

Court of Conscience

Community Legal Issues
in Redfern



Court of Conscience respectfully acknowledges the Bedegal, Gadigal and the Ngunnawal Peoples as the custodians and protectors of the lands where each campus of UNSW is located.

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With special thanks to Finn O'Keefe from Redfern Legal Centre.

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Foreword

David Dixon

Professor & Dean 2006-2016, UNSW Law



Judge Bob Bellar's family standing in front of his portrait in UNSW Law's Moot Court

The choice of Redfern as the focus of *Court of Conscience's* collection on community legal issues is both welcome and appropriate. UNSW Law's special relationship with Redfern goes back to our earliest days, when our founding dean, Emeritus Professor Hal Wootten worked with leaders of the Redfern community, notably Bob Bellear, to establish the Aboriginal Legal Service. Soon afterwards, Redfern Legal Centre was established, again by a combination of UNSW academics and students and community lawyers and activists. That tradition has been continued in the leading role of UNSW Law colleagues in the formulation of the *Uluru Statement from the Heart* – Gabrielle Appleby, Sean Brennan, Gemma McKinnon and of course the extraordinary Megan Davis.

In recent years, our connection with RLC has been renewed through the Police Powers Clinic, an initiative led from RLC by David Porter and Joanna Shulman (an alumna who is now the Centre's director) and from UNSW by Dr Vicki Sentas, someone who exemplifies the combination of socially committed and engaged research and teaching which has been such a proud part of the UNSW Law tradition. The complaints and cases which the Clinic deals with are depressingly familiar to anyone who knows the history of policing in Redfern. While much has changed both in the area and in the NSW Police, too much remains the same, as essays by Michael Siciliano, Vicki Sentas, and Thalia Anthony show. However, more is involved than direct racial discrimination (although there has been plenty of that).

For anyone unfamiliar with Redfern's history, Jenny Brockie's film *Cop it Sweet* is an essential introduction to the structural nature of Redfern's policing problems. The long final scenes record the interaction between a police officer and an Aboriginal resident. The latter has been arrested for offensive language, swearing at the police who were, in his words, 'studying the Block'. In this exchange, the police officer patiently tries to obtain the man's name so that he can be booked in to the station. The man resists – 'That's for you to find out' – but the officer snatches his wallet, and with it his dignity and autonomy. In this sad scene, these two men carry the weight of history, acting out parts in a pathetic drama.

Watching *Cop it Sweet* again took me back to a low point of the time I spent doing fieldwork research on police in Sydney almost thirty years ago. On a

night of torrential rain, an Aboriginal man had been hit by a car on Cleveland Street. He lay in the gutter with (at least) a badly broken leg, water streaming around him. An officer who, not long before, had taken part in the station abuse of Aboriginal people, knelt in the streaming gutter shielding the badly injured man from passing cars and trying to make him comfortable without moving him, while waiting for an ambulance. The injured man's colleague shambled around a second police officer on the pavement, drunkenly mumbling abuse and blaming the police for his friend's predicament. It was a scene of utter misery and hopeless contradiction.

Nothing is simple in Redfern. Just as changing police seems to mean two steps forward, one step back, so the urban regeneration discussed in Ned Cutcher's and Jo Shulman's essays involves both the necessary removal of appalling living conditions and the opportunism and exploitation which so often goes along with development.

Just as there is shadow, so also there is light, the light provided by the people of Redfern themselves. For UNSW Law, an iconic figure is our alumnus Bob Bellear, a man who became a lawyer in order to fight the injustice he saw around him in Redfern and who went on to be the first Aboriginal judge in Australia. As well as his role in the ALS, Bellear established the Aboriginal Housing Corporation in Redfern in 1972, and throughout the 1970s was a director of the Aboriginal Medical Service. His portrait now hangs in our Moot Court. Students wanting to understand the complexity of Redfern could start well by studying the proud face of a man who is an example not just to the young people of Redfern, but to us all.

In that spirit, I pay my respects to the elders past and present of the Gadigal people of the Eora Nation, forever custodians of Redfern and the land around it, and congratulate the editors of *Court of Conscience* for this fine collection of essays on community legal issues in Redfern.

My Redfern Story

Juanita Sherwood



Juanita Sherwood is a Wiradjuri woman and is currently the Deputy Vice Chancellor (Indigenous) at the University of Sydney. Before becoming a Professor, Juanita's early working years were spent supporting the women, men and children of the Redfern community as a nurse and teacher. This is her story of the challenges, strengths and people of Redfern then and now.

Working Roles in Redfern

I came to work in Redfern as a Child and Family Health Nurse for Redfern Community Health Services at Rachel Forster Hospital in the 1980s. It was a white organisation that was not well aligned with the Redfern Aboriginal Medical Service (AMS) or Redfern Aboriginal Health Services. This changed over the years as we all started working together in the area of child health.

I had trained as a Registered Nurse at St Vincent's Hospital from 1980–83. I worked for two years as a Registered Nurse at the general hospital, and while I studied, I worked part-time at St Vincent's Private Hospital. I studied primary school teaching at Australian Catholic University (ACU) North Sydney, completing it in 1987 and then looked for work in 1988.

I also became a member of the NSW Aboriginal Education Consultative Group — a vital body that pushed for Indigenous education to be taught in schools, and supported community initiatives to build educational opportunities for our kids.

I was very happy to be given the role of Child and Family Health Nurse as I believed it combined all my backgrounds very well. I was very keen to connect with the Aboriginal Health Service and Redfern AMS, where I had really wanted to work at and did so. I was greeted with much warmth and support.

It was, however, within the schools that I was quickly guided to what my role really was about. The Aboriginal education assistants took me straight to The Block to meet the Elders and community members. They were all very warm and encouraged me not to be shy; to come down and have a chat about anything. Aunty Norma from Darlington Primary School became my key guide and support on the many issues I was to witness in the coming years.

The centre I was working at was not particularly Aboriginal-friendly and I came to appreciate that it had done little over the years to change their way of working. I came to the centre gung-ho and keen to work with the communities and was often told off for being far too connecting.

Addressing Otitis Media Hearing Loss among Aboriginal Children in Redfern

As a Child Health Nurse, I attended preschools, primary schools and high schools. My role was to screen for hearing, vision and speech issues that may be impacting on a child's ability to learn in the classroom. I was really concerned about the very high rates of Otitis Media ('OM') amongst Aboriginal children living in the inner city area in preschools, primary and high schools. Otitis Media affects hearing and, consequently, learning.

Jennifer Bush, a Registered Nurse and midwife; who was the twin sister of Alison Bush (who worked for Aboriginal Health Services Redfern) and I raised our concerns about the high OM rates. Our concerns were heard by the Aboriginal education team at Sydney University who recommended we connect with the Menzies School of Health Research ('Menzies') in Darwin to explore a way forward. Jennifer and I met with Terry Nienhuys from Menzies who agreed that our high rates were a worry and that we needed to record them. We undertook a research project supported by the Redfern Aboriginal Interagency and Community in 1989.

The results indicated that we had a problem: 86 per cent of children we screened had an educationally significant hearing loss. Prior to our research, it was considered that OM was a remote health issue. Clearly, our work shifted this long-held thinking and health planning. The then President of the NSW Aboriginal Education Consultative Group, Linda Burney, took the results to the then Minister of Education, who sprang into action under Linda's prompting.

This was a critical shift, where we grasped that students' lack of success in the classroom did have a health causation. We worked very closely with Redfern AMS to support breathing and coughing programs in the schools and preschools. The supply of tissues assisted in children being able to clear their airways. We developed a tissue rap which the kids loved to do, and it enabled quiet listening times for children post the rap.

With the results of OM research, and much work with the health services, we were able to set up an Ear Nose Throat (ENT) clinic at Redfern AMS. This made my job a lot easier, and it made those services far more accessible for parents as well.

Local Responses to Nutrition Needs

We undertook a food survey at the Redfern IGA, where most of the community shopped. It was costlier than shops in the eastern and northern suburbs. This inequity impacted on the healthy purchases families could make. The community were concerned with our findings. As a result, a community taskforce attempted to negotiate with the IGA to lower prices. The taskforce did not succeed, so we supported the set-up of a vegetable and fruit cooperative for the Block residents that provided much cheaper varieties of nutritious food. We also set up a breakfast and lunch program for Aboriginal school students, which was supported by the community and university students.

Police on The Block: Trauma and Healing

I worked in Redfern from 1988 through to 1993, and during that time, I witnessed the war against the people who lived on The Block. This war was the work of Redfern police. This was the period when *Cop It Sweet*¹ was filmed, which clearly outlined the racist over-surveillance and thuggery of the police force. This was directed at our Elders, adults and children — boys and girls. I was at our 1989 NAIDOC celebrations and sports carnival in Alexandria Park when three police detectives shot into the crowd of children and their families celebrating NAIDOC week.

I remember watching police cars hurtling down Eveleigh Street at 100 kilometres an hour. Mothers would run to grab their children who were playing on a street hardly ever accessed by civilian cars. I witnessed young boys and girls being harassed by police. These showdowns of white supremacist power were appalling.

I was there during the infamous raid Operation Sue in early 1990, an illegal raid conducted

by the Tactical Response Group that terrified families and The Block community. They sledge-hammered down doors of 11 homes at 4.30 am. They hit, kicked and violently threw men and women out of their beds too. They held guns at the heads of parents, threatening to shoot them in front of their terrified children. In the end, no serious charges were laid, it was all to instill fear, and it did.

People who were attacked during the raid feared that they would be shot like David Gundy had been in his bed only six months earlier in the nearby suburb of Marrickville.² The killing of David Gundy and the raid on The Block demonstrated that we were at war with the police and Inspector Peate.

The morning of the raid, I was called by a member of the community. The community was meeting in Tony Mundine's gym to talk about the raid and what the community could do. They requested that I organise counselling for the families who had been violently abused in their houses. I went straight to the head of mental health services at Redfern Community Health Centre who told me that they could not provide the counselling and that the victims would need to go to Lidcombe for torture and trauma counselling. I was overwhelmed with frustration and anger and contacted my very senior supervisor Marie Bashir to talk to her about organising counselling. Marie and a psychologist at Redfern supervised me in providing counselling to a number of the families who were all suffering from post-traumatic stress disorder ('PTSD') — a result of the trauma they were all put through.

The Impact of Racist Policing on Youth

We all lived through racist, abusive violence in Redfern. Due to the targeting of young Aboriginal male and female youths by the police,³ we set up a

¹ *Cop it Sweet* (Directed by Jenny Brockie, ABC TV Factual Entertainment, 1992).

² Chris Cunneen, *Aboriginal-Police Relations in Redfern: With Special Reference to the 'Police Raid' of 8 February 1990* (Report, Human Rights and Equal Opportunities Commission, 1990) 9.

³ *Special Treatment – Locking Up Aboriginal Children* (Margaret Anne Smith, Ronin Films, 1991).

BE
DEADLY



small working group with Redfern Legal Centre to support Aboriginal youth. The youth were taken to cells without their parents' consent and beaten. The legal service purchased a beeper that was to be contacted when youth were taken to the cells by the police. The ideology behind our night beeper program was to provide the youth with support and an attempt to reduce the beatings.

But the kids on The Block did not have a chance. They were harassed by the police daily. When the kids swore back at the police, they were picked up and fined for the trifecta: offensive language, resisting arrest and assaulting police. This was a pattern I witnessed, and we did attempt to stop it. The sad story is that these young ones were continuously hassled, leading to fines. These unpaid fines led to time inside. In 2012, I conducted interviews in NSW prisons to talk to Aboriginal mothers who were inside. At each prison I went to throughout NSW, I ran into someone I knew. Many of these grown-up women were the young girls I had worked with in their schools and on The Block. They were happy to see me, and we had much to talk about and catch up about. These women did not have a chance; their struggles with government services, police, housing and Families and Community Services (FACS) ensured they would be stressed, fraught, strained and worried about their children.

Aunty Norma's Guidance and Support in Working with the Redfern Community

With the guidance of Aunty Norma Sides, I got to meet with many of the members of the community on The Block and within inner Sydney. Aunty Norma was the Aboriginal Education Assistant at Darlington Primary School ('Darlo'). Aunty Norma was my go-to person for everything, she had worked in this school for many years and knew the families of the children who went to Darlo.

Aunty Norma took me to each house on The Block and introduced me to the families and Elders of the community. Her introductions ensured that I was known and that I would not be considered as a government person, an untrusted person. This was vital as I had to call on many homes to talk to parents about

their child's health, often recommending referrals to specialists and then surgery. I quickly discovered that if I wanted the children to be seen by a specialist, I had to get them there, as their parents often did not have the transport or the money to get their children to these appointments. Parents were also concerned that they would be talked down to by the doctors. So, I would take a crowd to the hospital, and then translate the doctor's story back to mums and dads. This worked well, although the hospital would often growl at me as we were too noisy.

My Other Redfern Aunties

Aunty Polly Smith was the matriarch of Redfern and she lived across from Murrawina preschool. This was a preschool set up by Aboriginal women for Aboriginal children. This was initially the only way these children had access to early childhood education. It was a place where children played merrily and were loved greatly by their Aunties (teachers) who cared for them at school. Every Christmas, the "Black Santa" would come to Murrawina and hand out Christmas presents to the children. Black Santa was famous and much loved.

Aunty Polly was the grandmother of many young children I worked with who had ear health problems. I spent a lot of time at her home hearing about the old days, while picking up her grannies for appointments to the hospital. Aunty Polly was highly respected on The Block, everybody knew her. So when it came to name the new early childhood centre set up under Tony Mundine's gym, it was clear that it had to be in recognition of this amazing woman.

The Aunty Polly Smith Centre proved to be a great success. It had the highest immunization rates in the whole of central Sydney. The nurses and Aboriginal health workers were incredibly warm, and nurtured me as a new mother. I witnessed much joy at Aunty Polly's.

Aunty Joyce Ingram was another mentor to me and I was guided by her strong sense of justice. She was there right from the establishment of The Block until it was taken down for redevelopment.

Margaret Vincent: A Friend, Colleague and Ally

Margaret Vincent was a very dear friend and colleague. Margaret worked very hard within the community, making it a place that people were proud of.⁴ She worked with the Community Development and Employment Projects (CDEP) Program in 1991 that printed t-shirts with Paris, New York and Redfern on them and I bought many. Members of the CDEP also painted shoes, bags etc. and made great coffees. We were all excited about this opportunity to celebrate The Block and its peoples. Margaret and I set up the veggie garden on The Block, aiming to build children's knowledge about good tucker. We did a lot of good work around nutrition, and the CDEP served up healthy tucker.

Community Remembers the Ear Nurse, and I Remember Redfern

Today I have a long and trusting relationship with the Redfern and Glebe Aboriginal community, as I do with communities where I have worked and lived throughout Australia. Redfern is special in that it has always been considered the Black capital of Australia by Aboriginal Australians. It was the site of our taking responsibility for our health, housing and legal needs. It was the site of much political agitation as well as a site for the connecting of many families from all over NSW on four streets known as The Block.

The Block was a place where there was great solidarity of families who had moved to Sydney for employment, access to health services with Redfern AMS opening its doors in 1971, and access to education. The scene on The Block was warm and children would play on the street.

The wealth of wisdom held by many Elders who resided on The Block was immeasurable. I was grown and held by many who chose to share their wisdom with me. I grew, nurtured by their compassion for my work and being.

⁴ Bruce Dynan, *Auntie Polly Smith Centre, CDEP & Community Garden* (21 May 2010) Youtube <<https://www.youtube.com/watch?v=vsHXAv99d50>>.

Knock-Down, Rebuild, Redfern Waterloo

Ned Cutcher

Ned Cutcher has recently taken up a post as a Senior Policy Officer with Shelter NSW, where his focus is on the impact of urban renewal and redevelopment on low-income, marginalised and excluded members of the community. He has previously worked as a tenants' advocate with a number of Community Legal Centres, most recently as the Senior Policy Officer with the Tenants' Union of NSW.

The story of Redfern is a story of housing justice, particularly for Aboriginal people. It is a story of resilience in the face of discriminating landlords, of evictions and squats. It tells of an emerging self-determination following almost two hundred years of violence, so-called protectionism and assimilation. It is the story of The Block, and the establishment of the Aboriginal Housing Company, where for the first time since colonisation, housing for Aboriginal people was owned and managed by Aboriginal people.¹

The neighbouring suburb of Waterloo has a housing story too. It tells of slum clearance and urban renewal, high-rise apartment buildings, and the last major investment in public housing in inner-city Sydney.² It is the story of affordable housing on the city's doorstep, and for this reason it is a story of housing justice too.

These stories are contemporaries, sharing similar origins around the beginning of the 1970s when government policy was in their favour. They have shaped a community for over a generation, almost 50 years, as governments and policies have changed around them. But as Sydney has grown, and as the city and its pockets of privilege continue to change, these stories have become harder to sustain. Both The Block in Redfern and the Waterloo public housing estate are subject to plans for significant redevelopment that would alter both the physical and social fabric of their community.

Early in December 2015, then Premier Mike Baird announced that Waterloo would host a station on the planned Sydney Metro line, running between Chatswood and Bankstown. This was hailed as a 'once in a lifetime opportunity to renew the area's social housing and increase the supply of new homes close to the CBD'.³ The announcement said that the ageing Waterloo social housing estate would be progressively renewed with a mix of private, affordable and social housing, with no loss of social housing from the current 2000 or so dwellings.⁴ Thus it was confirmed that one of the country's largest and most iconic public housing estate is to undergo urban renewal according to an emerging formula of increased density and socially mixed communities, known as 'Communities Plus'.

Communities Plus is the name given to the NSW Government's current policy for growing the



social and affordable housing portfolio, aiming to deliver 23 000 'new or renewed' dwellings over the next two decades.⁵ In order to achieve this, around 17 000 existing dwellings are set to be demolished, providing a net gain of around 6500 social housing dwellings across the State.⁶ This will be delivered as part of an increase in density across the affected sites, with the balance of new dwellings to be sold into the

¹ Redfern Oral History, *Aboriginal Housing Company & The Block* (2 September 2018) <<http://redfermorahistory.org/Organisations/AHCAboriginalHousingCompanyTheBlock/tabid/209/Default.aspx>>.

² Patrick Troy, *Accommodating Australians: Commonwealth Government Involvement in Housing* (The Federation Press, 2012) 158 [21].

³ NSW Department of Premier & Cabinet, 'Sydney Metro to Rejuvenate Waterloo' (Media Release, 16 December 2015) <<https://www.nsw.gov.au/your-government/the-premier/media-releases-from-the-premier/2016/10/sydney-metro-to-rejuvenate-waterloo/>>.

⁴ *Ibid.*

⁵ Land and Housing Corporation, *Communities Plus Industry Briefing* (27 February 2018) Communities Plus <<https://static1.squarespace.com/static/ta/5625d102e4b0040b09643cc5/517/assets/docs/180327-CP-IndustryBriefing.pdf>>.

⁶ *Ibid.*

private housing market by developers who will use the anticipated proceeds to fund the redevelopment. The overall target is for 70 per cent of housing in the renewed estates to be sold off, with the remaining 30 per cent to be given to community housing providers to manage as social and affordable housing.⁷

In public policy terms, Communities Plus reflects a significant departure from the status quo. It is the first attempt in decades by a NSW Government to stem the loss of social housing stock, whereas previous governments have allowed the portfolio to run down.⁸ But it is not a sustainable model for growth, as it relies on the transfer of public land to private developers in order to finance the necessary construction. While a commensurate number of dwellings may be returned to the social housing portfolio at higher densities, only a fraction of the land will be returned, resulting in an overall loss to the citizens of New South Wales.

The Communities Plus website says that the policy will '[d]eliver more housing and a better social housing experience, with more opportunities and incentives to avoid or move beyond social housing'; '[d]evelop new mixed communities where social housing blends in with private and affordable housing, with better access to transport and employment, improved community facilities and open spaces'; and '[p]artner with the private and not for profit sectors to fast track the redevelopment of sites in metropolitan Sydney and regional NSW'.⁹ Some of this is clearly aspirational, as it attempts to make broad yet direct links between the Communities Plus agenda and the government's overall Future Directions for Social Housing strategy. Mostly, it speaks to a new built form, of imagined communities of home-buyers and social housing renters integrated in as yet unimagined places. What it doesn't say, unless you look a little more closely, is that to achieve all of this, the erasure of existing communities will be required. Communities like Waterloo.

Back up the hill in Redfern, the Aboriginal Housing Company has submitted a Master Plan for the 'Pemulwuy Project' to the Department of Planning and Environment.¹⁰ The Plan would see sites around The Block that were formerly used for Aboriginal housing redeveloped into a mixed-use precinct that includes retail and commercial space as well as a significant amount of student accommodation. It is

a model that is conceptually similar to Communities Plus, and it raised concerns within the community that Aboriginal housing may be squeezed out of the new development altogether.¹¹

In fact, both of these proposals have raised some alarm within Aboriginal communities, who fear there will no longer be any place for them in the soon-to-be transformed neighbourhoods of Redfern or Waterloo.¹² When acknowledging the context in which Aboriginal communities respond to change of this kind – particularly as it relates to land and housing – it is important to understand the shifts in government policy towards Australia's First Nations over time. Self-determination turned our country away from the earlier policies of assimilation and protectionism, under which Aboriginal people were prohibited from owning property and were required to renounce their cultural and ethnic heritage in order to have meaningful participation in Australian society.¹³ Those policies, in turn, were a move away from the outright violence of the expanding colonial frontiers from 1788 through to as late as the 1920s. The practice of wage theft and the removal of children from Aboriginal families may inform our understanding

⁷ Ibid

⁸ Audit Office of NSW, *Making the Best Use of Public Housing* (30 July 2013) <https://www.audit.nsw.gov.au/ArticleDocuments/280/01_Public_Housing_Full_Report.pdf.aspx?Embed=Y>.

⁹ Communities Plus, *Communities Plus is Delivering Future Directions for Social Housing in NSW* (18 October 2018) <<https://www.communitiesplus.com.au/>>.

¹⁰ NSW Government Planning & Environment, *SSD 8135 Pemulwuy Project Redfern – New Student Accommodation Building* (9 August 2018) <http://majorprojects.planning.nsw.gov.au/index.pl?action=view_job&job_id=8135>.

¹¹ 'Tent Embassy Victory for The Block', *National Indigenous Television* (online), 27 August 2015. <<https://www.sbs.com.au/nitv/article/2015/08/27/tent-embassy-victory-block?cid=inbody;jenny-munro-brings-tent-embassy-back-to-redfern>>.

¹² Danny Teece-Johnson and Robert Burton-Bradley, 'Inner Sydney's Aboriginal Community Fear They Are Being Pushed Out for 'White Hipsters'' *National Indigenous Television* (online), 9 March 2016 <<https://www.sbs.com.au/nitv/the-point-with-stan-grant/article/2016/03/09/inner-sydneys-aboriginal-community-fear-they-are-being-pushed-out-white-hipsters>>.

¹³ See, eg, *Aborigines Protection Act 1909* (NSW).

of intergenerational trauma in the contemporary setting,¹⁴ but significant and severe trauma has been inflicted upon Indigenous populations in the form of dispossession, displacement, disease and destruction of culture since the colony of New South Wales was established.¹⁵ For Australia's First Nations which are built on kinship ties and the passing of convention and culture through oral traditions, resilience in the face of such trauma is nothing short of extraordinary.

Against these odds the survival of Australia's Indigenous communities is there for all to see, and this is particularly so in Redfern and Waterloo. The proposed redevelopments of The Block and the Waterloo public housing estate could be perceived as yet more threats to this survival. The recently published 'Visioning Statement'¹⁶ for a redeveloped Waterloo captures the very strong sentiment that the proposal should be taken as an opportunity to strengthen the presence of Aboriginal people in the area, and to reinforce its significance as a cultural centre for Australia's First Nations. The worry, of course, is that potential property developers will only respond to this in tokenistic ways. The subsequent release of the 'Waterloo Redevelopment Options'¹⁷ can't have done much to alleviate such concerns, given that they have failed to expressly respond to the Vision's sentiment in this regard. This is not just a matter for the local Aboriginal community – although that should be the major consideration. It is also concerning for the broader Indigenous community, for whom Redfern and Waterloo have always been the first ports of call when visiting Sydney from afar; and for the continuing stories of housing justice in these pockets of South Sydney, for whom the importance of affordability for Aboriginal households should by now be self-evident.

In the meantime, the NSW Government has launched an 'Aboriginal Social Housing Strategy' that aims to build the capacity of Aboriginal housing providers across New South Wales.¹⁸ It remains to be seen whether the redevelopment of Waterloo, and other plans for urban renewal around the area, will provide new opportunities for Aboriginal housing providers to help make the community's vision a reality, and to continue their stories of housing justice. For Redfern and Waterloo's sake, let's hope they can.

¹⁴ Heather McCrae et al, *Indigenous Legal Issues: Commentary and Materials* (Thomson Reuters, 4th ed, 2009) 33–7.

¹⁵ Ibid 9–65; Richard Broome, *Aboriginal Australians: a History Since 1788* (Allen & Unwin, 4th ed, 2010).

¹⁶ KJA Engaging Solutions, 'Let's Talk Waterloo' (Report prepared for the Department of Family and Community Services, May 2018) 9. <<https://static1.squarespace.com/static/5625d102e4b0040b09643cc5/t/5b061b0e575d1f26582bc5fb/1527126916259/Waterloo+Visioning+Report+240518.pdf>>.

¹⁷ Communities Plus, 'Waterloo Redevelopment Options' (Brochure, NSW Government, August 2018). <<https://www.communitiesplus.com.au/news/waterloo-masterplan-options-released>>.

¹⁸ Aboriginal Housing Office, 'Strong Families, Strong Communities: a Strategic Framework for Aboriginal Social Housing in NSW' (Media Release, 31 July 2018). <<https://www.aho.nsw.gov.au/news/strong-family,-strong-communities-a-strategic-framework-for-aboriginal-social-housing-in-nsw>>.

Australian Policing in Context: Neo-Colonialism and the Suspect Targeting Management Plan

Michael Siciliano

Michael Siciliano is a fourth year Law/Psychological Science student at the University of New South Wales

The practices and attitudes of contemporary Australian policing are constantly being shaped by the history and politics of early European settlement. It is a violent colonial history, built on overt oppression that has been generally ignored by criminologists to '[permit] an historical and political amnesia' concerning Indigenous rights.¹ We can perceive colonialism as a situation in which a state imposes sovereignty on foreign peoples using 'military, political and cultural force, with the expressed intent of creating hegemony over the colonised',² whereas we distinguish neo-colonialism by its outward claim of formal equality, while retaining a fundamentally colonial relationship with the Indigenous community.³ Historically, Australia has been shaped by a continuous colonial presence which aimed to dispossess native Indigenous groups through 'active policies' of assimilation and segregation.⁴ In this way, 'police have been required to enforce legislation which denied basic rights and protections to Aboriginal and Torres Strait Islander people' for a significant portion of European history in Australia.⁵ Finnane, a historian writing almost a quarter of a century ago, goes so far as to suggest that the very origin of a centralised police force in Australia was in response to early Indigenous resistance against colonisation; this positioned police as the enforcers of Australian settlement.⁶ Despite the widespread repeal of racist policy from the 1960s onwards, colonial practices have contributed to how police interpret the identity of their institution and determine priorities,⁷ as seen in the decision to surveil Indigenous children as young as 10 under the Suspect Targeting Management Plan ('STMP').⁸

Adopting a historical perspective, the STMP resembles a paternalistic governmental approach based on familiar systems of intrusion and exclusion. This essay applies the lens of 'neo-colonialism'⁹ to demonstrate elements of the STMP that reflect the 'deep colonising' of formal relations between Indigenous people, the colonial state and its decolonised institutions.¹⁰ In this framework, the STMP's operation in Redfern has political and historical significance in responding to the concentrated presence of Indigenous Australians.¹¹ Questioning the perception of the STMP as a racially neutral crime deterrent,¹² both Finnane and Cunneen recognise that the political dimension of Australian policing effectively 'limit[s] the possibility of police

becoming more than the agents of governmental whim'.¹³ As such, this paper challenges the ways in which the Aboriginal community is constructed and reconstructed as a social problem to often justify pervasive intervention and surveillance.¹⁴ This paper does not offer a clear answer in moving forward; reconciling entrenched and indoctrinated colonialism is not easy. However, a critical lens and actions to shift colonial thinking can provide space for Aboriginal and Torres Strait Islanders to be central on changing issues that concern their communities.

Implemented in February 2000, the STMP is a NSW Police Force initiative that seeks to prevent future offending by identifying, assessing and targeting people 'suspected of being repeat offenders or responsible for emerging crime problems'.¹⁵ It is

¹ Chris Cunneen and Juan Tauri, *Indigenous Criminology* (Policy Press, 2016) 57, 68 ff.

² Ibid 11, citing Biko Agozino, *Counter-Colonial Criminology: A Critique of Imperialist Reason* (Pluto Press, 2003) and Frantz Fanon, *Black Skin, White Masks* (Pluto Press, 1967).

³ Chris Cunneen, *Conflict, Politics and Crime: Aboriginal Communities and the Police* (Allen and Unwin, 2001) 232.

⁴ Reconciliation Australia, 'The State of Reconciliation in Australia' (Report, June 2018) 9.

⁵ Cunneen, above n 3, 32.

⁶ Mark Finnane, *Police and Government: Histories of Policing in Australia* (Oxford University Press, 1994) 25.

⁷ Cunneen, above n 3, 32.

⁸ Ange Lavoipierre, 'Children as Young as 10 'on Secret NSW Police Blacklist'; Suspects 'Routinely Harassed' ABC News (online), 25 October 2017 <<http://www.abc.net.au/news/2017-10-25/children-as-young-as-10-on-police-blacklist-routinely-harassed/9083108>>.

⁹ Cunneen, above n 3, 232.

¹⁰ Ibid 8, citing Deborah Rose, 'Land Rights and Deep Colonising: The Erasure of Women' (1996) 3(85) *Aboriginal Law Bulletin* 6, 6.

¹¹ Vicki Sentas and Camilla Pandolfini, 'Policing Young People in NSW: A Study of the Suspect Targeting Management Plan' (Report, Youth Justice Coalition NSW, 2017) 14.

¹² Ibid 5-6.

¹³ Finnane, above n 6, 52.

¹⁴ Cunneen, above n 3, 104; Cunneen and Tauri, above n 1, 26.

¹⁵ NSW Ombudsman, 'The Consorting Law: Report on the Operation of Part 3A, Division 7 of the Crimes Act 1900' (Report, April 2016) 118.



a multifaceted tool comprised of a dedicated police program, intelligence and risk assessment, and an administrative policy focused on parties ‘police believe are likely to commit future crime’.¹⁶ Unlike the explicit powers and responsibilities of police officers under the *Law Enforcement (Powers and Responsibilities Act 2002* (NSW) (‘LEPRA’),¹⁷ the STMP offers limited potential for oversight due to reluctance from the NSW Police Force to disclose information on its procedures and operation.¹⁸ What is known is that a person is initially nominated by any police officer, an information ‘package’ is created, and the individual is graded for potential risk.¹⁹ Monitoring can involve unannounced home visits or street interactions,²⁰ and individuals are not informed if they are subject to the STMP or the reason leading to their placement.²¹ There is ripe potential for racial profiling in deciding the likeliness of individuals to offend or re-offend, with race and ethnicity given undue weighting as a deciding factor for police intervention.²² Examined in isolation from the Australian colonial context, this initiative claims objectivity in addressing the social problem of crime in its appeal to a formal ‘racially neutral’ character.²³ However, recent work from the Youth Justice Coalition highlights the STMP’s disproportionate usage against Indigenous youths such as ‘Lisa’.²⁴ Although data suggests that 54 per cent of targets were Aboriginal or

Torres Strait Islander,²⁵ the true impact of the STMP cannot be ascertained due to resistance from the NSW Police to clearly identify those targeted, or even the criteria to assess potential risk.²⁶ This exclusion from judicial oversight is a feature of the colonial period that continues to exist in many aspects of the STMP.²⁷

¹⁶ Sentas and Pandolfini, above n 11, 1.

¹⁷ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) pt 15 (‘LEPRA’).

¹⁸ Sentas and Pandolfini, above n 11, 5–6.

¹⁹ *Ibid* 5.

²⁰ *Ibid* 20 ff.

²¹ *Ibid* 5–6.

²² Cunneen and Tauri, above n 1, 71.

²³ *Ibid* 69.

²⁴ ‘Lisa’ is a young girl with a mental illness that was ideal for redirection away from the criminal justice system. This redirection was not provided by police and highlights an ill-considered dimension of STMP relating to mental health: Sentas and Pandolfini, above n 11, 35.

²⁵ Sentas and Pandolfini, above n 11, 14.

²⁶ *Ibid* 6.

²⁷ Finnane, above n 6, 45.

Observing broader trends, Redfern provides a clear example of how the rise of ‘law and order’ policies has been connected to ‘white anxiety’ produced by the increasing political organisation of Indigenous people within the area.²⁸ During initial settlement, Governor Macquarie attempted to ‘reclaim Sydney as a zone of British law, free from the taint of Indigenous custom’.²⁹ Using police to control the entry of Indigenous people into public space, Governor Macquarie used the threats beyond the scope of criminal law to discourage the Indigenous population from entering Sydney.³⁰ It is therefore unsurprising that the STMP encompasses the Redfern area, with Local Area Coordinators (‘LACs’) being able to nominate individuals and utilise risk assessment tools as they find most appropriate.³¹ Compared to its historical predecessor, the STMP is an administrative policy that is similarly concerned with controlling the movements of Indigenous people, using threats of punishment and interrogation to perpetuate the labelling of Indigenous people as a criminal class.³² It follows that Cunneen perceives police practice to gradually move its focus from traditional ‘over-policing’ towards today’s increasingly ‘zero tolerance’ approach.³³ Upon reflection, the increasingly arbitrary surveillance of Indigenous youth may be construed as a movement beyond ‘zero tolerance’ as fixation on pre-crime for those who police ‘believe are likely to commit future crime’ perpetuates colonialist practice in neo-colonial form.³⁴

This neo-colonial perspective therefore provides crucial context for the administrative oversight that police have adopted within the STMP. Neo-colonialism helps us recognise that the self-appointed caring role by colonial powers is analogous to the notion of ‘police as guardians’ during the Stolen Generation.³⁵ The unwanted caring figure has been commonplace in the history of Australia and Australian policing.³⁶ In 1982, the NSW Anti-Discrimination Board remarked that continuous police surveillance of young Indigenous people ‘alone constitute[d] a harassment by ordinary standards’.³⁷ Considering the enthusiasm of police in interjecting themselves in the lives of those under the STMP,³⁸ it is important to consider the larger historical function that police have served through the introduction of ‘protective’ legislation.³⁹ Over a number of legislative and policy developments, Australia has effectively imbued police

officers with the responsibilities of administrators over extensive aspects of Indigenous life. This creates a cultural expectation for policing to involve a firmer interaction with Aboriginal and Torres Strait Islanders compared to the rest of the population.⁴⁰ Observing the case studies collected by the Youth Justice Coalition lends credence to this historic practice in which young people report to be effectively monitored and goaded by police officers, with some being taunted using their parents’ criminal history.⁴¹ This pattern of intervention can be comparatively identified across a number of colonised nations and demonstrates the importance that political history holds in shaping police practices over successive generations.⁴²

An aspect of the STMP that lends itself to critique is its dependency on discretion, a concept that presents a history of misuse for the Indigenous community.⁴³ Discretion refers to the decisions made by members of the police on the most appropriate

²⁸ Ibid.

²⁹ Lisa Ford, ‘Thinking Big about New South Wales History: Colonial Law in Global Perspective’ (2011) 34 *Australian Bar Review* 204, 209.

³⁰ Ibid.

³¹ Sentas and Pandolfini, above n 11, 5.

³² Cunneen, above n 3, 251.

³³ Ibid 80.

³⁴ Sentas and Pandolfini, above n 11, 1; *ibid.*

³⁵ Cunneen, above n 3, 62.

³⁶ Chris Cunneen, ‘Colonialism and Historical Injustice: Reparations for Indigenous Peoples’ (2005) 15 *Social Semiotics* 59, 64–65.

³⁷ Cunneen, above n 3, 85, citing Anti-Discrimination Board, ‘Study of Street Offences by Aborigines’ (Report, NSW Anti-Discrimination Board, 1982) 113–14.

³⁸ Sentas and Pandolfini, above n 11, 26–29.

³⁹ Cunneen, above n 3, 66; See also *Aborigines Protection Act 1909* (NSW).

⁴⁰ Cunneen, above n 3, 62.

⁴¹ Sentas and Pandolfini, above n 11, 22.

⁴² Georgios A Antonopoulos, ‘Ethnic and Racial Minorities and the Police: A Review of the Literature’ (2003) 76 *The Police Journal* 222, 223.

⁴³ Ibid 225.

action to be taken, a common example being whether to charge, or decline to charge, an alleged offender.⁴⁴ Firstly, the use of discretion is recognised as a necessary and intrinsic aspect of policing on a purely pragmatic level.⁴⁵ However, discretion is routinely used not only by high-ranking officers, but also junior frontline officers, often with little supervision.⁴⁶ Under the STMP, any police officer may make an application to nominate an individual for assessment and monitoring.⁴⁷ This is a cause for concern for Aboriginal communities, who often find themselves on the receiving end of public order offences by police officers and reflects a history of police intervention that has been ‘unnecessary and sometimes provocative’.⁴⁸ This pattern of behaviour in policing racial minorities often constructs entire communities as an ‘other’ in relation to ‘danger, fear and insecurity’, with the ‘other’ effectively becoming ‘the focus of attention of the police’.⁴⁹ Case studies done by the Youth Justice Coalition substantiate the ways in which police officers escalate situations unnecessarily.⁵⁰ This is highly concerning, given how important the use of discretion can be for whether the ‘suspect’ is escalated or diverted through the criminal justice system.⁵¹

Lastly, colonial policing has consistently been used to instil terror and fear in Aboriginal and Torres Strait Islanders, by functioning as a method of control, while simultaneously perpetuating constructions of such communities as a ‘criminal class’.⁵² The Youth Justice Coalition highlights the antagonistic culture of traumatisation and disillusionment from those targeted by the STMP, in which ‘David’ and his family were effectively forced to relocate due to the stress of continual police intrusion.⁵³ Since the 19th century, historical mistreatment by police has resulted in deep cultures of distrust and resentment of police officers within Aboriginal communities.⁵⁴ This viewpoint effectively re-contextualises the continual focus placed on Indigenous youths as part of a colonial process to impart feelings of terror through racial profiling and brutality.⁵⁵ This antagonistic relationship is not only damaging for the individual, but often for the entire family that is exposed to the terrorisation.⁵⁶ As such, although the STMP does not expressly condone violence, historical parallels emerge when observing the impacts on those who experience the STMP firsthand.⁵⁷ In this way, Cunneen suggests that police

antagonisation perpetuates a vicious cycle where Indigenous communities invariably react to oppressive policies, thereby further legitimising police use of violence and surveillance.⁵⁸ It is a dispiriting irony that the STMP strategy is likely to further embed and entrench racialised dynamics between Indigenous peoples and the police by continuing to rely on ‘a form of “redemptive” violence’ to legitimise the use of violence as an appropriate method to deal with the perceived threat of these communities.⁵⁹

In summary, colonial history plays a significant role in shaping how Australian police operate in contemporary society.⁶⁰ Despite the STMP’s purpose as a general crime deterrent, so long as historical context is ignored, this initiative will continue to harm Aboriginal communities in a manner consistent with

⁴⁴ Cunneen and Tauri, above n 1, 74–5.

⁴⁵ Cunneen, above n 3, 30.

⁴⁶ Ibid.

⁴⁷ Sentas and Pandolfini, above n 11, 5.

⁴⁸ Cunneen, above n 3, 31, citing Anti-Discrimination Board, ‘Study of Street Offences by Aborigines’ (Report, NSW Anti-Discrimination Board, 1982); Cunneen and Tauri, *Indigenous Criminology*, above n 1, 70.

⁴⁹ Antonopoulos, above n 41, 224.

⁵⁰ Sentas and Pandolfini, above n 11, 29–30.

⁵¹ Antonopoulos, above n 41, 230.

⁵² Cunneen and Tauri, above n 1, 26.

⁵³ Sentas and Pandolfini, above n 11, 22–3.

⁵⁴ Cunneen and Tauri, above n 1, 70 citing Law Reform Commission of Western Australia, *Aboriginal Customary Laws: The Interaction of Western Australian Law with Aboriginal Law and Culture: Final Report*, Project 94 (2006) 192.

⁵⁵ Cunneen, above n 3, 61, citing Henry Reynolds, ‘The Unrecorded Battlefields of Queensland’ in Henry Reynolds (ed) *Race Relations in North Queensland* (Department of History and Politics, James Cook University, 1993).

⁵⁶ Sentas and Pandolfini, above n 11, 31–2.

⁵⁷ Ibid 31 ff.

⁵⁸ Cunneen, above n 3, 75–6.

⁵⁹ Ibid 61.

⁶⁰ Ford, above n 29, 204.

neo-colonialism.⁶¹ While important progress has been made since the 1967 referendum,⁶² ‘the relationship between [Aboriginal communities] and the dominant society is still manifestly colonial’.⁶³ Finnane’s criticism for secretive policing of the Indigenous population continues to find relevance, asserting that ‘[w]here the political ends themselves are questionable, the means are likely to be even more so’.⁶⁴ The lessons from the historical oppression and violence of that past require ample space be given for Aboriginal and Torres Strait Islander communities to voice their current experiences and concerns and inform policing policy. Indigenous community members must be included in a re-evaluation of fundamental questions of what it means to ‘keep the peace’ in contemporary Australia.

⁶¹ Cunneen, above n 3, 7.

⁶² Ibid.

⁶³ Ibid 232.

⁶⁴ Finnane, above n 6, 59.

A Meeting Place for Aboriginal Families to Support Aboriginal Families

Trent Shepherd

Trent Shepherd is an Aboriginal lawyer and Gamilaroi man. He is currently working with the Federal Circuit Court and Family Court on improving access to justice for Aboriginal and Torres Strait Islander peoples and families. He was instrumental in the establishment of Indigenous Family Law courts across Australia. Trent also sits on the NSW Law Society's Indigenous Issues Committee.

Introduction

The *Bringing Them Home Report* provided evidence that the intervention of child protection services was not considered an effective way of dealing with the protection needs of Indigenous children.¹ Additionally, the *Bringing Them Home Report* found that the welfare of Indigenous children is ‘inextricably tied to the well-being of the community and its control of its destiny’.² The welfare of Indigenous children is connected to the idea of self-determination, and this includes families and communities having real choices and making empowered decisions about where children will live and how to raise them.

The *Family Law Act 1975* (Cth) (*Family Law Act*) gives effect to the *Convention on the Rights of the Child* (*CRC*),³ which acknowledges the particular rights of Indigenous children. Article 30 of the *CRC* stipulates that Indigenous children must not be denied the right, in community with other members of his or her group, to enjoy their culture, to profess and practise his or her own religion, or to use his or her own language.

In 2006, the *Family Law Amendment (Shared Parental Responsibility) Act 2006* (*Amendment Act*) was introduced. The *Amendment Act* attempted a significant cultural change – to encourage more shared and co-operative parenting after separation, and to shift the Court’s focus to post-separation dispute resolution. The new legislation has much clearer provisions relating to how the Court considers the best interests of Indigenous children. Section 60CC(3)(h) of the *Family Law Act* states that, among other things, the Court must consider:

- (i) the child’s right to enjoy his or her Aboriginal or Torres Strait Islander culture (including the right to enjoy that culture with other people who share that culture); and
- (ii) the likely impact any proposed parenting order under this Part will have on that right

Section 60CC(6) provides further clarification on the above requirement, stating that the Indigenous child’s right to enjoy his or her culture

includes the right:

- (a) to maintain a connection with that culture; and
- (b) to have the support, opportunity and encouragement necessary:
 - (i) to explore the full extent of that culture, consistent with the child’s age and developmental level and the child’s views; and
 - (ii) to develop a positive appreciation of that culture.⁴

This section provides clear direction to judicial officers in considering the importance of the Indigenous child’s right to a connection with their culture.⁵

The 2006 *Amendment Act* also introduced a new requirement in Section 61F for the Court to regard any kinship obligations and childrearing practices of a child’s Indigenous culture in making parenting orders or in identifying persons who may exercise parental responsibility for an Aboriginal or Torres Strait Islander child.⁶ One of the purposes of implementing this provision was to facilitate greater involvement of extended family members in the lives of children.⁷

¹ By Indigenous we refer to Aboriginal and Torres Strait Islander people; Human Rights and Equal Opportunity Commission, Submission to Attorney-General, *Bringing Them Home: National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997, 393 (*Bringing Them Home Report*).

² Ibid 400.

³ *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 30.

⁴ *Family Law Act* s 60CC(6)

⁵ Ibid s 60CC(3)(h).

⁶ Ibid s 61F, as inserted by Amendment Act sch 1 item 14.

⁷ Explanatory Memorandum, Family Law Amendment (Shared Parental Responsibility) Bill 2005 (Cth) 27 [131].

It was with this purpose in mind that the Indigenous list at the Sydney registry was created. The list was intended to provide a family court that allowed the voice of Aboriginal people within the *Family Law Act*, thus within a legal framework a culturally responsive setting is able to be created. The *Family Law Act* allows for the importance of Indigenous cultural issues, particularly Indigenous child-rearing practices, to be included in the decision-making process undertaken by the Court.

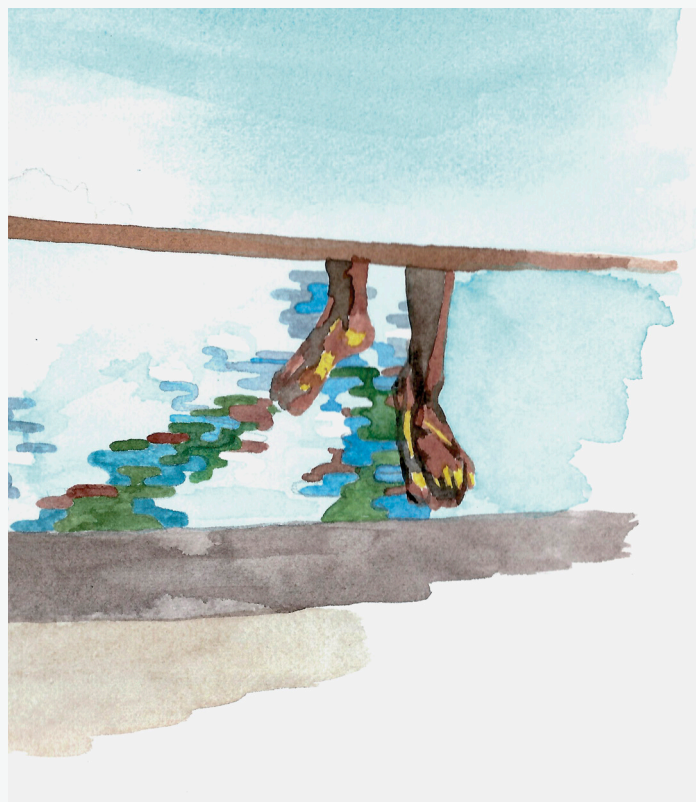
Aboriginal Specialist Courts

The first Indigenous court (Nunga Court)⁸ was established in Port Adelaide in 1999. Magistrate Chris Vass had been talking and consulting with Aboriginal people in the local community for several years prior to the Nunga Court commencing. In those discussions, the view emerged that Aboriginal people mistrusted the justice system, including the courts. They found the courts culturally alienating, isolating and unwelcoming to the community and family groups. They also expressed concern that they found the legal system difficult to understand and, significantly, that Aboriginal people did not respond well to the demands of the formal questioning process required by examination and cross examination. Mr Vass, upon hearing this feedback, considered that a Nunga Court would be advantageous because 'there was enormous dissatisfaction with the court system as it was. There was a lack of trust, a lot of frustration about not being able to have their say in court ... they felt that lawyers were often not putting their story across the way they wanted'.⁹

In an interview with Kathleen Daly, Vass described his vision for a new court where

Aboriginal people could feel more comfortable, [a court] that they could trust, where there was less formality, a court that would give people an opportunity to speak and have their family members with them without being overwhelmed by a large white presence.¹⁰

In the same interview, Vass also said that the aim of the court was not just about keeping people out of prison, but 'to have Aboriginal people trust the legal system, make them feel like they have a say ...



encourage them to be at court, encourage them to feel some ownership of the court process. That's what it's all about. It's their court.'¹¹ Senior Magistrate Kym Boxall noted from her time attending the circuit sittings of the Magistrates Court in the Pitjantjara Lands, located north west of South Australia, that '[t]he Aboriginal Community tended to resolve problems, including crime, by engaging in group discussions, often over a long period of time, until a solution was agreed upon'.¹²

⁸ 'Nunga' is used as a descriptor by Aboriginal people throughout Adelaide and surrounding towns. It is effectively the South Australian counterpart of 'Koori', used in New South Wales and Victoria.

⁹ Jennifer Powell, Interview with Chris Vass, Magistrate (May 2001) cited in John Tomaino, 'Aboriginal (Nunga) Courts' (Information Bulletin No 39, Office of Crime Statistics and Research, Government of South Australia, 2004) 2.

¹⁰ Kathleen Daly, Hennessey Hayes and Elena Marchetti, 'New Visions of Justice' in Andrew Goldsmith, Mark Israel and Kathleen Daly (eds), *Crime and Justice: A Guide to Criminology* (Lawbook, 3rd ed, 2006) 452.

¹¹ Ibid.

¹² Kym Boxall, 'A Court with Both Relevance and Tradition – The Aboriginal Court' (2000) 21(4) *Victims Voice*, cited in Mark Harris, 'From Australian Courts to Aboriginal Courts in Australia – Bridging the Gap?' (2004) 16 *Current Issues in Criminal Justice* 26, 31.

While Vass's work and ideas were related to the criminal courts, Stephen Ralph's research and interviews with community members on their response to the family law system revealed many of the same findings. Indigenous participants in the courts shared the view they were not able to have a fair say about their children's best interests and, in turn, this may have led to a belief that there was bias and unfairness in the court process. This was more so if participants felt they did not have 'a voice' in expressing their views about their child's best interests.¹³

Redfern Experience

In an interview with the Hon Robyn Sexton, the former Federal Circuit Court judge described a matter that was to be the catalyst for starting the Indigenous List.¹⁴ In 2012, a Redfern grandmother of six contacted her, asking for assistance to obtain parental responsibility of her six grandchildren. The children were living in country NSW with their parents. Unfortunately, the family was rife with the problems associated with drugs, alcohol and violence. The grandmother, who in the past had suffered her own problems with alcohol and drug abuse, knew the children were at risk and wanted to help them.

The Grandmother lived in a two bedroom home in Redfern, New South Wales. There was not a lot of space but she felt that living in a cramped home was better than the risk the children were living in with the parent's drug and alcohol use and potential for violence. She brought them to her house in Redfern and pursued an application for parental responsibility in the Federal Circuit Court.

The whole family could be characterised as one that has faced the challenges of coping with intergenerational trauma. The grandmother had started drinking when she was 12 and used many drugs, including heroin and cocaine. The children's mother (now 29 and unemployed) had met their father when she was 15. Their relationship had been marked by drugs, alcohol abuse, and neglect. The children's father, now 37, had himself had been removed from his parents and nine siblings as a child by State Child Protection. He had lived in 15 foster homes and his drug use started at 12.

The grandmother had her own children

removed at various times by State Child Protection. They were cared for by her grandmother and foster carers. She managed over the years, with courage and perseverance, to overcome her drug and alcohol addictions and, in Judge Sexton's view, was capable of looking after her grandchildren.

The grandmother's parental responsibility application was still before the Court in mid-2014 when the Department of Family and Community Services ('FACS'), made a decision to step in and remove the children. The grandchildren were separated and sent to separate and mainly non-Aboriginal carers on the NSW south coast, a long way from their home country (Wiradjuri) in central NSW. FACS had knowledge that the grandmother was making an application for parental responsibility before the Federal Circuit Court and failed to notify the Court or the children's independent lawyer of their intention to remove the children.

The placement of two of the children broke down within a matter of weeks of their removal. The Court expedited the need for a hearing and the date was brought forward to give the children some stability in their living arrangements. The judge was required to be satisfied that whatever decision was made was in the best interests of the children, the priority being for their safety and wellbeing. The Court concluded that the grandchildren could live with their grandmother and there were tears of joy and relief by many of the people in the court that day.

What was instrumental in assisting the judge in deciding that the children would be safe was the 'scaffolding and support' that could be given to the grandmother. By creating a support network that wrapped around the grandmother and children, the judge had the knowledge that she would be supported by community and services.¹⁵ It was this understanding of the importance of giving people a working support system that would become so central in the creation of the Indigenous List that was to come.

¹³ Stephen Ralph, 'Indigenous Australians and Family Law Litigation: Indigenous Perspectives on Access to Justice' (Report, Family Court of Australia and Federal Magistrates Court of Australia, October 2011) 30.

¹⁴ Interview with Robyn Sexton (Sydney, 16 October 2017).

¹⁵ See *Drake & Drake* [2014] FCCA 2950 (17 December 2014) [225].

According to her Honour's final orders, 'the Court's primary focus should not be on the Grandmother's history of involvement with the Department in relation to her own children, but rather on the Grandmother's present capacity to care for her six Grandchildren'.¹⁶

In our interview, Sexton described how this matter was a critical moment for her after 10 years on the Bench. She came to realise that she had seen very few matters involving Aboriginal or Torres Strait Islander peoples. She was well aware of the facts that Aboriginal people were over-represented in the criminal and children's court systems but now realised that they were under-represented in the family court jurisdiction. This was a jurisdiction or area of law that could be used to assist families with self-determination in deciding how to manage their family's business and protect their children. This led her to begin the creation of an Indigenous Court in the Sydney Registry that gave access to families in the inner Sydney region, including Redfern.

In the two years after that case, Sexton engaged with the community about what the Court needed to do to create a culturally and socially supportive environment with the help of Rick Welsh from The Shed at Emerton. Then with the strong support of the Hon John Pascoe (now Chief Justice of the Family Court), the Indigenous list was started in the Sydney Registry.

The creation of the Indigenous list within the Sydney Registry was designed to create a culturally safe and supportive space where families can obtain assistance to help their families. Where a grandmother, grandfather, aunty or uncle are aware that children in their family are at risk, they can obtain interim orders to care for the children. This process means that FACS is not required to obtain orders in the Children's Court, thus avoiding the need to seek orders to intervene on behalf of the children to be removed and placed into out-of-home care.

I was appointed as the Federal Circuit Court's policy adviser in September 2016. My role was to assist the Court in reaching the objectives set in the Reconciliation Action Plan including creating a culturally aware and responsive environment. Working with Sexton in her chambers, we set about the task of creating an Indigenous list.

Firstly, we undertook community consultations, where many raised the concern of the Family Court being an open court and of not wanting the shame of others knowing their family business. Aboriginal people are the most studied race in the modern world and have always had their lives and culture exposed for study and judgement.¹⁷ Sexton made the decision to have a closed court. The only people allowed in the court are the parties and their legal teams and the support services who sit in the back of the court. The Aboriginal and Torres Strait Islander flags were hung in the courtroom. Aboriginal artwork was placed on the walls along with the AIATSIS map of Aboriginal Australia. These physical symbols were placed to give a familiar reference point to Aboriginal and Torres Strait Islander people that came into the court.

Within the Court, the services most present include Rick Welsh from The Shed, a men's suicide prevention service funded by the University of Western Sydney; Wirringa Baiya Aboriginal Women's Legal Centre; an Indigenous support person from the Family Advocacy and Support Service ('FASS'); an Indigenous family support worker at Relationships Australia, and Indigenous mediators from the Legal Aid Early Intervention Unit and Indigenous Mediation Unit. The idea here is that Aboriginal controlled or facing support services would be on hand to help Aboriginal people right at the beginning of proceedings. This helps in breaking down some of the traditional barriers to culture and knowledge when dealing with families and is the seed of providing a culturally safe environment within a western legal system for families.

During proceedings, the judge sits down with the participants, not up high on the bench. As Sexton explains,

I realised the only way we could get to the heart of the problems was to sit with them and get them to yarn with me. I needed to make them confident to tell their stories about who they are and what they wanted to do to help the children. By sitting at the bar table with

¹⁶ Ibid 114.

¹⁷ Kay Anderson and Colin Perrin, 'The Miserablest People in the World': Race, Humanism and the Australian Aborigine' (2007) 18(1) *Australian Journal of Anthropology* 18.

¹⁸ Interview with Robyn Sexton (Sydney, 16 October 2017).

them I was making it clear that I was there to help make it work for the children, with them.¹⁸

Sexton would begin each matter on the day with an Acknowledgement of Country and informs the litigants that the people at the back of the courtroom are from the different support services that are there to assist in providing a wrap-around system to families where it can and when it is needed.

This Court (the Indigenous list) aims to acknowledge that Aboriginal families may have problems, just like non-Aboriginal families, but they are also strong families who, when given the opportunity that this Court hopes to provide, are able to work towards a solution that keeps children with family where it is safe to do so. The Court is signalling to Aboriginal communities that it recognises that when a crisis arises in a family, there are many capable, solid, safe family members who are able and want to assist. Those family members may not be happy with the behaviour of the parents and are able to care for the children. These are the relatives who say to the children, ‘Get your act together, you should be providing a safe non-violent home with your children, not out drugging and drinking’.

Since the list started, there have been 56 matters. Of those 56 matters, 17 have been finalised (generally by consent of the parties), three have been transferred (two due to family violence and the other to regional NSW for ease of location access for the families involved), and the remainder are ongoing. The biggest measure of success is that there have been no drop-outs. Families are staying engaged with the process until a solution is found for the children. In a recent matter from the list, one grandmother said, ‘I said what I had to say and I am happy that the judge let me speak and she listened to what I had to say’. A solicitor representing a family said ‘if this list keeps just one child with a safe family member rather than going into care – it is worth it’.¹⁹

The Sydney registry and its judges are always seeking to build stronger community ties in Redfern. This is done by meeting, engaging and consulting with various community and social groups. The involvement of the community and their voice has been one of the major success drivers of this Court. It is not possible to have the engagement of Mob without asking Mob.


Redfern is one of the historical and cultural meeting points in Aboriginal and non-Aboriginal history. In 1970, the Aboriginal Legal Service was launched here and 1971 saw the creation of the Redfern Aboriginal Medical Service. In 1973, land rights victories that saw legal title recognised over a block of Aboriginal housing situated at the heart of metropolitan Sydney, created an Aboriginal Housing Company based in Redfern. In December 1992, Prime Minister Paul Keating chose Redfern as the place to make what is now known as the ‘Redfern Speech’. It was the first time an Australian political leader admitted the impact of white settlement, which wreaked death and destruction on Indigenous people, culture and society. It has become one of the most significant speeches in Australian history.

Sexton, the creator of the Indigenous list, gives her take on why she thinks it is working and why people and families are engaging:

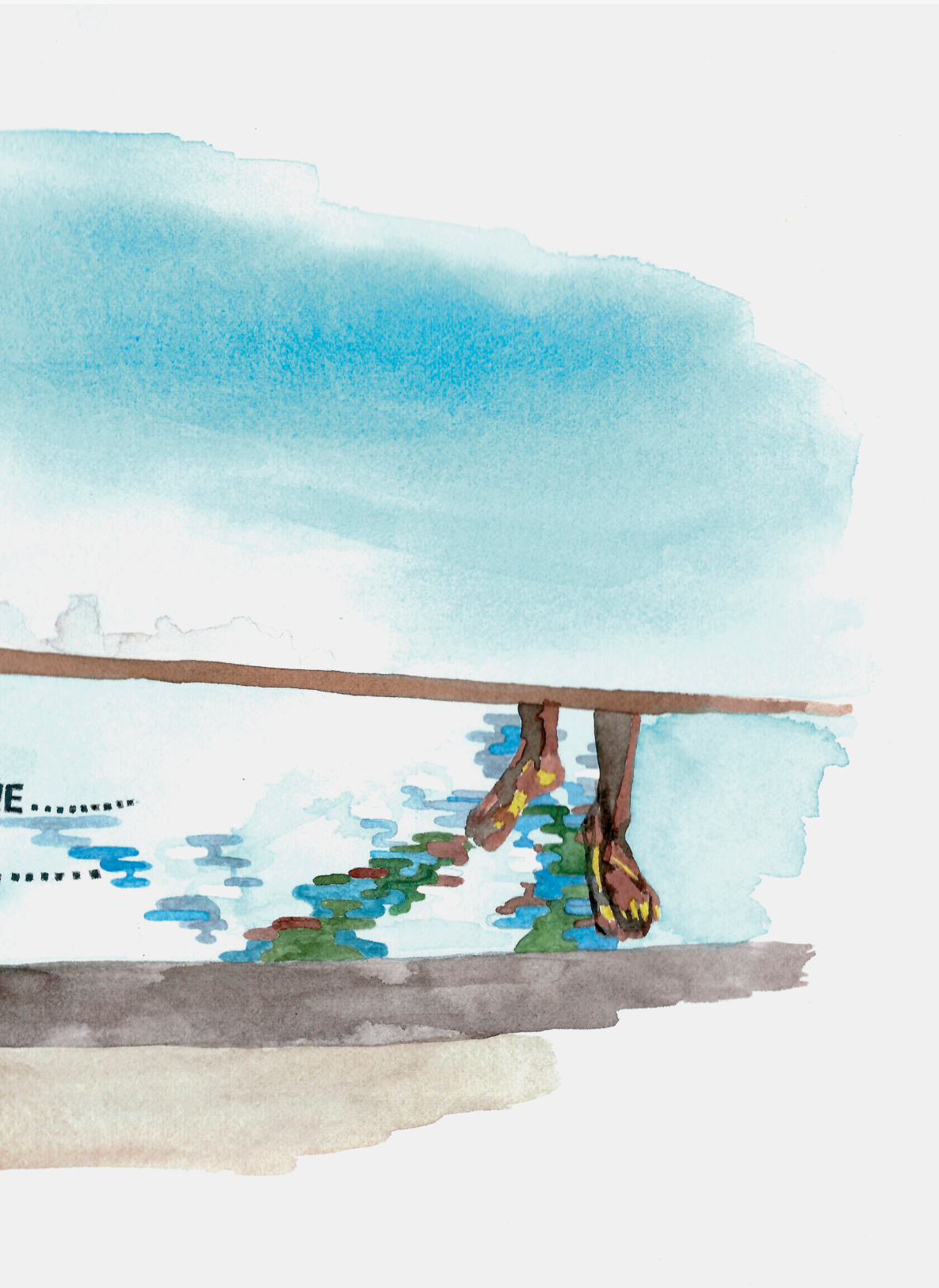
It’s the greater informality and inquisitorial approach, the Acknowledgement to Country, the ability to have non-party family members at the bar table and the involvement of the Indigenous support workers. The key ingredient is that Aboriginal people themselves have a say. The message to Indigenous families is, ‘You are welcome here. You are allowed here and this is your space’.²⁰

¹⁹ Interview with Cheryl Orr, Principal Solicitor, Cheryl Orr Family Law (Sydney, 25 May 2018).

²⁰ Interview with Robyn Sexton (Sydney, 16 October 2017).

A watercolor illustration of a landscape. The top half features a light blue sky with soft, blended washes. Below the sky, there are faint, sketchy outlines of green foliage on the left and grey, blocky structures on the right. A dark brown horizontal line, resembling a road or a signpost, runs across the middle. Below this line, a light blue rectangular area contains two lines of text in a bold, black, sans-serif font. Underneath the text is a semi-circular shape filled with a red and white cross-hatched pattern, outlined in black. At the bottom of the illustration, there are two more horizontal washes: a dark brown one and a light tan one, suggesting a ground surface or a path.

40,000 YEARS IS A LONG, LONG TIME
40,000 YEARS STILL ON MY MIND.



Truth, Justice and the Redfern Way

Joanna Shulman

Joanna Shulman is the CEO of Redfern Legal Centre.

The landscape has changed since Redfern Legal Centre first opened its doors just over 40 years ago, staffed by a passionate team of students and law faculty volunteers from UNSW.

The coffee may be better and the parking harder, but there still remains significant levels of chronic disadvantage. In fact, we are bigger and busier than ever.

The gentrification of many parts of Redfern has not eclipsed the need for legal support within our community. In fact, the demand for community legal assistance has only increased.

How do we explain this? As the area we serve becomes more desirable – and the gap widens between those who have and those who have not – the have-nots become increasingly vulnerable to a growing number of unlawful practices.

Our service is seeing people being evicted at higher rates, and more heavily targeted by predatory lenders.

We have seen spates of unscrupulous door-to-door-salesmen targeting Redfern's Aboriginal community with funeral insurance they don't need.

We see international students crammed into dwellings stretched well beyond capacity, with six people or more living in a room designed for two.

We see the massive expansion of alcohol-free zones and move-on orders being regularly used to temporarily move those who are not welcome amongst the newly refurbished cafes.

With the rise of the 'gig economy', we see more workers – many of whom are students – deliberately targeted by unethical employers whose business model turns on the underpayment and exploitation of their staff.

And we are about to see the massive redevelopment of Waterloo Public Housing to make it into the most densely populated area in Australia.

And so, as the issues get more complex, we have gotten more creative and innovative in finding legal solutions to these problems, and in delivering targeted services

in areas where the need is greatest.

We have expanded our partnerships with community organisations, working to provide holistic and multi-layered programs to support and strengthen the resilience of our diverse and vibrant community.

Our tenants' advocates give people the tools they need to fight unfair evictions and avoid homelessness, including running regular outreach services in Redfern, Glebe and Waterloo. Our state-wide police powers practice monitors and supports a fairer and more accountable police service. Our domestic violence team works across the local court system, as well as in partnership with our credit and debit service, to shine a light on financial abuse and other forms of domestic abuse.

We place lawyers in hospitals to reach those who are so disenfranchised they would never find their way to us, and we use technology and social media to expand our reach. We are even working on the development of a mobile app – who would have predicted that!

And so, as we look to the future, the fight for social justice continues. One thing is certain: Redfern Legal Centre isn't going anywhere just yet.



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Redfern Legal Centre and the Prisoners Legal Service: A Short History

Frances Gibson

Frances Gibson spent seven years with Redfern Legal Centre where she was Principal Solicitor and was Director of Kingsford Legal Centre for eight years. She is currently working on a PhD on social innovation in community legal centres which includes a history of Redfern and West Heidelberg legal centres.

*'We always thought of ourselves as gadflies — stinging other people into action'*¹ John Basten

For 40 years, Redfern Legal Centre ('RLC') has provided legal advice and assistance to tens of thousands of people in need and run notable cases, law reform campaigns and educational programs. RLC has also been a leader in developing innovative legal service programs. One project that started at RLC and has had a significant impact on the justice system is the Prisoners Legal Service ('PLS').

Prison work started early in RLC's history. Historically there had been little, if any, legal assistance for prisoners in NSW who often faced harsh conditions and judicial indifference.² Brutality in NSW prisons in the early 1970s led to major prison riots erupting at Bathurst gaol in 1974. Lobbying by prison activists, NSW parliamentarians, legal academics and lawyers was successful in getting mainstream press attention to the issue. This led to a Royal Commission into NSW Prisons beginning in 1976, conducted by then Justice of the NSW Supreme Court, John Nagle.³ One of the first RLC lawyers, Virginia Bell, remembers:

I had followed the Nagle Royal Commission and the revelations were quite shocking ... I saw quite a bit of the hearings ... There had been an institutional approach to the infliction of physical beatings on prisoners described as intractable. That had resulted in one case in a man becoming a paraplegic. The beatings were officially administered and were savage. When that material came to light, I think it was a shock to people ... At the time the *Report* was tabled my recollection is that there was a lot of press coverage about the shocking revelations and the Premier Neville Wran made statements that this would not happen again.⁴

At the time, there was little or no access to legal advice and assistance for prisoners. In 1978, a loose group of legal academics, lawyers and prison activists formed the PLS based at RLC.

George Zdenkowski, a legal academic at UNSW involved with RLC, notes:

We did a lot of legal visits to the gaols and there was some litigation that took place. It grew out of that. ... [RLC] received a lot of letters and individuals received letters from prisoners. The PLS was an opportunity to educate prisoners about their rights and we made regular visits to prisons ... I used to take out a group of law students weekly to Long Bay Gaol. That was mutually beneficial.⁵

Those working in the PLS consisted of RLC staff lawyers, barristers briefed by the RLC and also volunteer lawyers. The RLC solicitors were well known in the gaols and word-of-mouth brought the PLS many clients. John Basten (one of the founders of RLC) went to the Bar in 1981 and was briefed by RLC on many cases.⁶ RLC ran appeals for prisoners challenging disciplinary convictions. This led to the government legal aid service extending legal aid for those matters.⁷ RLC ran many cases about prisoners' remission entitlements,⁸ and was influential in the establishment of the Visiting Justice system (independent magistrates dealing with disciplinary charges in prisons).⁹

Work done at RLC for prisoners was undertaken in loose coalitions with other organisations. One of these, the Prisoners Action Group ('PAG'), had been formed in 1973 and 'was committed to abolition (not reform), to activism (not passivity), and ex-prisoners were to have the final say on policy and activities'.¹⁰ Prisoners would make complaints about their treatment in gaols,¹¹ and the PAG would arrange for solicitors from RLC to take instructions from them. Media organisations were involved. Radio Skid Row, in the basement of the Wentworth building at the University of Sydney, conducted interviews on prison issues with the

¹ Interview with John Basten (Sydney, 27 July 2016).

² For a history of prisoners' rights in Australia, see Mark Finnane and Tony Woodyatt, "Not the King's Enemies": Prisoners and Their Rights in Australian History' in David Brown and Meredith Wilkie (eds), *Prisoners as Citizens: Human Rights in Australian Prisons* (Federation Press, 2002) 81. See also Justice Action, *Chronology of the Prisoner Movement in Australia* <http://www.justiceaction.org.au/index.php?option=com_content&view=article&id=111&Itemid=991>.

³ David Brown, 'The Nagle Royal Commission 25 Years on: Gaining Perspective on Two and a Half Decades of NSW Prison Reform' (2004) 29 *Alternative Law Journal* 135, 136.

⁴ Interview with Virginia Bell (Sydney, 1 December 2016).

⁵ Interview with George Zdenkowski (Sydney, 28 October 2016).

⁶ Interview with John Basten (Sydney, 27 July 2016).

⁷ John Basten, 'Neighbourhood Legal Centres in Australia: A Legacy of the Vietnam War?' (Paper presented at the Annual Meeting of the Law and Society Association and the ISA Research Committee on Sociology of Law, Madison Wisconsin, 5-8 June 1980).

⁸ Remission entitlements are entitlements to a reduction of the term of a prison sentence, usually due to good behaviour or conduct.

⁹ Interview with John Basten (Sydney, 27 July 2016).

¹⁰ George Zdenkowski and David Brown, *The Prison Struggle: Changing Australia's Penal System* (Penguin Books, 1982) 83.

¹¹ *Ibid* 99.

lawyers from RLC.¹² Nick Franklin at ABC Radio 2JJ began broadcasting *The Prisoners Program* in about 1978,¹³ and there were other prisoners' programs on community radio stations in Sydney.

While the PLS mainly focused on prisoners in male gaols, Women Behind Bars ('WBB') concentrated on women prisoners. Staff of RLC were involved with activists in WBB.¹⁴ In 1979, Robyn Lansdowne was working with the Feminist Legal Action Group ('FLAG') and WBB to assist clients Violet and Bruce Roberts.¹⁵ Violet Roberts and her son were convicted of murdering her violent husband in 1976.¹⁶ Lansdowne recalls:

I interviewed Violet Roberts who had been convicted of murder and had been given a life sentence. Her case was very tragic and through WBB there was a movement to have her and her son released. In 1980, there was a street campaign – sit-ins, marches etc and public meetings at Redfern Town Hall. There was a formal process when I was the solicitor for Violet at RLC making an application for Violet's release on licence and a campaign through the media including *60 Minutes* episodes etc.¹⁷

Lansdowne was employed by the law firm Freehills and was the first pro bono lawyer to be employed to work for a community legal centre by a firm in Australia. 'The terms of my employment were, I worked 1 day a week for the Centre and 4 for Freehills and Freehills paid me 5 days a week.'¹⁸ At RLC, Lansdowne worked on Violet's case. Ultimately Violet and her son were released on 15 July 1980.¹⁹

There was strong support for RLC in the prisons, to the extent that one of the demands by prisoners in a sit-in at Parramatta Gaol on 13 January 1979 was that '[gaol] authorities organise among prisoners a collection of money to aid the Redfern Legal Centre'.²⁰ RLC undertook casework for prisoners but also took an activist approach to prison issues. In 1979, RLC organised lawyers to go to Goulburn to take statutory declarations from prisoners. This work formed the basis for the terms of reference in the Goulburn Gaol inquiry into warder bashing and other offences.²¹ The inquiry led to Public Service Board charges against five prison officers.²²

Well-known prison activist Brett Collins finished a prison sentence in 1980 and was keen to make a difference in NSW prisons.²³ 'Redfern was the only centre [in NSW] following through on prisoners' issues. It was a centre linking the Prisoners Action

Group with other activists and lawyers – a safe place and a place of networking.'²⁴ Collins and other prison activists used RLC as a resource and RLC lawyers and volunteer lawyers were involved in all aspects of prison work, including the management of a halfway house for prisoners in Glebe.

The work was not without its difficulties. Anne Healey, a RLC staff member, recalls:

The prisoners were getting a voice they hadn't had before and my impression was that the armed hold up squad didn't like it at all ... There was a palpable hostility from the Redfern police ... I remember thinking particularly Virginia [Bell] and Nanette [Rogers] [RLC Solicitors] were really brave ... They never thought of changing their behaviour as a result of the police hostility.²⁵

¹² Interview with Andy Nehl (Sydney, 9 February 2017).

¹³ Bernie Matthews, *Intractable: Hell Has a Name: Katingal: Life Inside Australia's First Super-Max Prison* (Pan Macmillan, 2006) 203.

¹⁴ Women Behind Bars was a 'small ... effective group of activists in NSW in the 1970s and early 80s, who changed public awareness about women, crime, punishment and imprisonment': see ABC Radio National, *Women Behind Bars* (15 April 2012) <<http://www.abc.net.au/radionational/programs/archived/hindsight/hindsight-15-04-12/3941858>>.

¹⁵ *Women Behind Bars* (Presented by Lorena Allam, ABC National Radio, 2012) 37:15:00.

¹⁶ 2XX, 'Report on the Violet and Bruce Roberts Story in the 2XX collection', *2XX Collection*, 1979. For more on Violet Roberts, see Ann L Genovese, *The Battered Body: A Feminist Legal History* (PhD Thesis, University of Technology Sydney, 1998) <<https://opus.lib.uts.edu.au/handle/10453/20131>>.

¹⁷ Interview with Robyn Lansdowne (Melbourne, 6 July 2016).

¹⁸ *Ibid.*

¹⁹ *Ibid.*

²⁰ 'Sit-In by Prisoners', *Sydney Morning Herald* (Sydney), 14 January 1979, 3.

²¹ Garth Symonds, 'RLC Policy Meeting' (Non-casework paper, Redfern Legal Centre, 3 February 1980) 2. See R W Henry, 'Report of Inquiry into Allegations of Misconduct by Prison Officers at Goulburn Gaol' (Report, NSW Government Printer, 1979).

²² Garth Symonds, 'RLC Policy Meeting' (Non-casework Paper, Redfern Legal Centre, 3 February 1980) 2.

²³ Interview with Brett Collins (Sydney, 18 July 2016).

²⁴ *Ibid.*

²⁵ Interview with Anne Healey (Sydney, 24 July 2016).

The PLS and other prison work done by RLC demonstrated the real need for legal services to prisoners. The ethos of RLC at the time was that it was the RLC's role to demonstrate legal need in sectors of the community. Once the government accepted that this need existed, the plan was that RLC could hand over responsibility for providing the service to the government and move on to work on other areas of need.²⁶ As Basten states, '[w]e always thought of ourselves as gadflies stinging other people into action'.²⁷ In 1979 and 1980, discussions were had with the State government's legal aid body, the Legal Services Commission, with a view to setting up a funded, independent Prisoners Legal Service. On 27 May 1981, the Legal Services Commission resolved to recommend, to the Attorney-General, the establishment of a separate division of the Commission to operate a comprehensive Prisoners Legal Service.²⁸

At first, the government contracted the PLS services to RLC and other community legal centres. Redfern, Marrickville and Macquarie Legal Centres participated in the Legal Services Commission's Prisoners Legal Service by providing solicitors to attend at Long Bay, Parramatta, Silverwater and Mulawa Jails on a regular basis to give general legal advice to prisoners.²⁹

The legal regime in prisons was incredibly arcane and little was known about it. RLC's work led to the first Australian consolidation of prison law in *Halsbury's Laws of Australia*.³⁰ There were a lot of technical cases run. Previously, prisoners had been almost always unrepresented. Cases were run by RLC such as *Riley v Parole Board of New South Wales*,³¹ where Mr Riley had been refused release by the Parole Board for years with no reasons given. The case was taken on as an issue of natural justice and its successful conclusion assisted not only Mr Riley but also many other prisoners.

RLC staff lawyers represented prisoners at Visiting Justice hearings for which RLC had received specific funding. Andrew Haesler, a solicitor at RLC, notes:

We engaged in strategic thinking about the work being done. In the PLS work for instance, we asked, 'if we run this case will we change the remission system?' We forced changes which got lots of people released. We would send someone down to the gaol with a particular facts situation in mind and try and find someone who fitted that case. We didn't want to be just a duty solicitor.³²

RLC Prisons solicitor Bill Dickens recalls work in the 1980s:

We used to do a lot of sentence calculation work ... At the Department of Corrective Services, there was an employee whose sad responsibility it was to calculate the sentences. These were done on handwritten cards which had all the arithmetic on them. And it was complex because of the nature of the remissions system ... We used to get the cards and would check the release dates and inevitably the Department would get it wrong and we would then commence extensive litigation to calculate the proper sentences. This was a good source of income from costs for RLC for a while.

That was a lot of fun. I remember one time when the prison released a person and he said to them, 'I am not meant to be released now' and they said, 'yes you are, on your way' and about a week later they contacted him and said, 'please come back now we made a mistake'. So, we briefed John Basten and went to the Full Court of the Federal Court and they found the release extinguished the warrant and there was no power to arrest him so he was out. There was an amendment to the *Crimes Act* to deal with that situation after that. John Basten was absolutely ruthless in his efficiency. You briefed him and within 24 hours you would not only have an advice but you would have pleadings and documents and you were ready to go. It was pretty exciting, all that crime work.³³

Ben Slade, a RLC solicitor in the mid 1980s, had come straight from law school to work at RLC and was participating in the PLS with Bill Dickens.

²⁶ Interview with Roger West, (Sydney, 9 December 2015).

²⁷ Interview with John Basten (Sydney, 27 July 2016).

²⁸ 'Prisoners Legal Service Advisory Committee Report' (Committee Report, Legal Services Commission, 1981).

²⁹ John Hunt, 'Free Legal Advice All Year', *Sydney Morning Herald* (Sydney), 13 May 1984, 116.

³⁰ LexisNexis, *Halsbury's Laws of Australia*, (at 3 October 2014) 335 Prisons.

³¹ (1985) 3 NSWLR 606.

³² Interview with Andrew Haesler (Sydney, 7 July 2015).

³³ Interview with Bill Dickens (Dubbo, 8 February 2017).

They would visit two gaols in a day. You would 'see a queue of 30 people in one gaol and another 30 in the afternoon'.³⁴ There was no other free legal advice at the gaols. RLC's activities clearly antagonised the Department of Corrective Services. The Hon John Fahey publicly criticised the PLS, claiming it was being abused by prisoners who appealed to the District Court when Visiting Justices punished them for misbehaviour. Fahey claimed these appeals 'clogged up the District Court and cost the State tens of thousands of dollars in transport and legal expenses'.³⁵

Eventually it was agreed that the government legal aid office would set up a separate section to deal with prisoners' matters to start around July 1985.³⁶ RLC handed over the PLS organisation to government though they retained casework in Visiting Justice matters, occasional test cases,³⁷ and representation on the PLS Advisory Committee. RLC's mission in this area was accomplished. The project to provide legal services and a voice for prisoners in NSW had been established by RLC and was now to develop into a state-wide government funded service to prisoners in NSW gaols.³⁸

The new PLS though did not operate as an activist organisation. Brett Collins, now coordinator of prison activist group Justice Action, notes:

Over the years legal aid became more and more reluctant to be activist and less prepared to expose what was actually happening in the prisons ... after a while they didn't want to put all that time into the meetings ... they tried to step away. Then they said they don't want a committee any more [Advisory Committee] ... it was reinstated after protests but then disbanded ... The Prisoner movement lost the network and being part of the processes with lawyers.³⁹

Zdenkowski agrees:

When the PLS went to legal aid there was a gap in advocating for prison rights. There are now very few people involved. Brett Collins and Justice Action have continued to hold the torch. However there is no sustained public discourse about prison conditions.⁴⁰

Despite these concerns, the innovation of the PLS has proved to be a sustainable service that today assists prisoners everywhere in NSW.⁴¹ The staff and volunteers at RLC saw a need, then designed and implemented

a novel service to meet the need. They demonstrated the value of providing assistance to some of the most vulnerable people in the state and persuaded the NSW government to take on and run a service for prisoners in all gaols. In doing so, they made a significant contribution to delivering access to justice.

³⁴ Interview with Ben Slade (Sydney, 8 December 2015).

³⁵ Luis Garcia, 'Prison Drug Smugglers Face Jail', *Sydney Morning Herald* (Sydney), 1 June 1988, 3.

³⁶ Letter from Andy Haesler to Tony Woddyatt, 11 March 1985.

³⁷ For example, 'in December 1988 ... Redfern Legal Centre, acting on behalf of all prisoners sentenced to life imprisonment, commenced a representative action in the Supreme Court of New South Wales to have the policy declared null and void': New South Wales, *Parliamentary Debates*, Legislative Council, 1 March 1989, 5396 (Elisabeth Kirkby). This policy declared a mandatory higher security classification for any prisoner who had escaped: at 5391.

³⁸ The contribution made by Legal Aid's PLS solicitor Jack Grahame, who had a longstanding commitment to civil liberties and prisoners' rights, should be noted.

³⁹ Interview with Brett Collins (Sydney, 18 July 2016).

⁴⁰ Interview with George Zdenkowski (Sydney, 28 October 2017).

⁴¹ See Anne Grunseit, Suzie Forell and Emily McCarron, 'Taking Justice into Custody: The Legal Needs of Prisoners' (Paper, Law and Justice Foundation of New South Wales, 2 June 2008) for research on issues relating to prisoners' access to legal assistance in NSW.

Redfern Legal Centre: Challenging Everyday Police Powers

Vicki Sentas

Dr Vicki Sentas is senior lecturer at the Faculty of Law, UNSW Sydney.

Introduction

This article reflects on one aspect of Redfern Legal Centre ('RLC')'s work around police accountability — its state-wide police complaints practice, established in 2010. RLC is a well-regarded community legal centre ('CLC'), playing a key role in providing legal services to people who are excluded by socio-economic disadvantage in Redfern and beyond. It has a long history of acting for and with Aboriginal and Torres Strait Islander peoples, including those who have experienced oppressive policing or police misconduct. RLC is also a community-based voice in law and policy reform. It remains a model for how legal practice can both diagnose systemic patterns of inequality and contribute to social justice solutions.

This article is written from the standpoint of a clinical teacher involved in RLC's Police Powers Clinic, a clinical legal education course run with UNSW since 2013. It considers a number of contemporary problems in the policing of First Nations peoples brought to the fore in RLC's work. This article briefly overviews some of the key patterns in policing apparent in RLC's work, with a focus on stop and search. It also offers reflections on a community-based research and advocacy project focused on rolling back proactive policing. Lastly, it highlights the broken nature of police investigation of complaints, and thus both the limits and opportunities for change.

A Flawed System of Police Accountability

Systemic and oppressive policing of Aboriginal people was one of the catalysts for the creation of RLC in 1977, alongside the establishment of Aboriginal-controlled community organisations as outlined by Thalia Anthony in this Issue. Since the roll-out of the RLC state-wide focus in 2010, its police accountability practice has advised in more than 2000 police misconduct matters. Of those matters, it is estimated that more than 12% of clients identified as Aboriginal or Torres Strait Islander. RLC's ongoing representation and assistance to clients includes civil actions against the police for false imprisonment, malicious prosecution and assault and battery; assistance with both accused

and victim police complaints; police harassment; retention of mugshots, DNA and fingerprints and challenging unsubstantiated allegations on the Computerised Operational Policing System ('COPS') database. In the policy and advocacy domain, RLC has raised awareness and engaged in advocacy for systemic change in the areas of police sniffer dogs, police bail, arrest, search and move-on powers, independent investigations of police and retention of personal data.

A core component of accountable policing is an effective complaints system,¹ and it is well established that justice and accountability are undermined in a system where police investigate themselves.² However, complaints against the police in NSW, like all Australian jurisdictions, are overwhelmingly investigated by the police. Only complaints that are categorised as 'serious misconduct' or 'serious maladministration' are independently investigated by the Law Enforcement and Conduct Commission ('LECC').³ The pattern of police misconduct commonly experienced by our clients relates to the improper or unlawful exercise of police powers like stop and search, arrest, directions and the use of force. RLC argues that it is these 'everyday forms of policing' that form the bulk of people's experiences of the police and require institutional attention as police misconduct.⁴ Police accountability systems need to account for those police practices and experiences presently excluded from independent examination. In short, a focus on the everyday policing experienced by Aboriginal people is fundamental for accountability systems to be able to recognise practices of institutionalised police racism and colonial dispossession.

¹ Graham Smith, 'Every Complaint Matters: Human Rights Commissioner's Opinion Concerning Independent and Effective Determination of Complaints against the Police' (2010) 38 *International Journal of Law, Crime and Justice* 59.

² Tamar Hopkins, 'An Effective System for Investigating Complaints against Police' (Report, Victoria Law Foundation, August 2009) 15 <<http://www.policeaccountability.org.au/wp-content/uploads/2014/03/VLF-REPORT-Effective-Investigation.pdf>>; Tim Prenzler, 'Civilian Oversight of Police' (2000) 40(4) *The British Journal of Criminology* 659; Tim Prenzler, 'Scandal, Inquiry, and Reform: The Evolving Locus of Responsibility for Police Integrity' in Tim Prenzler and Garth den Heyer (eds), *Civilian Oversight of Police: Advancing Accountability in Law Enforcement* (CRC Press, 2016) 3.

³ *Law Enforcement Conduct Commission Act 2016* (NSW) s 51.

⁴ Redfern Legal Centre, Submission No 21 to the NSW Department of Justice, *Review of Police Oversight in NSW*, 25 June 2015, 5.

Where our clients have experienced police misconduct, many have decided against pursuing complaints, fearing reprisals and/or doubting police impartiality to investigate complaints against fellow officers.⁵ As Longman has observed, for Aboriginal people, the history and continuation of police violence and the non-transparency of the ‘accountability’ process (most starkly apparent in relation to deaths in custody) creates a continuing form of dispossession and denial of justice.⁶ This was also identified in the 2017 Australian Law Reform Commission (‘ALRC’) inquiry into incarceration, which recommended:

To provide Aboriginal and Torres Strait Islander people and communities with greater confidence in the integrity of police complaints handling processes, Commonwealth, state and territory governments should review their police complaints handling mechanisms to ensure greater practical independence, accountability and transparency of investigations.⁷

The Centrality of Stop and Search to Over-Policing

RLC’s casework gives an indication of the persistent processes of criminalisation at play in the contemporary policing of Aboriginal and Torres Strait Islander peoples. The repeated interaction between the over-charging of ‘police offences’ like offensive language or affray, aggressive policing of bail conditions and proactive policing generate patterns of oppressive policing, which are in turn indicators of systemic and institutional racism.

RLC’s Aboriginal and Torres Strait Islander clients overwhelmingly experience patterns of routine stop and search by police without a lawful basis. In the absence of a police officer having a reasonable suspicion for a search as required by law,⁸ police offer a range of reasons for stopping our clients who are Aboriginal or Torres Strait Islander. These unlawful reasons are evidenced in police records’ failure to document a legitimate basis for stop and search. Across RLC’s case files, police reasons include:

- that the person is in a high crime area or an area known for drug use;
- that the person has a suspect demeanour, such as avoiding police eye contact or refusing to answer questions; or
- that there is ‘intelligence’ justifying the stop.

It is very rare for complaints on these grounds to be investigated, and when they are investigated, despite the apparent lack of legitimacy for police stops, very few complaints are sustained. A recurring pattern across our case files indicates RLC’s clients are being policed for being Aboriginal. Many of our clients have the reasonable belief that police are searching them not because they believe they are in possession of items connected to criminal activity, but because they and their communities are permanently under suspicion of offences. There is a substantial body of international research that identifies the absence of lawful grounds for suspicion as racial profiling.⁹ A 2017 report by academic experts in the Police Stop Data Working Group commissioned by the Flemington and Kensington Community Legal Centre sets out detailed recommendations for how Victoria Police can monitor and prevent racial profiling by collecting and making publicly available demographic and ethnicity

⁴ Redfern Legal Centre, Submission No 21 to the NSW Department of Justice, *Review of Police Oversight in NSW*, 25 June 2015, 5.

⁵ See especially Jane Goodman-Delahunty, Alan Beckley and Melissa Martin, ‘Resolving or Escalating Disputes? Experiences of the NSW Police Force Complaints Process’ (2014) 25 *Australasian Dispute Resolution Journal* 79, 89.

⁶ Craig Longman, ‘Where is the Accountability for Aboriginal Deaths in Custody?’ (2016) 25(3) *Human Rights Defender* 5.

⁷ Australian Law Reform Commission, *Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, Report No 133 (2017) 17.

⁸ *Law Enforcement (Powers and Responsibilities) Act 2002* (NSW) s 21.

⁹ See, eg, Police Stop Data Working Group, ‘Monitoring Racial Profiling: Introducing a Scheme to Prevent Unlawful Stops and Searches by Victoria Police’ (Report, Flemington and Kensington Community Legal Centre, August 2017) 6 <http://www.policeaccountability.org.au/wp-content/uploads/2017/08/monitoringRP_report_softcopy_FINAL_22082017.pdf>.

data on the use of police powers.¹⁰ In its submission to the ALRC inquiry, RLC recommended that all Australian jurisdictions legislate to ‘mandate police collection and publication of data on the use of their street powers in order to monitor and prevent the over-policing of Aboriginal and Torres Strait Islander peoples in particular’.¹¹ Making police data transparent and public is a first step in understanding the police practices that disproportionately target Aboriginal and Torres Strait Islander peoples.

For our clients who live with physical, cognitive or mental impairments, being stopped and searched without a lawful basis compounds experiences of discrimination and vulnerability.¹² Repeated, discriminatory searches increase the risk that Aboriginal and Torres Strait Islander peoples become enmeshed in the criminal justice system. Unnecessary police encounters predictably generate conflict when the person being policed questions the lawful authority for police power (or even responds through silence), as many of our clients have found. In RLC’s experience, overzealous police use of search powers routinely subject our clients to assaults by police as well as unnecessary charges such as offensive language and resisting and assaulting police.

Proactive Policing and the Suspect Targeting Management Plan

Regular data on the numbers of stop and searches, move on directions, breach of bail conditions and the correlation between the rate of searches and the rates of prosecution are urgently required. In the absence of publicly accessible, state-collected data, generating evidence from the ‘ground up’ through people’s experiences of policing is a long tradition in activist scholarship and practice.¹³ RLC, as part of a coalition of CLC members of the Youth Justice Coalition, contributed to an action-research project that I led in collaboration with Camilla Pandolfini (solicitor at the Public Interest Advocacy Centre) on the NSW Police Force’s Suspect Targeting Management Plan (‘STMP’) — a pre-emptive form of disruption policing based on future risk of offending.¹⁴ The research drew together 32 qualitative case studies of clients of CLCs together

with analysis of police records, court records, available documentary material on the STMP and limited data obtained from NSW Police through freedom of information laws.

Over the last two years, 1800 adults and children have been placed on the STMP. Young people under 25 make up 50% of the STMP and children comprise approximately 25%. The youngest person on the STMP is nine years of age. The STMP is grossly disproportionately targeted towards Aboriginal communities. Consistent with our research, NSW Police confirmed that close to 56% of all people on the STMP in NSW are Aboriginal.¹⁵ In Redfern, 60% of the 45 individuals on the STMP in 2015 were Aboriginal, even though only 2% of the Redfern population identifies as Aboriginal.¹⁶ Of the 10 select Local Area Commands for which we were able to obtain data, Redfern had the highest number of total STMP targets.¹⁷

Our project found that the STMP is being used as a substitute for holding a reasonable suspicion that the person has committed an offence. In this way, the STMP amplifies the racial profiling of Aboriginal peoples and continues to exclude them from the purported protections of law. The police justification

¹⁰ Ibid 51.

¹¹ Redfern Legal Centre, Submission No 79 to the Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, 12 September 2017, 9.

¹² See especially Eileen Baldry et al, ‘A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System’ (Report, University of New South Wales, October 2015) <<https://www.mhdc.d.unsw.edu.au/>>.

¹³ In Australia, see the work of Flemington & Kensington Community Legal Centre’s ‘Police Accountability Project’; The Youth Justice Coalition’s work since 1987; and the Indigenous Social Justice Association.

¹⁴ Vicki Sentas and Camilla Pandolfini, ‘Policing Young People in NSW: A Study of the Suspect Targeting Management Plan’ (Report, Youth Justice Coalition, 2017) <<https://www.piac.asn.au/2017/10/25/policing-young-people-in-nsw-a-study-of-the-suspect-targeting-management-plan/>>.

¹⁵ Evidence to Legislative Council Portfolio Committee No. 4 - Legal Affairs, Parliament of New South Wales, Sydney, 9 November 2017, 9 (Michael Fuller, New South Wales Police Force Commissioner).

¹⁶ Sentas and Pandolfini, above n 14, 11.

¹⁷ Ibid 9. The 10 LACS under study were: Redfern, Parramatta, Orana, Canobolas, Bankstown, Blacktown, Blue Mountains, Mount Druitt, Barwon and St Marys.

for the STMP strategy is to seek to disrupt a person's everyday life in order to pre-empt their potential future offending. However this means people on the STMP are subject to constant police surveillance and the exercise of coercive police powers. The young people in our study were visited at home, several times a week over several months, and sometimes years. Some young people were targeted several times a day. People on the STMP are stopped on the streets and searched or given move-on directions and questioned about what they are doing. By design, the STMP amplifies experiences of stigma, alienation, poor police-community relations and social exclusion. We documented worrying levels of extreme household stress, particularly experienced by Aboriginal families where a young person was on the STMP. The continuities of the STMP with colonial forms of policing as dispossession and racialised management are stark, and explored in this Issue by Michael Siciliano.

The discriminatory targeting of Aboriginal people on the STMP amplifies and extends the harmful and oppressive effects of policing. We found that the STMP is contributing to detrimental social outcomes for Aboriginal young people, in particular undermining opportunities for diversion and increasing opportunities for criminalisation. Aboriginal young people placed on the STMP tend not to be the beneficiaries of police cautions and warnings for minor offences.¹⁸ Our research found that the STMP criminalised young people by sometimes detecting minor offences (overwhelmingly, small amounts of cannabis). We found the STMP often generates charges as a result of the increased contact with police, including offensive language, resisting arrest and assaulting police. A key finding of our research is that the STMP is used by police to justify unlawful searches.

The STMP is both a driver and the consequence of proactive policing. As the dominant framework for policing since the 1980s and 1990s in NSW and across western jurisdictions, the growth in proactive policing is intimately linked to changes in the political economy of policing associated with the 'new public management'.¹⁹ Consequently, engaging in 'pre-crime' policing is understood to be more efficient and effective than 'reactive' criminal investigation. Additionally, the logic underpinning

proactive policing is that it is capable of preventing crime through deterrence.²⁰ These claims remain partial and contested across the international literature, and beyond our research, have not been subject to transparent evaluation in NSW. Our research indicates that the STMP is not effective crime prevention, and undermines best practice aimed at holistically addressing the diverse causes of offending.

Conclusion

The received framework of 'accountability' in policing continues to exclude the perspectives and experiences of those who are over-policed. The complaints system in NSW is structurally deficient (as it is across Australia) and does not provide justice for Aboriginal and Torres Strait Islander peoples. Exposing everyday forms of police violence and over-policing remains necessary work to be done in solidarity with Aboriginal and Torres Strait Islander peoples. This is what RLC attempts to do, using the broken complaints system to generate an imperative for the police to respond and remedy the structural, systemic and institutional causes of racialised over-policing.

¹⁸ See generally Clare Ringland and Nadine Smith, 'Police Use of Court Alternatives for Young People in NSW' (Crime and Justice Bulletin No 167, NSW Bureau of Crime Statistics and Research, January 2013).

¹⁹ Jerry H Ratcliffe, *Intelligence-Led Policing* (Routledge, 2nd ed, 2016) 33.

²⁰ See David Kennedy, 'Pulling Levers: Getting Deterrence Right' (1998) 236 *National Institute of Justice Journal* 2, 3; Anthony A Braga and David L Weisburd, 'Pulling Levers Focused Deterrence Strategies to Prevent Crime' (Crime Prevention Research Review No 6, Office of Community Oriented Policing Services in the United States Department of Justice, August 2012) 20–22.

Policing in Redfern: Histories and Continuities

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Introduction

Redfern is a microcosm of many colonial and postcolonial frontiers across Australia. Colonial violence in the early nineteenth century was met with resistance by the Gadigal people and other clans of the Eora nation.¹ State violence and Aboriginal struggle cast long shadows over Aboriginal experiences in Redfern. The wounds of injustice that lie open, especially in recent decades from policing, continue to be a focal point for local Aboriginal people and organisations. A flashpoint for the injustice in Redfern is the death of Aboriginal teenager TJ Hickey in a police chase in 2004 and the lack of subsequent accountability.² This article traces the fraught history of discriminatory policing in Redfern and the ongoing plight for justice.

Aboriginal Rights and Black Power in the 1960s and 1970s

From the early twentieth century, Aboriginal people began to relocate to Redfern due to a variety of push and pull factors. On the one hand, Aboriginal people came to Redfern in the 1920s to work at the Eveleigh Railway Workshops and then in the local factories.³ From the 1950s, Redfern offered relatively good educational and political opportunities, including building a proud Aboriginal community and an escape from impoverished and conservative regional towns that were kept under tight surveillance by the Welfare Board.⁴ On the other hand, Aboriginal people were forced from regional towns, often on Country, because of a policy in the 1960s to move Aboriginal families to urban areas by funding housing and services in places such as Redfern at the expense of regional areas. The Welfare Board threatened Aboriginal people with eviction if they did not relocate.⁵ By 1970, the Aboriginal population of Redfern had grown to over 35 000.⁶ This would have made Redfern the most concentrated Aboriginal population in the country. Given that today 13 000 people live in Redfern (only two per cent of whom are Aboriginal),⁷ Aboriginal people in the 1960s and 1970s experienced severe overcrowding.

In the 1970s, the Redfern Aboriginal

community became instrumental in the nationwide struggle for Aboriginal rights and self-determination.⁸ Its radicalism, according to activist Gary Foley, meant it became a crucial link the Australia's 'Black Power' movement that was focused on realising rights through direct action.⁹ From this movement, key Aboriginal-owned services spawned, including the Aboriginal Legal Service ('ALS') in 1970 and the Aboriginal Medical Service in 1971.¹⁰ The establishment of the ALS in Redfern was a response to harassment by police who were 'unnerved' by the 'explosion' in Redfern's Aboriginal population, and discrimination in the legal

¹ The Gadigal clan was significantly diminished as a result of a small pox epidemic introduced by colonial settlers between 1789 and 1790. The few survivors were forced to move into surrounding areas. The introduction of small pox has been characterised as a deliberate act of biological warfare against Gadigal and other local Aboriginal people: Christopher Warren, 'Smallpox at Sydney Cove – Who, When, Why?' (2014) 38 *Journal of Australian Studies* 68, 68.

² The Royal Commission into Aboriginal Deaths in Custody recommended that police pursuits be encapsulated in the definition of a death in custody: Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) vol 5, Recommendations 6 and 41 ('*National Report*').

³ James Hoff, *Redfern Oral History Timeline*, Redfern Oral History <<http://www.redfermoralhistory.org/Timeline/Timeline/tabid/239/Default.aspx>>.

⁴ *National Report*, above n 2, chs 15, 26. In addition, the granting of citizenship rights to Aboriginal and Torres Strait Islander people in the 1960s enabled relocation to Redfern, including by Queensland Aboriginal (Murri) people: see T Attajarusit et al, *Pre and Post Colonial Redfern: A Social History*, University of Sydney, 2 <[http://faculty.arch.usyd.edu.au/web/current/topic1/Attajarusit+Burdon+Burgess+Boyle\(T1\)/prepost%20colonial.pdf](http://faculty.arch.usyd.edu.au/web/current/topic1/Attajarusit+Burdon+Burgess+Boyle(T1)/prepost%20colonial.pdf)>.

⁵ George Morgan, *Unsettled Places: Aboriginal People and Urbanisation in New South Wales* (Wakefield Press, 2006) ch 4.

⁶ Susan McIntyre-Tamwoy and Graham Wilson, *Chronology* (2018) Eveleigh Stories <<https://eveleighstories.com.au/chronology?page=4>>.

⁷ Australian Bureau of Statistics, *2016 Census QuickStats: Redfern* (23 October 2017) <http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC13339?opendocument>.

⁸ Gary Foley, 'Black Power in Redfern 1968–1972' in Zanny Begg and Keg De Souza (eds), *There Goes the Neighbourhood: Redfern and the Politics of Urban Space* (Break Out, 2009) 12–13.

⁹ *Ibid.*

¹⁰ Around this time, Redfern also became home to the Aboriginal Children's Service, the Aboriginal Community Housing Cooperative, the Indigenous Radio Station and the National Black Theatre.

system.¹¹ The ALS staff themselves were targeted by police, with over half of them arrested in 1975.¹²

A significant moment in the history of Aboriginal self-determination was the purchase of 'The Block' between Eveleigh, Caroline, Louis and Vine Streets for Aboriginal residents in Redfern.¹³ The purchase of the first set of houses in The Block was made by the Aboriginal Housing Company ('AHC') in 1973, and the remaining houses were acquired by the AHC over the following two decades¹⁴ – the first housing collective in Australia – with a view to providing a communal housing arrangement run by Aboriginal people.¹⁵ The Block, however, became the epicentre for racist policing at Redfern.

Police Harassment from the 1960s

Following the decline of the protectionist era when Aboriginal people were detained on missions and government settlements, the 1960s and 1970s saw policing of Aboriginal people in towns and cities across Australia take on a new intensity.¹⁶ In Redfern Aboriginal people faced discriminatory and violent over-policing.¹⁷ Police would call out 'coon, boong and Abo' to Aboriginal people from their vehicles and then drive off.¹⁸ Aboriginal people who lived in Redfern describe racist policing as intrinsic to the community's history and the ongoing tensions.

Tiga Bayles' experience of Redfern in the 1980s was of 'police brutality' taking place 'almost every day'.¹⁹ Cecil Bowden described that the biggest problem on The Block was the police who constantly provoked trouble.²⁰ Lyall Munro Jnr, who was involved in the early years of the ALS, recalls frequent incidents with police where 'guns were drawn and we were shot at and pistol whipped'.²¹ The police were an agent for the enforcement of white standards and discriminated against Aboriginal young people.²² 35 years later, in 2018, Lyall Munro spoke about the injustice of the death of his nephew Patrick Fisher during a raid by Redfern police.²³ In this edition, Juanita Sherwood speaks to havoc that policing wreaked on the lives of Aboriginal women in Redfern.

Aboriginal residents of Redfern commonly had minor charges trumped up by the police to justify arrests. Police would mostly lay charges for public order

offences, such as swearing and drinking in public.²⁴ Trumped up charges included 'the trifecta': offensive language ('unseemly words'), resist arrest and assault police.²⁵ In the 1970s and 1980s, police vans would camp outside Redfern hotels, such as the Empress

¹¹ *National Report*, above n 2, vol 2, [20.4.46]. The ALS provided more than Aboriginal legal representation; it developed a new style of service delivery where Aboriginal field officers mediated between police and Aboriginal people.

¹² Chris Cunneen, *Aboriginal-Police Relations in Redfern: With Special Reference to the 'Police Raid' of 8 February 1990* (Report, Human Rights and Equal Opportunities Commission, 1990) 3.

¹³ Cameron McAuliffe, 'Book Review: Cities of Whiteness' (2009) 99 *Annals of the Association of American Geographers* 627, 627.

¹⁴ Aboriginal Housing Company, *Aboriginal Housing Company and The Block*, Redfern Oral History <<http://redferoralhistory.org/Organisations/AboriginalHousingCompany/tabid/209/Default.aspx>>.

¹⁵ Attajarusit et al, above n 4, 2.

¹⁶ Russell Hogg, 'Penalty and Modes of Regulating Indigenous People in Australia' (2001) 3 *Punishment and Society* 355; Elizabeth Eggleston, *Fear, Favour or Affection: Aborigines and the Criminal Law in Victoria, South Australia and Western Australia* (Australian National University Press, 1976).

¹⁷ *National Report*, above n 2, ch 18; Cunneen, above n 12.

¹⁸ 'Lone Liaison Officer Left in Redfern', *The Sydney Morning Herald* (Sydney), 25 September 2004, [10] <<https://www.smh.com.au/national/lone-liaison-officer-left-in-redfern-20040925-gdjswk.html>>.

¹⁹ Quoted in Cunneen, above n 12, 12.

²⁰ *The Block: Stories from a Meeting Place* (Directed by Poppy Stockell, SBS Online, 2012) <<http://www.sbs.com.au/theblock/lyall.html#/cecil>>.

²¹ *The Block: Stories from a Meeting Place* (Directed by Poppy Stockell, SBS Online, 2012) <<http://www.sbs.com.au/theblock/lyall.html#/lyall>>.

²² Lyall Munro Jnr, 'Aboriginal Legal Service and Police' (1983) 5 *Alternative Criminology Journal* 10, 10.

²³ Quoted in Rangji Hirini, "'Too Many Coppers, Not Enough Justice': Community Rally for Man Who Fell Off Balcony During Police Chase' *National Indigenous Television* (Australia), 12 February 2018 <<https://www.sbs.com.au/nitv/nitv-news/article/2018/02/11/too-many-coppers-not-enough-justice-community-rally-man-who-fell-balcony-during>>.

²⁴ Two-thirds of offences for which Aboriginal people were convicted were offensive language and vagrancy (such as public disorder or intoxication, which were offences under the *Intoxicated Persons Act* (NSW) (repealed on 1 December 2005)); Cunneen, above n 12, 2.

²⁵ Catie Gilchrist, *The Empress Hotel, Redfern*, (2015) Dictionary of Sydney <https://dictionaryofsydney.org/entry/the_empress_hotel_redfern>.

Hotel, after 10pm – the ‘unofficial Aboriginal curfew’ imposed by Redfern Police.²⁶ The police would then ‘round up’ Aboriginal people emerging from the hotels and indiscriminately arrest them under the *Intoxicated Persons Act*.²⁷ Chicka Dixon recalls that being ‘black in Redfern’ means ‘you’re taking a chance’ being on the street after 10pm.²⁸ Gary Foley likened the line-up of up to 35 police vehicles to a ‘taxi rank’, from which the police would emerge to ‘beat the shit out of everyone inside [the Empress], arbitrarily arrest anyone who objected, and ... drive off and lock people up on trumped up charges’.²⁹ On one occasion in 1983, assaults resulted in one pregnant woman miscarrying her unborn child and another woman having her teeth knocked out as a result of alleged police bashings after leaving the Clifton Hotel.³⁰

The racist culture of Redfern Police received broad public attention when it was portrayed in the 1991 documentary *Cop It Sweet*,³¹ which filmed the deliberate pursuit of Aboriginal people in police vehicles and arrests for swearing (while using the same language themselves). It was also detailed in the National Inquiry into Racist Violence on Aboriginal-Police Relations in Redfern and the Royal Commission into Aboriginal Deaths in Custody (‘RCIADIC’) Final Report. They identified Redfern Police’s targeting of Aboriginal youth, including the bashing of Aboriginal children in Victoria Park in 1971 and the discharging of pistols at the NAIDOC Week sports carnival in Alexandria Park in 1989.³² RCIADIC documented that Redfern Police Station had ‘two big boards’ with photos of ‘nearly all the kids in Redfern and grown-ups’.³³ It quoted an Aboriginal resident of Redfern:

[The photo boards are] put there for the trainee police to come into Redfern and sort out these kids and they really harass them ... You know the police harassment there is unbelievable and we’re going to have more of our kids die if they don’t get off their backs.³⁴

The Tactical Response Group periodically conducted raids on homes in Redfern in the 1980s and 1990s.³⁵ The RCIADIC noted that the use of this paramilitary special police unit involved provocative interventions into Aboriginal peoples’ units over several years.³⁶ In 1989, 50 police from the Tactical

Response Group charged batons at approximately 50 Aboriginal youth in Eveleigh Street.³⁷ During the confrontation a young Shane Phillips was referred to as a ‘little black cunt’ by a riot officer.³⁸ Twenty-five years later, TJ Hickey was killed in a police chase and the riot squad was mobilised to put down a protest. This did not mark a turning point in relations between police and Aboriginal people, but a crystallisation.

Culmination of Police Harassment in 2004: TJ Hickey

On the morning of 14 February 2004, seventeen-year-old Kamilaroi boy TJ Hickey was impaled on the spikes of a fence consequent to a chase by Redfern police in two vans on Renwick Street, Redfern.³⁹ TJ died at

²⁶ Unlike other establishments that refused Aboriginal people, the Empress Hotel openly welcomed Aboriginal customers (drinkers and non-drinkers alike): *ibid.*

²⁷ *Ibid*; *Intoxicated Persons Act 1979* (NSW) (repealed).

²⁸ *Ibid* quoting Colin Tatz, *Black Viewpoints: The Aboriginal Experience* (Australian and New Zealand Book, 1975) 36.

²⁹ *Ibid* quoting Terry Irving and Rowan Cahill, ‘Survival Day, 26 January 1988, Koori Redfern, The Empress Hotel, Regent Street’ in Terry Irving and Rowan Cahill (eds), *Radical Sydney: Places, Portraits and Unruly Episodes* (University of New South Wales Press, 2010) 328, 329.

³⁰ Cunneen, above n 12, 7.

³¹ *Cop It Sweet* (Directed by Jenny Brockie, Australian Broadcasting Corporation, 1991).

³² Cunneen, above n 12, 1, 10.

³³ *National Report*, above n 2, vol 2, ch 20.

³⁴ *Ibid.*

³⁵ *National Report*, above n 2, vol 2, ch 18.

³⁶ *Ibid.*

³⁷ Cunneen, above n 12, 8.

³⁸ *Ibid.*

³⁹ NSW State Coroner John Abernathy, ‘Inquest into the death of Thomas James Hickey’ (Report No 287, 17 August 2004) 72–3; L Kennedy, M Pelly and P Totaro, ‘Chased or Not, TJ Had Reasons to Run’, *The Sydney Morning Herald* (Sydney), 17 February 2004, 1 <<https://www.smh.com.au/national/chased-or-not-tj-had-reasons-to-run-20040217-gdidcw.html>>; Anon, ‘Police “Deserve All They Get”: Dead Teen’s Mum’, Australian Associated Press, 16 February 2004.

Sydney Children's Hospital in the early hours of 15 February. There was evidence by civilian witnesses and an Aboriginal Community Liaison Officer (ACLO) that the police 'rammed' into TJ's bike.⁴⁰ TJ's family and many in the Redfern Aboriginal community maintain that the police killed TJ.⁴¹ He was terrified of the Redfern police due to an earlier chase where five officers beat TJ, according to his mother, Gail Hickey.⁴²

The treatment of TJ following this incident was highly suspicious. Rather than immediately call for medical assistance, the police who attended TJ called for police back-up.⁴³ They handled TJ's body rather than waiting for medical staff to move him, as required by police procedures.⁴⁴ Redfern Police did not contact the Aboriginal Community Liaison Officers, which is also required by police procedures.⁴⁵ The police failed to conduct a proper and timely investigation, taking over a week to commence it.⁴⁶ After TJ was impaled, the police returned to Redfern Station to write their statements, rather than being separated as required by protocols,⁴⁷ enabling them to collude when making their account. The Superintendent then made alterations to their statements.⁴⁸ These acts breached police procedures as recognised by the NSW Coroner.⁴⁹ During the coronial, police consistently failed to answer questions and the Senior Constable at the centre of the allegations refused to give evidence. The coroner accepted the police version of events over contradictory witness evidence. Ultimately, the coroner found that TJ Hickey died during 'police operations' and did not apportion blame.⁵⁰

The late Ray Jackson who founded the Redfern-based Indigenous Social Justice Association,⁵¹ an organisation that advocates for justice for Aboriginal deaths in custody, highlights the problems when police 'investigate their own'.⁵² He said that the brief of evidence excluded bystander, paramedic, ACLO, Aboriginal detective and rescue police witness testimony, and withheld TJ's bike from the evidence before the coroner.⁵³ He referred to the cleansing of evidence through 'steam-cleaning' the crime scene soon after TJ's passing and repairing the five police vehicles involved.⁵⁴ Each year since TJ's passing, there has been a rally at Redfern that calls for justice for TJ. On its 10th anniversary, Redfern Police Commander Luke Freudenstein publicly criticised the rally.⁵⁵

The Redfern Clash

On the evening of 15 February 2004, Aboriginal people gathered in Redfern to mourn TJ's passing and express anger with the police's involvement in TJ's death. Over

⁴⁰ Paul James Wilkinson, Submission No 89 to Parliament of New South Wales, *Report of Proceedings before Standing Committee on Social Issues Inquiry into Issues Relating to Redfern-Waterloo*, 12 July 2004, <<https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2074>>; see also NSW State Coroner Abernathy, above n 38, 79.

⁴¹ Kennedy, Pelly and Totaro, above n 38, 1. There is currently a petition calling for a Parliamentary Inquiry into the events leading to TJ's death and a review of the coronial inquiry. See petition at <<https://www.facebook.com/photo.php?fbid=1950058685059732&set=gm.2-43420339001680&type=3&theater&itg=1>>

⁴² 'Brogden's Riot Response: Bulldoze The Block', *The Sydney Morning Herald* (Sydney), 16 February 2004 <<https://www.smh.com.au/national/brogdens-riot-response-bulldoze-the-block-20040216-gdid8b.html>>; Kennedy, Pelly and Totaro, above n 38, 1 <<https://www.smh.com.au/national/chased-or-not-tj-had-reasons-to-run-20040217-gdidcw.html>>; Anon, above n 38.

⁴³ Eve Vincent, 'Tour of Beauty' (2006) 65(2) *Meanjin* 121, 126.

⁴⁴ *Ibid.* For current procedures, see the *NSW Police Force Handbook* (2016), 148 <https://www.police.nsw.gov.au/__data/assets/pdf_file/0009/197469/NSW_Police_Handbook.pdf>.

⁴⁵ *Ibid.* 152.

⁴⁶ NSW State Coroner John Abernathy above, n 38, 87.

⁴⁷ *Ibid.* 87.

⁴⁸ *Ibid.* 74.

⁴⁹ *Ibid.* 87; For current procedures see *NSW Police Force, Critical Incident Guidelines* (2017), 15 <https://www.police.nsw.gov.au/__data/assets/pdf_file/0020/420392/Critical_Incident_Guidelines_2017_Public_document.pdf>.

⁵⁰ NSW State Coroner John Abernathy, above n 38, 89.

⁵¹ Jackson was formerly involved in the Aboriginal Deaths in Custody Watch Committee, and when this was disbanded by the government, he, with others, set up the Indigenous Social Justice Association ('ISJA').

⁵² Ray Jackson, *Ray Jackson Provides an Overview of the "TJ Hickey" Injustices* (2014) Sovereign Union – First Nations Asserting Sovereignty <<http://nationalunitygovernment.org/content/ray-jackson-provides-overview-tj-hickey-injustices>>.

⁵³ *Ibid.*

⁵⁴ *Ibid.*

⁵⁵ 'Thomas "TJ" Hickey Rally in Redfern, Sydney, Could be Last after Brawls Lead to Traffic Disruption: Police', *ABC News* (online), 14 February 2014 <<http://www.abc.net.au/news/2014-02-14/police-warn-tj-hickey-rally-could-be-last/5260536>>.

six hours, this became a clash between the gathering and the police that resulted in violence and injuries for the police and the protesters.⁵⁶ It has become widely known as the ‘Redfern Riot’. However, some describe the incident as incited by the police who had acted violently towards members of the community.⁵⁷ In other words, Aboriginal people saw the riot as preempted by the police who had been inflicting force on Aboriginal residents of Redfern for many years.

In the aftermath of the confrontation, the Police initiated Strike Force Coburn to investigate its causes. The report of the Strike Force laid blame at the hands of the Aboriginal gathering and ignored the underlying dynamics of discriminatory policing in Redfern. The Strike Force criticised the protesters who had ‘a perception of Police involvement in the death of a youth the previous day’, without addressing why this perception existed.⁵⁸ Like the mainstream media, the report characterises the event as a product of a disorderly and irrational Aboriginal group.⁵⁹ The report recommended a punitive response, which the NSW Government delivered through the establishment of a 29-member Target Action Group (‘TAG’) team, enhanced focus from Dog Squad in Redfern, riot training for police recruits and a new police station.⁶⁰ Punishment was also directed to fourteen Aboriginal people who were identified for their involvement in the clash.

The Scales of Injustice: Arrests for Protesters

Despite the long and ongoing wait for disciplinary action for the police responsible for TJ’s death,⁶¹ there was a quick punitive response to those involved in the confrontation with police following TJ’s death. The Aboriginal community were more broadly punished through police drug squad raids which resulted in many more charges, especially against Aboriginal young people.⁶²

The major reported cases were the prosecutions of TJ’s aunt, Marilyn Cargill and TJ’s cousin, Raymond Carr. Redfern Local Court refused Marilyn Cargill’s bail application to attend TJ’s funeral, on the grounds that she made threats to the police that were serious offences.⁶³ Marilyn regarded TJ Hickey as a son.⁶⁴ She was ultimately convicted and sentenced

to one year’s imprisonment; the District Court held that TJ’s death was not a relevant mitigating factor.⁶⁵ Raymond Carr was the deemed ‘ringleader’ of the ‘riot’ and charged with riot, affray and maliciously damaging a police car.⁶⁶ Carr told the Local Court in Sydney that he threw bottles – the criminal conduct in question – because ‘he was angry at the death of Thomas Hickey’.⁶⁷ He was imprisoned for one year because of the seriousness of smashing a police vehicle window and threatening to throw pavers at police, and his evidence of the grief caused from TJ’s loss was overshadowed by penal considerations.⁶⁸

⁵⁶ John Laycock et al, ‘Strike Force Coburn: Final Report – Part A Analysis – Redfern Local Area Command Civil Unrest 15–16 February 2004’ (Report, Strike Force Coburn, NSW Police, 2004) 52–4.

⁵⁷ Tony Birch, ‘“Who Gives a Fuck about White Society Anymore”: A Response to the Redfern Riot’ (2004) 175 *Overland* 18, 18; Andy Gargett, ‘A Critical Media Analysis of the Redfern Riot’ (2005) 6(10) *Indigenous Law Bulletin* 8, 10.

⁵⁸ Laycock, above n 55, 8. See also Neal Funnell, ‘Non-Lethal Intelligence: Strike Force Coburn and the Police Response to the Redfern Riot’ (2005) 6(10) *Indigenous Law Bulletin* 4.

⁵⁹ Thalia Anthony, *Indigenous People, Crime and Punishment* (Routledge, 2013) 166.

⁶⁰ John Watkins, Minister for Police, ‘Redfern Crime Plan: Enhanced Numbers, Training, Response and Relations’ (Media Release, 16 July 2004) 1 <http://www.redwatch.org.au/govt/nsw/police/redfermenhanced2004/REL16%20Redfern%20Plan_1.pdf>.

⁶¹ Paul Gregoire, *Waterloo Injustices: An Interview with Indigenous Social Justice Association’s Ken Canning* (17 February 2018) Sydney Criminal Lawyers, <<https://www.sydneycriminallawyers.com.au/blog/waterloo-injustices-an-interview-with-indigenous-social-justice-associations-ken-canning/>>.

⁶² ‘Dozens Arrested in Redfern Drug Raid’, *ABC News* (online), 30 July 2004 <<http://www.abc.net.au/news/2004-07-30/dozens-arrested-in-redfern-drug-raid/2017726>>.

⁶³ Mike Corder, ‘Dead Boy’s Aunt in the Dock over Sydney Riot’, *The Independent* (London), 21 February 2004, 31.

⁶⁴ *R v Cargill* (Unreported, District Court of New South Wales, 6 January 2005).

⁶⁵ ‘Teen’s Aunt to Miss Funeral as Bail Denied’, *The Sydney Morning Herald*, 21 February 2004 <<https://www.smh.com.au/national/teens-aunt-to-miss-funeral-as-bail-denied-20040221-gdieb5.html>>; *R v Cargill* (Unreported, District Court of New South Wales, 6 January 2005).

⁶⁶ Elizabeth Colman, ‘Magistrate Refuses Bail for Alleged Riot Ringleader’, *The Australian*, 25 February 2004, 7.

⁶⁷ *Ibid.*

⁶⁸ Leonie Lamont, ‘Rioter Loses Jail-Term Appeal’, *The Sydney Morning Herald*, 15 February 2005, 5.





The Aftermath: ‘Bulldoze The Block’

In the immediate aftermath of the violent encounter between police and Aboriginal people in Redfern on 15 February 2004, politicians called for The Block to be bulldozed.⁶⁹ Although the events in mid-February were a catalyst for such proposals, in reality they were part of a broader political and economic drive to ‘clean up’ Redfern by dispersing Aboriginal people.⁷⁰ The Block was described by Shaw as a ‘failed (urban) Aboriginal self-determination’.⁷¹ This paved the way for its demolition in 2010 to give way to gentrification and profits for developers in a climate of rising house prices in Redfern.⁷² Ray Jackson referred to the loss of The Block as a ‘nightmare for Aboriginal people with an historic connection to the block’.⁷³ At present, plans to develop a 16-storey tower on The Block are underway with only a small fraction of units touted for Aboriginal people.⁷⁴

Contemporary Policing of Aboriginal People in Redfern

Some recent reports on Redfern suggest that policing has improved.⁷⁵ It is difficult to determine whether Aboriginal peoples’ experiences of Redfern Police have improved given that most of the Aboriginal population have been forced out of Redfern, with only 284 remaining.⁷⁶ Nonetheless, research by Vicki Sentas on the Suspect Target Management Program reveals the continued disproportionate targeting of Aboriginal youth by Redfern Police.⁷⁷ There is also ongoing dissatisfaction with the resistance of the recent Police Commander Luke Freudenstein to erect a plaque at the site where TJ was impaled that remembers him and acknowledges his death during a police chase.⁷⁸

The continuity in the heavy-handed practices of Redfern Police was brought into sharp relief earlier this year when Patrick Fisher, a 31-year-old Waka Waka man and father of three, died in a police raid.⁷⁹ Like TJ, Patrick was attempting to escape the police, who were pursuing him over two outstanding warrants for minor charges. He feared police attacks and had been subject to violence by Redfern Police in the past.⁸⁰ He fell from the 13th floor of an apartment block on 7

February, almost 14 years after TJ’s death in custody.

Following Patrick’s passing, a gathering was held to call for justice and to hold a smoking ceremony. The Indigenous Social Justice Association continued to be at the forefront of supporting and advocating for Patrick’s family and highlighting the ongoing injustices inflicted by Redfern Police. Its current President, Ken Canning, asked why Redfern Police had to chase Patrick rather than wait for him to

⁶⁹ Anon, ‘Brogden’s riot response: bulldoze The Block’, above n 41.

⁷⁰ For instance, the Aboriginal community in Redfern felt under threat by the 2003 NSW State Government’s proposal called the Redfern-Eveleigh-Darlington (‘RED’) Strategy that gave greater powers to the Council and undermined Aboriginal community control.

⁷¹ Wendy Shaw, ‘Ways of Whiteness: Harlemising Sydney’s Aboriginal Redfern’ (2000) 38 *Australian Geographical Studies* 291.

⁷² Matt Khoury, ‘Friday Deadline on the Block, but Last Residents are Refusing to Go’, *The Sydney Morning Herald* (online), 15 November 2010 <<https://www.smh.com.au/national/nsw/friday-deadline-on-the-block-but-last-residents-are-refusing-to-go-20101114-17sqc.html>>; Danny Teece-Johnson and Robert Burton-Bradley, ‘Inner Sydney’s Aboriginal Community Fear They are Being Pushed Out for “White Hipsters”’, *The Point*, NITV (online), 10 March 2016 <<https://www.sbs.com.au/nitv/the-point-with-stan-grant/article/2016/03/09/inner-sydneys-aboriginal-community-fear-they-are-being-pushed-out-white-hipsters>>.

⁷³ Jackson, above n 51.

⁷⁴ Jack Latimore, ‘Indigenous People are Being Displaced Again – by Gentrification’, *The Guardian* (online), 9 April 2018 <<https://www.theguardian.com/cities/2018/apr/09/indigenous-people-are-being-displaced-again-by-gentrification-aboriginal-redfern-west-end-fitzroy>>.

⁷⁵ Heather McNab, ‘Redfern Police Boxing Program KOs Crime Statistics’, *The Daily Telegraph* (online), 10 December 2015 <<https://www.dailytelegraph.com.au/newslocal/city-east/redfern-police-boxing-program-kos-crime-statistics/news-story/58a988d14ec56db93a854d578d55d59a>>.

⁷⁶ Australian Bureau of Statistics, above n 7.

⁷⁷ See Vicki Sentas and Camilla Pandolfini, ‘Policing Young People in NSW: A Study of the Suspect Targeting Management Plan’, (Report, Youth Justice Coalition NSW, 2017) <<https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>>.

⁷⁸ Jackson, above n 51; Debra Jopson, ‘Placement of Plaque for T.J. Held Up by Argument over Five Words’, *The Sydney Morning Herald*, 14 February 2011 <<https://www.smh.com.au/national/nsw/placement-of-plaque-for-t-j-held-up-by-argument-over-five-words-20110213-1as50.html>>.

⁷⁹ Jessica Kidd, ‘Sydney Father Dies after Falling from Waterloo Balcony During Attempted Arrest’, *ABC News*, 9 February 2018 <<http://www.abc.net.au/news/2018-02-07/indigenous-man-dies-during-attempted-arrest-in-sydney/9405462>>.

⁸⁰ Gregoire, above n 60.

come out to arrest him. He reasoned that it is a 'case of Redfern police flexing their muscles to show that they are in control'.⁸¹ Ken regards this as an example of the police terrorising Aboriginal people and explaining why 'we will try and escape'. He states that police who assault Aboriginal people 'are getting away with impunity'. He points to the fact that Botany Police are going to investigate Redfern Police over the death, which precludes any independent scrutiny because '[i]t's mate on mate'.⁸²

Conclusion – Redfern Resistance

Despite police violence against Aboriginal people, Redfern continues to be a place where Aboriginal people gather to struggle against injustice and support the families affected by deaths in custody. The Indigenous Social Justice Association, which grew out of the Aboriginal Deaths in Custody Watch Committee, is one bastion of resistance in Redfern and a mechanism for police accountability. They continue to rally in Redfern for families affected by injustice, particularly TJ's. There are other Aboriginal advocacy services in the area – such as Mudgin-Gal Aboriginal women's organisation,⁸³ and Inside Out Aboriginal Justice Consulting,⁸⁴ that strengthen Aboriginal women and young peoples' capacity to participate in improving justice outcomes. The resistance has been a response to the circumstances at Redfern – both the policing and the resilience of Aboriginal people and supporters in the community.⁸⁵ Attempts to push Aboriginal people out of Redfern and to develop The Block for profit have not been able to quash the past and present struggles for Aboriginal justice that continue to live and breathe in Redfern.

⁸¹ Ibid.

⁸² Ibid.

⁸³ See *About Mudgin-Gal*, Redfern Foundation <<http://www.redfernfoundation.org.au/mudgingal.html>>.

⁸⁴ See *About Inside Out*, Inside Out – Aboriginal Justice Consultancy <www.insideoutajc.com.au/about/>.

⁸⁵ Kay Anderson, 'Constructing Geographies: "Race", Place and the Making of Sydney's Aboriginal Redfern', in Peter Jackson and Jan Penrose (eds) *Constructions of Race, Place and Nation* (University of Minnesota Press, 1993) 81.

Racist Policing in Redfern and Beyond

Uncle Ken Canning (Burruga Gutya)

A proud Murri (Aboriginal Person) from the Kunja Clan of the Bidjira People.

The history of Redfern is a chilling reminder of how we got to where we are today. The over-policing at the Empress Hotel in Redfern resonates with the experiences in Brisbane at the Waterloo Hotel, Fortitude Valley and another hotel in Mary Street. Police used to run in, round us up and flog us. I was a kid at the time and didn't drink at all. I used to go to talk to older people about rallies etc, but we got targeted severely.

Redfern is a classic example of how police will target an area with intensity. I remember in the late 1980s when I started working at the University of Technology Sydney, I stated then that the police would do their utmost to clear the area on behalf of governmental and business concerns. They have blitzed this wonderful community from 35 000 Aboriginal residences in the 1960s down to 284 today.¹

Redfern was great in its day. The media played a big part in its demonisation. After the so-called Redfern Riots, the media declared Redfern a no-go area. This was also the case prior to the riots. At different times, the media would splash stories of how police were afraid to go into The Block. I remember in the early 1990s, the media doing a blitz on Our Peoples' violence in Redfern. They kept showing on the 6 o'clock news images of police cars being smashed up. I had every news item taped, it turned out to be the same car shot from different angles and no evidence the shot was even in Redfern. In one scene, footage showed a young boy throwing a large rock, then the shot panned to a smashed up police car. I had seen this boy before. I was living at Campbelltown at the time and it dawned on me that this boy was now grown up and lived up the road from me, married with a few kids.

The late Lester and Gerry Bostock and myself, set up a media watch campaign and we recorded all these types of illegal media campaigns. The tapes I had were confiscated in a raid on my place in Airs, Campbelltown. There was never any excuse given to me for the raid. After this a police car was stationed outside my house every night with its lights going all night and the radio turned up full blast. My young kids could not sleep at all. I complained and the police stated they had no knowledge of such actions or even the raid when my tapes were stolen. Around the same time, my younger brother Robbie had been filming

police interaction with young Murries, and the same treatment was afforded to him: an unauthorised raid and all of his tapes confiscated.

There are some who may believe policing has improved but it is all window dressing. One way to show how policing is still as racist as it was, is the following very compelling statistic. Since the Royal Commission into Aboriginal Deaths in Custody, the killings in custody and the incarceration rates have increased, thus proving that any attempt by police to show a more compassionate view is merely a front.² This includes at the hands of Redfern Police with TJ Hickey and Patrick Fisher. It's like a red carpet and my favourite quote is by an unnamed Nigerian political activist: 'history is like a pretty red carpet, rolled out on ceremonial occasions to cover all the bloodstains on the steps.' This sums up what is happening in Redfern and other places in the country today that will become the history of tomorrow.

¹ Danny Teece-Johnson and Robert Burton-Bradley, 'Inner Sydney's Aboriginal Community Fear They are Being Pushed Out for "White Hipsters"', *Special Broadcasting Service* (online), 10 March 2016 <<https://www.sbs.com.au/nitv/the-point-with-stan-grant/article/2016/03/09/inner-sydneys-aboriginal-community-fear-they-are-being-pushed-out-white-hipsters>>; Australian Bureau of Statistics, *2016 Census QuickStats: Redfern*, (23 October 2016) <http://quickstats.censusdata.abs.gov.au/census_services/getproduct/census/2016/quickstat/SSC13339?opendocument>.

² See Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander Prisoner Characteristics*, (30 June 2017) <<http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2017~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics~5>>; Lorena Allam, Calla Wahlquist and Nick Evershed, "'National Shame': 147 Indigenous People Die in Custody in Australia in a Decade", *The Guardian* (online), 28 August 2018 <<https://www.theguardian.com/australia-news/2018/aug/28/national-shame-147-indigenous-people-die-in-custody-in-australia-in-a-decade>>.

