (1991) discusses the issue of self-determination extensively in its report and recommendations relating to the over-representation of Indigenous Australians in the criminal justice system.

The demonstrated capacity of Indigenous women with lived experience in the criminal justice system is seen in the engagement of these women as advisors in research on Indigenous women's interaction with the criminal justice system (see Sherwood & Kendall 2013). For instance, the peer-to-peer group, *Sista 2 Sista*, brings together Indigenous women with lived experience and support roles to advise on the ethics, process and outcomes of the Australian Research Council project *Where are the Women in Sentencing Indigenous Offenders?*[1] The Indigenous women in *Sista 2 Sista* have expertise on the harm arising from criminalisation of their women, the supports needed to enhance their wellbeing, and alternatives to criminalisation. Indigenous women advisors on the Social and Cultural Resilience and Emotional wellbeing of Aboriginal Mothers in prison (SCREAM) project demonstrated similar expertise (Sherwood et al 2015).

2. Legislation needs to promote non-custodial and non-punitive options at all stages of the criminal justice system, especially for Indigenous people

Indigenous people have borne the burden of the increasingly punitive approaches to law enforcement in recent decades. Law and order policies and practices have permeated all aspects of the criminal justice system to reduce judicial discretion and enforce tougher penalties (e.g. harsher sentencing provisions, more restrictive bail regimes and more onerous community corrections orders). To curb growing rates of Indigenous imprisonment, which have not had the effect of creating safer communities, there need to be greater legislative guarantees to liberty at each stage of the

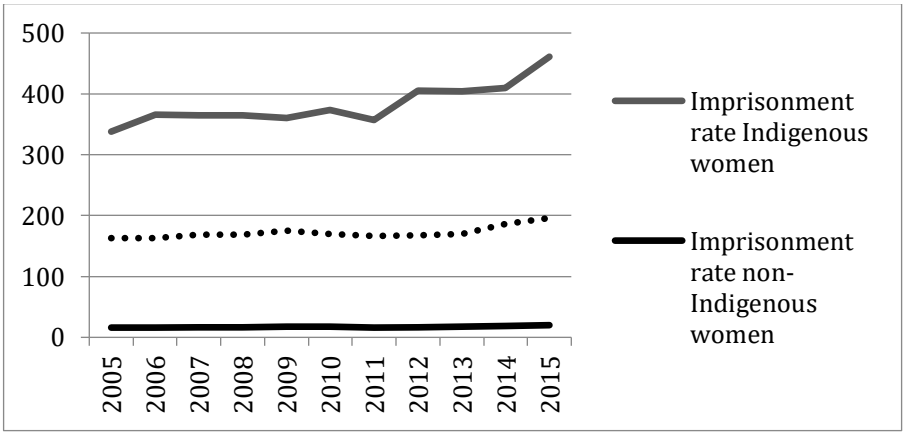
[1] The research team comprises Kamilaroi and Yualawuy woman and Director of Research at the UTS Jumbunna Institute of Indigenous Education and Research, Professor Larissa Behrendt, Associate Professor in Law at the University of Technology Sydney, Dr Thalia Anthony (*Chief Investigators*), and Gomeroi woman and LLB graduate, Alison Whittaker, and Guringai woman and LLB graduate, Ellen O'Brien (*Research Associates*).

criminal justice system (e.g. protections against police arrest, rights to bail, and prison as a sentence of last resort).

The promotion of non-carceral options should *especially* be applied to Indigenous people in order to temper the discriminatory impacts that institutions, legal frameworks and criminal justice decision-making have on Indigenous people. The role of unconscious bias and indirect discrimination in Australian judicial decision-making in criminal procedures has been identified by *inter alia* Hagan (2017), McGary (2017), Anthony and Longman (2017) and Anthony (2013). This extends the work of critical race theorists in the United States such as Kang et al (2012) who measure the differential impact on non-white defendants when applying racially neutral laws and practices. This is explained by Behrendt (2002: 179-8) as the role of bias in 'seemingly neutral institutions' where 'formal equality is a formula for inequality'. Measures to promote non-prison sentences for Indigenous people would temper the effect of discrimination and give effect to substantive equality. On this premise, the Supreme Court of Canada in the case of *Ipeelee* (2012: [68]) held that special provisions that caution against prison for Indigenous people are required to remedy the over-incarceration of Indigenous Canadians.

3. Special attention to the needs of Indigenous women

Indigenous women have been disproportionately affected by the rising imprisonment rates, as illustrated in the graph below. Options relating to diversion, bail, sentencing and prison need to be specifically developed to address the needs of Indigenous women (discussed further below).



Source: Australian Bureau of Statistics (2016)

Bail and Remand

General: Over one-quarter of the Indigenous prison population across Australia is on remand (Australian Bureau of Statistics ('ABS') 2016). Contributing to the high numbers of Indigenous people on remand is the watering down of the right to bail through increasing legislative exceptions to this right. It is important that legislation continues to stipulate the right to bail. This existed previously, for example, in the substantive bail legislation in New South Wales, but has since been moved to the 'Preamble (c)' of the *Bail Act 2013* (NSW). The right to bail should make particular reference to Indigenous people in recognition of their increased likelihood of being placed in remand compared to non-Indigenous people.

Proposal 2-1: This proposal to broaden the application of *Bail Act 1977* (Vic) s 3A should be extended in conjunction with the above-mentioned provision on the right to bail. The right to bail should exist generally and legislated considerations relating to Aboriginality should complement this right to account for the over-representation of Indigenous people on remand. Jessica Best in her Honours research (forthcoming, *Australian Indigenous Law Review*) found that the Victorian provision has had an 'equalising' effect on bail outcomes for Indigenous people. However, the benefit only arose when lawyers who sought to rely on section 3A provided detailed submissions on the relevance of Aboriginal background. In Toronto, Canada, this process is facilitated through the provision of *Gladue* Reports on Indigenous background factors in **bail applications** (see below on the more common use of these reports in sentencing).

Proposal 2-2: This proposal, which points to the need to fill gaps in services and infrastructure to provide culturally appropriate bail support, should also include options specifically for Indigenous women. For example, there should be bail hostels exclusively for Indigenous women, which would allow, where needed, children to stay with their mothers to maintain family relationships.

Sentencing and Aboriginality

Question 3-1: Yes, there should be such legislative provisions across Australia that require courts to consider Indigenous background factors in a way that is **consistent with promoting non-prison sentences**, especially for Indigenous people. This is on par with the provision s718.2(e) in Canada's *Criminal Code*, which has been interpreted by the Canadian Supreme Court to take into account relevant systemic factors, including over-incarceration, to promote alternatives to prison especially for Aboriginal people (*Gladue* 1999). This has been used not only to mitigate prison sentences (through providing a context for sentencing information such as the role of policing Aboriginal communities in influencing criminal antecedents) but also to promote *appropriate* sentences.

Question 3-3: No, sentencing courts do not have sufficient information about Indigenous offenders' background and circumstances, including histories of their communities. My research conducted with Professor Larissa Behrendt (Jumbunna Institute of Indigenous Education and Research UTS), Professor Elena Marchetti (Griffith Law School) and Senior Researcher Craig Longman (Jumbunna) and with the support of the Australasian Institute of Judicial Administration found that judicial officers in New South Wales and Victoria wanted more information on Indigenous community background to enable them to tailor sentences appropriately. Without such information, they felt they were unable to comprehend fully and account for the defendant's circumstances (Anthony et al 2017). Greater information on Indigenous background factors would shed light on the culpability of the offender and the availability of additional community sentencing options (such as programs in Aboriginal organisations rather than simply non-Indigenous NGOS). The judicial officers conveyed the need for more information in relation to:

- Historical and contemporary community circumstances affecting the Indigenous person (including, for example, the community's relationship with police and how this may affect the individual);

- Indigenous community perceptions of the role that the individual plays within the community, including their strengths;

- The individual's family and kinship relations;

- Available supports for the individual within their Indigenous community;

- Indigenous programs locally or otherwise available to the individual outside of his or her community (e.g. Indigenous residential rehabilitation centres);

- The defendant's health history (including trauma) and whether his/her needs are being addressed (Anthony et al 2017); and

- Perceptions within the Indigenous community of the impact that the offence and whether the defendant has made amends.

Question 3-4: It could supply the information outlined in response to Question 3-3.

Question 3-5: Our study published in Anthony et al (2017) included research on the experiences in Canada in relation to their various *Gladue* Report writing models and consultations with Aboriginal organisations. It found that the preparation of these reports should be informed by the following principles and strategies:

- The need for discrete reports on Indigenous background, rather than subsumed into pre-sentence reports provided by Community Corrections/Probation and Parole;
- The need for reports to be produced by Indigenous case workers in Indigenous-controlled organisations;
- The need for reports to be personal to the defendant's experience in the context of community and colonial circumstances;
- Report writing processes should be complemented with aftercare for the individual in recognition that the storytelling process may be traumatic and raise issues that require ongoing support (see also Standing Committee on Justice and Community Safety ACT 2015: 208-223).

Sentencing Options

Question 4-1: The Inquiry should not simply recommend reviews of mandatory sentencing laws but the immediate abolition of mandatory sentences. Studies undertook in the late 1990s and early 2000s in relation to the mandatory sentencing laws in the Northern Territory that applied to property offences revealed the disproportionate impact they had on Indigenous people (Northern Territory Office of Crime Prevention 2003: 2-3). At the same time, the studies found that during the period in which these laws were enacted, property crime rates increased, demonstrating their failure to have a deterrent effect (Northern Territory Office of Crime Prevention 2003: 10-12). These laws were ultimately repealed following the death of an Indigenous young person in Don Dale youth detention centre who was mandatorily sentenced to prison for stealing paint, textas and pencils worth less than $90 from school. Similar discriminatory outcomes were found in relation to Western Australia's mandatory sentencing laws that were introduced in the late 1990s (Le Plastrier 2005: 2-3). Given these disproportionately harsh and discriminatory outcomes for Indigenous people, and the fact that mandatory sentencing defies the fundamental sentencing principle of individualised justice, there are sufficient grounds to recommend the cessation of all mandatory sentencing laws.

The adverse carceral consequences of mandatory sentencing are evident in the case of Indigenous man Zak Grieve. In that case, the Northern Territory Supreme Court imposed a 20-year non-parole sentence when Grieve was 19-years-old in 2011. He was sentenced for murder although Supreme Court Judge, Dean Mildren, accepted that Grieve withdrew from the crime well in advance of its commission. Judge Mildren stated that the hefty imprisonment was 'the fault of mandatory minimum sentencing provisions, which inevitably bring about injustice' (*R v Grieve* 2012).

Questions 4-2 – 4-3: Yes, for minor offences, sentences of less than one-year imprisonment should be abolished. Aboriginal people are more likely to receive these short sentences than non-Aboriginal people, the latter tending to receive non-custodial sentences (ABS 2016). Short sentences of less than a year have a detrimental impact on access to housing, relationships with children and employment prospects. In connection with housing, in some states, such as New South Wales,

there is capacity for people to retain homes from social housing for up to six months, so the critical period is between six-months and one-year. This is also the case for relationships with children. Studies show that the first 12 months is vital for retaining the role of the parent/s' in the child's life and, where child protection authorities are involved, restoring the child to the parents' care (Scott et al 2005: 14). This is particularly important for Indigenous women in the criminal justice system who are more likely to be single parents. At the same time, imprisonment for short periods has little rehabilitative effect, especially to address the complex needs of women (see Joyce 2013: 452, Atkinson et al 2007: 290, Bartels 2012: 4).

Proposal 4-1 There should be greater availability of programs in regional and remote communities and more appropriate programs for Indigenous people, including those which accommodate the distinct needs of Indigenous women, Indigenous youths or elderly and Indigenous people with disabilities. Work should be oriented towards developing the individual's skills or education that can build the capacity. Community-based programs and orders (such as supervision orders) are rarely available in remote communities because of the lack of corrections staff. This may be redressed through a broader conceptualisation of community programs. For instance, greater consideration should be given to providing placements in Indigenous-owned organisations or guidance by Elders (Puruntatameri 2017: 2403). Moreover, programs relating to rehabilitation or health needs should be appropriate to culture and gender, and flexible so the person is not set up to fail.

Prisons

General:

1. High recidivism rates of people who have been imprisoned indicate that prison is not an effective pathway for rehabilitation or deterrence. The prison environment exacerbates trauma and breaks connections to family and community (Atkinson et al 2007: 290). In addition, prison staff tend to lack trauma-informed approaches and therefore compound the difficulties facing Indigenous people in prison (Bamblett 2016: 229). There are insufficient programs and supports accessible to Indigenous people in prisons to enhance their wellness

and healing, and facilitate their return to community. For instance, Indigenous mothers, who constitute 80 per cent of Indigenous women in prison do not have adequate support to maintain their parenting role while in custody (Sherwood & Kendall 2013: 85). Imprisonment, therefore, is not only a symptom of the criminal justice system's interventions in Indigenous peoples' lives, it is a contributing factor to ongoing criminalisation of Indigenous people due to the trauma and alienation it creates.

2. Prison is particularly threatening for Indigenous people given the long history of Indigenous deaths in custody, which directly touches many Indigenous families. In New South Wales, the recent deaths in prison of David Dungay (December 2016), his cousin Eric Whittaker (July 2017) and Tane Chatfield (September 2017) have produced a deep sense of grief and betrayal among their families and in their Indigenous communities (Chettle 2016, Begley 2017, Aunty Jean Hands, Northern Regional Alliance quoted in Higgins and Brennan 2017). The families feel that they have been shut out of the investigations and their wounds can only heal through 'justice', including independent investigations that produce answers for the families and make the system accountable (Guivarra 2016, Higgins and Brennan 2017a, Baxter 2017, Welcome to Country 2017, Deep-Jones and Blanco 2017, Liddle 2017).

Fines and Driver Licences

Question 6-7 Our research in the Northern Territory found that suspending a driver licence for fine default disproportionately criminalises Indigenous people for the offence of driving without a license (Anthony & Blagg 2012, Anthony 2010). It did not incentivise the payment of fines, because Indigenous people often lacked the capacity to do so. Indigenous people had pressures and obligations placed on them to drive cars, including obligations to Elders and children. Especially in remote communities where driving was required for accessing basic services, attending courts and conducting sorry business, Indigenous people felt that the penalty of licence suspension was a disproportionate and counterproductive response to people whose poverty precluded fine repayment. From criminal court observations in remote communities, it was not uncommon to see Indigenous people sentenced for driving unlicensed, which would conflate prison sentences, often

in conjunction with other driver-related crimes (e.g. driving an uninsured vehicle, driving an unregistered vehicle or driving disqualified) (Anthony & Blagg 2012).

Question 6-9 The provision of a special driver permit scheme should especially apply to remote communities where there is restricted access to licensing services and the streetscape barely resembles the urban road system that relate to licensing tests and common road rules (e.g. lacking traffic lights, street dividers, signs and guttering) (Anthony & Blagg 2012: 10, 63). Remote driver licences would enable people to drive in remote communities without meeting the onerous bureaucratic and written test requirements to obtain a full driver licence as long as the person could demonstrate driver safety and competence. This recommendation is consistent with recommendation 21 of the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011) and exists in other contexts such as special licences for driving on rural properties.

Alcohol

Question 8-1 In the Northern Territory, research and initiatives by Tangentyere Council in Alice Springs have shown the expertise local Indigenous people have in relation to managing alcohol abuse (Foster et al 2006). Conversely, this research has demonstrated the damage inflicted on Indigenous communities from top-down strategies and external evaluation practices on alcohol management. In the early 2000s, Tangentyere consulted with community to inform the Northern Territory Liquor Commission of appropriate restrictions on the supply of alcohol. The restrictions on trading hours were trialed and rejected (despite positive outcomes identified by Tangentyere's research hub). This is a critical example of the need for governments to listen to communities, empower them in decision-making and build their capacity to enable people in Indigenous communities to evaluate programs that affect them, including with respect to alcohol management.

Question 8-2 Mandatory treatment programs in the Northern Territory under the *Alcohol Mandatory Treatment Act* (NT), which are triggered by police interventions, are of limited value where there are 'no rehabilitation facilities available in any remote Aboriginal communities', as this means that

Indigenous people 'cannot get help in their home community' (Hunyor 2015). Moreover, this coercive scheme has had a discriminatory impact on Indigenous people.

Access to justice

General:

1. **Access to diverse juries:** The widespread occurrence of Indigenous defendants being tried by all-white juries has a detrimental effect on Indigenous peoples' perception of justice (especially where offences are committed against white victims or where offences relate to a response to white racism) (Anthony & Longman 2017). Equally, Indigenous victims usually have restricted access to justice due to the likelihood of an all-white jury, especially where their perpetrators are non-Indigenous (Purdy & McGlade 2001).

2. **Better access to justice through improved courthouse and courtroom design:** Our research has found that improving court settings for Indigenous users, including defendants, victims and their families, can have a beneficial effect on access to justice. This includes removing imperial symbols, improving sight-lines to the outside environment (including in courtrooms, public areas and in holding cells), creating more ingress and egress passages and private spaces (see Anthony and Grant 2016).

Police Accountability

General:

1. To increase confidence in policing, Indigenous communities and families need to see greater accountability for police who are responsible for harm to their people (see Longman 2016, on the failures to ensure independent investigations and accountability where Indigenous people have died at the hands of the police). Indigenous families who have lost people in police custody, including Rebecca Maher, Ms Dhu, TJ Hickey, Mulrunji Doomadgee, Kwementyaye Briscoe, Eddie Murray, John Pat and Lloyd Boney, to name just a few who are part of a "say their name" campaign, are still seeking justice for their loved ones.

2. To improve relations with Indigenous communities, there also need to be improvements in police practices in relation to Indigenous victims and investigations of Indigenous homicides. The cases of Elijah Doughty in Kalgoorlie and the Bowraville three: Colleen Walker, Evelyn Greenup and Clinton 'Speedy' Duroux, for instance, were originally impeded by police misconduct, racist stereotypes and disrespect to the victims' families (see Moodie 2017, Behrendt 2014, Graham 2017).

References

Cases

R v Ipeelee [2012] 1 SCR 433.

R v Gladue [1999] 1 SCR 688.

R v Grieve 2012, Proceedings of the Northern Territory Supreme Court, No. 21136195.

Materials

Altman J. 2015. Is Indigenous Funding Going where it has to Go? *The Wire*. 8 September. Available at http://thewire.org.au/story/is-indigenous-funding-going-where-it-has-to-go/

Anderson P.A. 2016. Transcript of Proceedings. *In the Matter of a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory*, 12 October.

Anthony T. 2005. Aboriginal Self-Determination after ATSIC: reappropriation of the 'original position'. Polemic 14(1) 4-15.

Anthony T. 2010. Governing Crime in the Intervention. *Law in Context* 27(2), 90-113.

Anthony T. & Blagg H. 2013. STOP in the Name of Who's Law? Driving and the Regulation of Contested Space in Central Australia. *Social & Legal Studies* 22(1), 43-66.

Anthony T. & Blagg H. 2012. Addressing the "Crime Problem" of the Northern Territory Intervention: Alternate Paths to Regulating Minor Driving Offences in Remote Indigenous Communities. Report to the Criminology Research Advisory Council. Available at: http://www.criminologyresearchcouncil.gov.au/reports/CRG_38-0910_FinalReport.pdf

Anthony T. 2013. *Indigenous People, Crime and Punishment*. Oxon: Routledge.

Anthony T. & Grant, E. 2016, 'Courthouse Design Principles to Dignify Spaces for Indigenous Users', *International Journal for Court Administration*, vol. 8, no. 1, pp. 43-59

Anthony T. 2017. FactCheck Q&A: are Indigenous Australians the most incarcerated people on Earth? *The Conversation*. 6 June. https://theconversation.com/factcheck-qanda-are-indigenous-australians-the-most-incarcerated-people-on-earth-78528

Anthony T. & Longman C. 2017. Blinded by the white: A comparative analysis of jury challenges on racial grounds. *International Journal for Crime, Justice and Social Democracy* 6(3) 25-46.

Anthony T., Marchetti E., Behrendt L. & Longman C. 2017. Individualised Justice through indigenous Community Reports in Sentencing. *Journal of Judicial Administration* 26(3), 121-140.

Atkinson J., Nelson J., Brooks R., Atkinson C. & Ryan K. 2007 Addressing Individual and Community Transgenerational Trauma. In Purdie N., Dudgeon P. & Walker R (eds), *Working Together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice*. 2nd Ed. Canberra: Department of The Prime Minister and Cabinet, 289-306.

Australian Bureau of Statistics. 2016. *Prisoners in Australia*. Cat No. 4517.0

Bamblett M. 2016. Transcript of Proceedings. *In the Matter of a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory*, 13 October.

Bartels L. 2012. *Sentencing of Indigenous women*. Indigenous Justice Clearing House Research Brief 14. Available at https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/brief014.pdf

Baxter R. 2017. Tane Chatfield who died in custody at Tamworth Correctional Centre farewelled by hundreds of mourners in Armidale. The Inverell Times. 23 October. Available at

http://www.inverelltimes.com.au/story/5006769/death-in-custody-tane-chatfield-remembered-as-a-man-with-considerable-courage/

Begley, P. 2017. Eric Whittaker's death in custody leads to 'conflicting stories': family. *The Sydney Morning Herald*. 19 July. Available at http://www.smh.com.au/nsw/eric-whittakers-death-in-custody-leads-to-conflicting-stories-family-20170719-gxeay7.html

Behrendt L. 2002. Lessons from the mediation obsession: Ensuring that sentencing 'alternatives' focus on Indigenous self-determination. In Strang H. & Braithwaite J. (eds) *Restorative Justice and Family Violence*. Cambridge: Cambridge University Press.

Behrendt L. 2014. *Innocence Betrayed*. Lavarch Productions & Front Yard Films.

Behrendt L. 2015. Spin continues and the gap widens. New Indigenous funding is a dangerous misstep. *The Guardian*. 19 March. Available at: https://www.theguardian.com/commentisfree/2015/mar/19/spin-continues-and-the-gap-widens-new-indigenous-funding-is-a-dangerous-misstep

Brown A. & Brown N.J. 2007. The Northern Territory Intervention: voices from the centre of the fringe. *Medical Journal of Australia* 187(11-12), 621-3.

Chettle N. 2016. David Dungay death in custody: Family rally outside Long Bail jail, push for inquiry. *ABC News*. 11 September. Available at: http://www.abc.net.au/news/2016-09-11/david-dungay-family-demands-inquiry-after-death-in-custody/7834122

Davis M. 2016. Listening but not hearing: process has trumped substance in Indigenous affairs. *The Conversation*. 22 June. Available at https://theconversation.com/listening-but-not-hearing-process-has-trumped-substance-in-indigenous-affairs-55161

Deep-Jones L. & Blanco C. 2017. Family of Indigenous man who died in custody doubt he was prone to self-harm. *National Indigenous Television (NITV) News*. 25 September. Available at: http://www.sbs.com.au/nitv/nitv-news/article/2017/09/25/family-indigenous-man-who-died-custody-doubt-he-was-prone-self-harm

Foster D., Williams R., Campbell D., Davis, D. & Pepperill L. 2006. 'Researching ourselves back to life': new ways of conducting Aboriginal alcohol research. *Drug and Alcohol Review.* 25: 213-217.

Gibson, P. 2017. 10 Impacts of the NT Intervention. *NITV SBS*. 21 June. http://www.sbs.com.au/nitv/article/2017/06/21/10-impacts-nt-intervention

Graham C. 2017. The Killing Fields: How we failed Elijah Doughty, And Countless Others. *New Matilda*. 23 July. Available at: https://newmatilda.com/2017/07/23/groundhog-day-elijah-doughty-joins-a-long-list-of-deaths-with-no-justice/

Guivarra N. 2016. Family demand justice for death in custody of David Dungay Jnr. *National Indigenous Television (NITV) News*. 22 December. Available at http://www.sbs.com.au/nitv/family/nitv-news/article/2016/12/22/family-demand-justice-death-custody-david-dungay-jnr

Hagan S. 2016. *The Rise and Rise of Judicial Bigotry*. Canberra: Magpie Goose Publishing.

Higgins I. & Brennan B. 2017. Tane Chatfield's family demands answers from Corrective Services NSW over death in custody. *ABC News*. 25 September. Available at http://www.abc.net.au/news/2017-09-25/tane-chatfields-family-demands-answers-over-death-in-custody/8986246

Higgins I. & Brennan B. 2017a. Tane Chatfield's family want to know how he died. *ABC News*. 3 October. Available at: http://www.abc.net.au/news/2017-10-03/death-in-custody-how-did-tane-chatfield-die/9011948

House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs. 2011. *Doing Time - Time for Doing - Indigenous youth in the criminal justice system*. Canberra: Commonwealth of Australia

Hunyor J. 2015. Imprison Me NT: Paperless arrests and the rise of executive power in the Northern Territory. *Indigenous Law Bulletin* 8(21) 3-9.

Joyce P. 2013. *Criminal Justice: An Introduction*. New York: Routledge.

Kang J., Bennett M., Carbado D., Casey P., Dasgupta N., Faigman D., Godsil R., Greenwald A.G., Levinson J., Mnookin J. 2012. Implicit bias in the courtroom. *UCLA Law Review*. 59(5), 1124-86.

le Plastrier, B. 2005. Western Australia's Mandatory Sentencing Laws and Australia's International Legal Obligations. *Dialogue* 3(2), 1-10.

Liddle R. 2017. Family of Aboriginal man who died in custody call for justice. *National Indigenous Television (NITV) News*. 19 July. Available at: http://www.sbs.com.au/nitv/nitv-news/article/2017/07/19/family-aboriginal-man-who-died-custody-call-justice

Longman C. 2016. Scales of justice still tipped towards police who harm people in their custody. *The Conversation*. 15 April. Available at https://theconversation.com/scales-of-justice-still-tipped-towards-police-who-harm-people-in-their-custody-57125

Moodie C. 2017. Elijah Doughty's mother pleads for 'everyone to come together' after teen's death. *7.30 Report, ABC News*. 27 July. Available at: http://www.abc.net.au/news/2017-07-27/elijah-doughtys-mother-appeals-for-end-to-racial-divide/8749518

Northern Territory Office of Crime Prevention 2003. *Mandatory Sentencing for Adult Property Offenders: The Northern Territory Experience*. Darwin: Northern Territory of Australia, Office of Crime Prevention.

Puruntatameri M. 2017. Transcript of Proceedings. *In the Matter of a Royal Commission into the Child Protection and Youth Detention Systems of the Northern Territory*, 31 March.

Purdy J. & McGlade H. 2001. … No jury will convict: An account of racial killings in Western Australia. *Studies in Western Australian History* 22: 91-106.

Scott D., O'Neill C & Minge A. 2005. *Contact between children in out-of-home care and their birth families: literature review*. NSW Department of Community Services. Available at http://www.community.nsw.gov.au/__data/assets/pdf_file/0019/321724/oohc_research.pdf

Sherwood J. & Kendall S. 2013. Reframing spaces by building relationships: Community collaborative participatory action research with Aboriginal mothers in prison. *Contemporary Nurse* 46(1): 83-94.

Sherwood J., Lighton S., Dundas K., French T., Link- Gordon D., Smith K. & Anthony T. 2015. WHO ARE THE EXPERTS HERE? Recognition of Aboriginal women and community workers in research and beyond. *AlterNative: an international journal of indigenous scholarship* 11(2): 177-191.

Standing Committee on Justice and Community Safety, Parliament of the Australian Capital Territory. 2015. *Inquiry into Sentencing*. March. Report No. 4. Available at: https://www.parliament.act.gov.au/__data/assets/pdf_file/0019/707212/JACS-Ctee-report-for-Inquiry-into-Sentencing-FINAL.pdf

Welcome to Country. 2017. Why did it take 40 minutes to get Tane Chatfield to a hospital 250m away? *Welcome to Country*. 12 October. Available at: https://www.welcometocountry.org/tane-chatfield-to-hospital/