

Menzies Oration 2019 – Where is the Justice?

31 October 2019

Good evening ladies and gentlemen, distinguished guests.

I am honoured to have been asked to present this year's Menzies Oration.

My first duty is to acknowledge that I am presenting on Larrakia land.

I would also like to welcome the many Aboriginal people in the audience.

Tonight, my presentation is titled 'Where is the Justice?'

And to respond to this question, I need to talk about discrimination based on race - or to put it simply, racism and its intersection with justice outcomes for Aboriginal Territorians.

I want to illustrate this with the testimonies and experiences of Aboriginal people alongside the data and research that we captured for the development of the Northern Territory's first Aboriginal Justice Agreement.

Justice, according to the Collins English dictionary, is defined as:

fairness in the way that people are treated.

Within that definition there is no doubt that it applies to all people – regardless of their colour, race, class, gender and status.

Even the scales of justice that are used so often to represent the court system embody the principle that truth and fairness must be balanced in the delivery of justice.

It is a symbol used in many western presentations of modern law to represent the idea that the law must be applied fairly, without such influences as bias, privilege or corruption.

Sometimes the scales are held by the figurehead '*Lady Justice*' who is portrayed often blindfolded, dressed in flowing robes, holding a sword along with her scale, which stands for the need to use force to back up moral imperatives when necessary.

But despite the symbol and the principle that are upheld to define 'justice', the prism that we see through as an Aboriginal person here in the Northern Territory in the delivery of justice is very different.

Because justice requires more than just symbols and principles as it needs to apply the principle of equity.

And equity requires the recognition that treating people as if we are all the same can generate inequalities.

And that's because equity is not about everyone getting the same share.

Instead, equity is about doing things differently to accommodate the realities of what we are trying to fix with the acknowledgment that it needs to be fair.

And the delivery of fairness may mean doing more for some than for others.

We were not blinded nor were we strangers to this as we captured the content for the two documents; the Agreement and the accompanying Pathways to the Northern Territory's Aboriginal Justice Agreement.

Two documents that bring together the background information, consultation findings and the evidence that has provided the rationale for the initiatives and the twenty three proposed strategies within the draft Justice Agreement.

An Agreement to be delivered in two stages over its seven year lifespan.

An Agreement that has the following three aims:

1. reduce re-offending and imprisonment rates of Aboriginal Territorians;
2. engage and support Aboriginal leadership;
3. improve justice responses and services to Aboriginal Territorians.

But before I outline the findings and the evidence, it is important to highlight some of the realities that we live with as Aboriginal people here in the NT.

In the Northern Territory, Aboriginal people make up thirty per cent of the total population.¹

¹ Department of Treasury and Finance (NT), Population - Northern Territory Economy: Aboriginal Population (2018) <<https://nteconomy.nt.gov.au/population>>.

The median age of Aboriginal Territorians is twenty six years² and almost thirty per cent of the Aboriginal population are aged between zero and fourteen years.³

Almost seventy seven per cent of Aboriginal people live in remote or very remote areas.⁴

Sixty per cent of the Aboriginal population speak an Aboriginal language at home⁵, where there is a rich and proud selection of one hundred and four languages.⁶

In order to capture the breadth and depth of the diversity of views from Aboriginal people across the Northern Territory for the content of the Justice Agreement, we made sure we did not only listen and hear the voices of those who spoke the loudest, or from people who had the best grasp of English, or the people who were the most approachable, sitting around a board room or members of peak representative bodies.

No: we did a lot more.

We listened and heard from people who have spent their lives in the shadows, people who had been silenced, and people who had a poor grasp of English.

We listened and heard from Aboriginal people who told us that they were upset and angry with the continued high levels of disadvantage in their communities or towns, who told us that they had talked to many people, with different titles, from different places, from different agencies for decades and yet nothing had changed in their lives, their children's or their grandchildren's lives: Some told us that their lives were now worse than ever.

And it was at these consultations that we were told and we saw first-hand the 'normal practice', where consultations or meetings with Aboriginal people involved an expectation that Aboriginal people representing a community would bring to the table only a single view from all the Aboriginal people in that area, regardless of the diverse values and needs of that community, regardless of their level of expertise in

² Australian Bureau of Statistics, Estimates of Aboriginal and Torres Strait Islander Australians, June 2016: Summary Commentary (2016) cat. no. 3238.0.55.001. <<https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>>.

³ Department of Treasury and Finance (NT), Northern Territory Population Projections (2019 Release) (April 2019), 9 <<https://treasury.nt.gov.au/df/economic-group/population-projections>>.

⁴ Department of Treasury and Finance (NT), Population - Northern Territory Economy: Background (2018) <<https://nteconomy.nt.gov.au/population>>.

⁵ Derived from Australian Bureau of Statistics, Census of Population and Housing: Reflecting Australia - Stories from the Census, 2016 - Cultural Diversity (2017), cat. no. 2071.0, table 12.

⁶ Aboriginal Interpreter Service, Aboriginal Languages in NT (19 July 2018) <<https://nt.gov.au/community/interpreting-and-translating-services/aboriginal-interpreter-service/aboriginal-languages-in-nt>>.

that area, regardless of the circumstances and impact of past policies and histories, and regardless of the subject matter.

One commonplace form of racism in Australia is this tendency to lump all Aboriginal people into an undifferentiated category quite unlike those non-Aboriginal people who pride themselves on their individuality.

This refusal to acknowledge diversity is compounded by failures to follow good research practice by not referring back draft findings and proposed recommendations to those Aboriginal people and communities involved in the consultation, let alone engage in a process that allows further time for people to fully understand any obligations and commitments; or have further meetings to present the final findings.

So, with this awareness, and equipped with lived personal experiences and the knowledge of generations of Aboriginal people who have not had access to the services they need that has resulted in poor outcomes, we knew we had to design an extensive consultation process that could identify and capture both issues and solutions developed in partnership with Aboriginal people to address the underlying factors that have led to the over-representation of Aboriginal people in the justice system.

So, that's what we did.

Because the content for the Justice Agreement was designed and developed through an extensive process that was not just measured by the number of consultations or kilometres travelled.

Instead, we travelled across the Northern Territory, in an unhurried manner, alongside interpreters and cultural brokers, to listen and hear from Aboriginal Territorians who live in urban, regional remote or very remote areas.

Where Aboriginal people had different relationships and experiences with many agencies and authorities.

Where we heard and listened to Aboriginal people who were victims, witnesses, offenders, and professionals.

Where there were different views to fix different problems.

Those who were deeply entrenched, frequent or casual users of government and non-government services and the many who had had no contact with the justice system at all.

Where we heard that some communities had at times up to eighty three agencies delivering services to their small community to service no more than two thousand Aboriginal residents, yet still; the disadvantage existed and persisted.

Some may say that this model and this type of service delivery is something that they would find challenging to deliver on based on time, skills and costs.

Some may say that it's because we were experts at this.

But what I say is this:

It is a process that accommodates the realities of appropriate levels of service delivery to thirty per cent of the NT's population.

A model that we should not be aiming for, instead, it is a model and a process that Aboriginal people are entitled to.

And this is just one of the ways in which we should be delivering 'justice' to Aboriginal Territorians.

A process that needs to be triggered on any matter that affects directly, indirectly, formally or informally any Aboriginal Territorian.

Now during the two years, as we travelled across the NT, and as we completed our research, we encountered many an expert.

Experts not unlike this former senior public servant, who I'll call Mr X and I quote:

I have dedicated my entire life to work with Aboriginal people in Aboriginal affairs.

Well Mr X: I have lived my entire life relying on your expertise and dedication to change the levels of disadvantage for my family across the past three generations and despite all your good intentions, and academic talents, and years of dedicated work, it hasn't made an ounce of difference to our lives.

So, I'll just add you to the long list of experts and well-intended people to be one of those many people who have failed us.

Without doubt, there are many people who have earned respect for their research and policy work, particularly in the area of health.

However, there remain disturbing disparities of power, wealth, status and capacity of these experts who stand outside of the turmoil, and the pain they describe, that still persist.

The vast majority of these experts are not Aboriginal people.

Consequently, the problematic nature of their position could be described as 'white privilege', a result of colonisation where white privilege in all its forms remains a fundamental oppression for Aboriginal Australians.⁷

And despite the increasing numbers of highly qualified Aboriginal researchers, public servants, policy makers, officials and the ever increasing number of Aboriginal parliamentarians this does not guarantee a quick transformation of such problems, nor access to all the solutions to the present challenges facing Aboriginal people, especially as many of these Aboriginal 'experts' are trained and evaluated from within the prevailing non-Aboriginal academic and governmental sectors.

And that's because all those who wish to generate explanations, recommendations and strategies meant to fix Aboriginal issues, typically forget or fail to undertake one of the many essential components of critical analysis, and that is, the requirement to 'ground-truth' any work undertaken through sustained, respectful and accountable relationships with those whose lives are being assessed and those whose lives will bear the brunt of resulting policies and programs.⁸

So tonight, as my focus is principally on the justice system, it requires that I tease out some of the facts, findings and realities that present themselves in the NT.

Sometimes these findings were consistent with available research and literature.

Sometimes they were new or framed in new ways.

And sometimes they were quite contrary to the accepted positions adopted by governments and the so-called experts.

But the data and statistics painted the same picture every time.

⁷ See, eg, Bob Pease, *Encouraging critical reflections on privilege in social work and the human services* (Deakin University, 2006); Andrew Todd et al, *Perspective Taking Combats Automatic Expressions of Racial Bias* (In Press, Journal of Personality and Social Psychology, 2011).

⁸ See, eg, Emma Kowal, Ian Anderson and Ross Bailie, *Moving beyond good intentions: Indigenous participation in Aboriginal and Torres Strait Islander health research* (Australian and New Zealand Journal of Public Health, 2005); C Jalla and G Hayden, *Aboriginal Health Research is not Black and White – Lessons from the field* (Australian Indigenous Health Bulletin, 2014).

In fact, they provide the factual platform that highlights the unequal treatment and disparities between Aboriginal and non-Aboriginal people in the Northern Territory.

It will be old news for many of you here in the audience tonight, to hear that Aboriginal Territorians are over-represented in the criminal justice system as both offenders and victims.⁹

This disparity pervades every point of contact in the justice system in the Northern Territory.

In fact, since 2017, we have had the highest incarceration rate in the world for any Indigenous group.¹⁰

And addressing this disparity will require more than thinking that we as Aboriginal people just need to follow the rules and not break the law- it will require more than just additional money.

Instead it will require a total shift in power, attitude and culture.

Because here in the Northern Territory Aboriginal youth make up almost one hundred per cent of all the youth in our detention centres no matter what the actual number, despite Aboriginal youth accounting for forty-five per cent of the NT's total population aged ten to seventeen years.

Our data collated for the Aboriginal Justice Agreement identified that as an Aboriginal youth the offence that I am most likely to be charged with is 'unlawful entry with intent to break and enter', and I will inevitably join up with the eighty per cent of unsentenced Aboriginal youth in detention.

But if I am granted bail, then I'll join the almost ninety-two per cent of youth who are apprehended for breach of my bail conditions.

Where, as an Aboriginal youth I am over-represented in the criminal justice system to an even greater extent than my parents.

As an Aboriginal Adult the picture is not dissimilar.

I am likely to be taken into police custody, with data showing that Aboriginal people are taken into police custody in seventy-five per cent of proceedings compared to fifty-seven per cent for non-Aboriginal people.

⁹ See pg 15 AJA reference

¹⁰ Andrew Leigh, *The Second Convict Age: Explaining the Return of Mass Imprisonment in Australia* (Parliament of Australia, 2019) 9.

That results in an arrest and report rate ten times that of a non-Aboriginal Territorian.

Again, I am less likely to be granted bail, principally due to my previous convictions and a lack of suitable housing, coupled with the fact that I have had significant difficulties maintaining a permanent residential address, let alone stable employment.

And if I am found guilty, I am more likely to receive a term of imprisonment, with data showing that sixty per cent of Aboriginal Territorians receive a term of imprisonment for their principal offence compared to thirty-four per cent for non-Aboriginal Territorians, who are more likely to receive a fully suspended sentence or a monetary order for the same offence. .

And I'm likely to join the 60 per cent of Aboriginal Territorians who return to prison within two years of release.

As an Aboriginal woman I will be imprisoned at a rate fourteen times that of my non-Aboriginal counterpart.

In fact, during the period 2008 to 2017 the rate of Aboriginal women in prison increased by 109%.

And the picture is no better as an Aboriginal victim.

In the NT, nine out of ten victims of all domestic and family violence related assaults are Aboriginal.

And in 2017 Aboriginal Territorians accounted for almost seventy per cent of all victims of assault in the NT.

Have no doubt: the data, research and experiences of Aboriginal people demonstrate that Aboriginal people fare worse than non-Aboriginal people at every stage of the justice system; as articulated by former Chief Justice of Western Australia Wayne Martin in the following statement:

Aboriginal people are much more likely to be questioned by police than non-Aboriginal people. When questioned they are more likely to be arrested rather than proceeded against by summons. If they are arrested, Aboriginal people are much more likely to be remanded in custody than given bail. Aboriginal people are much more likely to plead guilty than go to trial, and if they go to trial, they are much more likely to be convicted. If Aboriginal people are convicted, they are much more likely to be imprisoned than non-Aboriginal people, and at the end of their term of imprisonment they are much less likely

to get parole than non-Aboriginal people... So, at every step in the criminal justice process, Aboriginal people fare worse than non-Aboriginal people.¹¹

It paints a grim picture, alongside the grim statistics.

Now you can't have a discussion about justice and equality without recognition of its link to the social determinants of health.

Researcher Michael Marmot states that these measures identify a clear link to justice outcomes that include a broad range of personal, social, economic and environmental factors that determine individual and population health.

The social determinants of health include the following measures:

- social gradient
- stress
- early life experiences
- social exclusion including racism
- unemployment and working conditions
- social supports
- addiction
- food consumption
- transportation.¹²

Specifically, these social determinants are reflected in the Commonwealth's 'Closing the Gap' targets, developed in 2008 to close the gap of the current levels of disadvantage experienced by Aboriginal Australians.

The targets focus on similar factors as Marmot's including life expectancy, infant mortality, literacy levels, early childhood education, school attendance, year twelve attainment, and employment¹³ but none relate to discrimination based on race.

And despite all the investment and effort we have put into addressing our high levels of disadvantage we've only managed to nationally progress – note, not close any gap on three of the targets: child mortality, Year 12 attainment and the enrolment of all four year olds in early childhood education.

¹¹ Justice Wayne Martin, *Unequal Justice for Indigenous Australians* (Criminal Lawyers' Association of the Northern Territory Biennial Conference, 2017) 19.

¹² Wilkinson R & Marmot M, *Social determinants of health - The solid facts* (Copenhagen, World Health Organization, 2003).

¹³ Commonwealth of Australia, Department of Prime Minister and Cabinet, *Closing the Gap – Prime Minister's Report 2018*. <<https://www.pmc.gov.au/sites/default/files/reports/closing-the-gap-2018/sites/default/files/ctg-report-20183872.pdf?a=1>>

When reviewing efforts to Close the Gap in the Northern Territory, the data shows this:

That for life expectancy: Aboriginal women live on average 12.8 years less and men 11.5 years less than non-Aboriginal men and women.¹⁴

For Education: only 14.2 per cent of Aboriginal Territorians have completed year 12 compared to 58.7 per cent of non-Aboriginal Territorians - a difference of nearly 45 per cent.¹⁵

And we have lower school attendance rates, at 62 per cent compared to our non-Aboriginal students at 88 per cent.¹⁶

Our unemployment rate stands at 25 per cent compared to 2.3 per cent for non-Aboriginal people.¹⁷

That's six times the unemployment rate no matter what my age.

My average weekly income as an Aboriginal person will be \$430 per week, compared to the \$1247.00 of a non-Aboriginal Territorian.¹⁸

Where Aboriginal people make up 88 per cent of the homeless population compared to 9 per cent of non-Aboriginal Territorians.¹⁹

Where research shows that over fifty per cent of all Aboriginal kids in the NT are subject to a notification to child protection services by the age of ten.²⁰

¹⁴ Australian Bureau of Statistics, Life Tables for Aboriginal and Torres Strait Islander Australians, 2015-2017 (2018) cat. no. 3302.0.55.003.

¹⁵ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework Report (2018), Cat. No. IHW 194, Canberra, table 2.06. Retrieved from <<https://www.aihw.gov.au/reports/indigenous-health-welfare/health-performance-framework/contents/tier-2-determinants-ofhealth/2-06-educational-participation-and-attainment-of-adults>>.

¹⁶ Northern Territory Government, Department of Education, Enrolment and Attendance (2018) <https://education.nt.gov.au/__data/assets/pdf_file/0012/600114/E-and-A-Web-T2-2018-Table-2.pdf>.

¹⁷ Australian Institute of Health and Welfare, Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory, Cat No IHW 186, 2017, 82.

¹⁸ Australian Institute of Health and Welfare, *Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report: Northern Territory*, Cat No IHW 186, 2017, 84. Note: Weekly income relates to the median equivalised gross weekly household income for Indigenous adults.

¹⁹ Derived from Australian Bureau of Statistics, *Census of Population and Housing: Estimating Homelessness* (2016), cat no 2049.0, table 1.5.

²⁰ Commonwealth of Australia, *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, Final Report (2017) vol 1, 30.

All of these disparities not only contribute to gross inequalities in health and wellbeing, but also to the huge over-representation within the criminal justice system that I detailed earlier.

Realities that may be hard for you to accept – but even harder to live with. Now remember all this has happened with a historically recent level of investment of money and resources not provided to any other racial group in Australia.

All this has happened on Aboriginal land in a Territory where most of it has been returned to the custody or control of Aboriginal people under legislation aimed at improving our lives.

All this has happened in the so called 'lucky country' yet it is still a country where we, as Aboriginal people, are over policed, over regulated, and over represented in the criminal justice system, more so than any other race of people in Australia.

This stasis is all wrapped up in policies and practices that have been established, and delivered with the intention and expectation that it would improve our lives and equalize the imbalance and reduce our levels of disadvantage as Aboriginal people.

But on all levels, these approaches continue to fail us.

So, one of the many questions that needs to be asked and answered next is: how has this happened?

Well here's one answer.

The existence of discrimination based on race.

Whilst we have concentrated on so many other factors – I call them symptoms of the problem, we must face the reality that racism is a key factor that impacts on us ever being able to achieve any progress towards achieving any gains.

Now I recognise that racism is an uncomfortable topic for many of you to hear me talk about tonight.

But I make no apology, nor concessions.

For we as Aboriginal people live with the consequences if we continue to fail to acknowledge racism as a fundamental factor that influences and contributes to our lived experiences of disadvantage.²¹

²¹ See, eg, Y Paradies and J Cunningham, *Experiences of racism among urban Indigenous Australians: findings from the DRUID study* (Ethnic and Racial Studies, 2009); Nancy Priest et al, *Effects of time of self-reported*

And we heard the desperation in the voices; and we saw the sadness in people's eyes, when we asked people the question:

how would we address the disparity and high levels of disadvantage for you as an Aboriginal person?

And this is what we were told:

the only way to overcome the disadvantage and to break free is to basically forget that you're Aboriginal.

Where racism and its link to the current outcomes that we are dealing with was raised at every single consultation that we attended regardless of the location or context.

But what is racism?

Racism is most broadly defined as 'avoidable and unfair actions that further disadvantage the disadvantaged or further advantage the advantaged.'²²

Racism is the result of a complex interplay of individual beliefs, shared values and ideologies, and institutional practices.

Where individual racist beliefs are often reinforced by widely held social attitudes and vice versa.

It can be expressed through stereotypes, prejudice or discrimination.²³

Racism has many forms that interact and mutually reinforce each other.

And one form of racism that I want to highlight tonight is systemic or institutional racism.

That is, racism that is embedded in social, political and economic structures and processes.

And the spotlight on racism as a cause and not a symptom of Aboriginal peoples over representation in the justice system is nothing new.

direct and vicarious racial discrimination on depressive symptoms and loneliness among Australian school students (BMC Psychiatry, 2017).

²² Yin Paradies, Ricci Harris and Ian Anderson, *The impact of racism on Indigenous health in Australia and Aotearoa: towards a research agenda* (Cooperative Research Centre for Aboriginal Health, 2008) 4.

²³ Yin Paradies, *A systemic review of empirical research on self-reported racism and health* (Oxford University, 2006) 889.

Some 28 years ago in the Royal Commission into Aboriginal Deaths in Custody, the Commissioners acknowledged that it is a subject that tends not to be talked about very openly and its existence is often vigorously denied by those who are its most obvious practitioners.²⁴

And despite their recommendations, it remains unaddressed.

Instead we have focused on the symptoms of racism as a principal cause of the disadvantage and continuation of the disparities.

Many Aboriginal people told us that they experienced racism every day.

We were told that racism was something that is accepted, with some people describing it as a 'normal' part of life for Aboriginal Territorians.

But what needs to be understood is that when we were told this, we knew, and you should know, that we weren't talking about a daily experience where Aboriginal people were called racist names, or when they were refused service.

No. Instead what it meant was that in every part of their day from access to employment, accessing a computer, buying goods from the local store, navigating or accessing government and non-government programs or having a health issue seen to by the clinic, racism was present: embedded into formal or informal policies in all its forms.

Let me provide you some of the testimonies that we heard.

Aboriginal people told us when they rang 000 for an emergency response from police, ambulance, or fire that there was no interpreter available.

Very few emergency call takers could even say their community's name, let alone say their name.

So, in frustration, the caller hung up, and now, many people told us that they don't bother to call police to report crimes anymore whether that be as a victim or witness.

But here's another fact you should know.

If you spoke any of the fifty-four other international languages say Spanish, German or Mandarin, there's a policy for that and you would be linked with an appropriate interpreter.

²⁴ Commonwealth of Australia, *Royal Commission into Aboriginal Deaths in Custody, National Report* (1991) Vol 4. Ch 12.1. [2].

Now this was recently reported in the paper and here's one of the comments from that article:

Why are people that are living in Australia and supposedly attending school unable to speak and have a basic understanding of English?

This is after all an English speaking country.

We were also told that in one community that houses a permanent police presence, with several full-time police officers that services a ninety nine per cent Aboriginal client base, that the police station is not even open for one day a week for people to register their car or firearm, or check if they are required to go to court, let alone be able to build any relationship with the local police.

And even then, a police response can take up to 12 hours.

We were told that people don't have the means to attend court at a cost of \$600 each way, and with limited access to post, mail or internet services most people aren't even aware when they've received a summons to attend court.

We were told that the only public phone where there is no mobile phone service is on the oval in full view of the community.

The oval has lights so if people call the police at night, everyone knows who has called and it takes hours for police to come out and they arrive once the trouble has finished - sometimes it's even the next day.

Or the numerous stories of people accessing services only to be provided with over the phone counselling on a public phone again in full view of the community.

Or when a family member committed suicide, the mother was told to ring a 1300 number which connected her to a person in Sydney who had no idea where her community was, they couldn't even offer her counselling services, but they did offer a \$150 Coles voucher to support the influx of additional family for the funeral; helpful yes, but not when the nearest Coles is an 8 hour drive away on a dirt road.

Or what about the current hospital policy that says should I leave my hospital bed unannounced and I am absent from my hospital bed for more than 4 hours, I am deemed to have self-discharged against medical advice.

Forget the fact that it's a bit hard when I tried to explain why because you didn't understand my broken English mixed with Warlpiri.

So, I left embarrassed even though I know I'm still sick.

So, answer me this question:

Why would you leave a hospital that is trying to make you better, that you say is welcoming and culturally competent?

When Aboriginal people's discharge rate against medical advice is 9 times higher than non-Aboriginal Territorians.

The simple answer is, 'you wouldn't'.

We heard many stories like this and it didn't matter if that were written in formal or informal policy.

Where we were told that the local health clinic had refused the entry and subsequent medical treatment of people with children unless the kids were wearing underwear or a nappy as they walked thru the clinic doors.

A box of nappies cost \$80 from the local store.

Where the policy of an NGO funded by government does not let the women's safe house take a mum if she had even one drop of alcohol.

So, you tell me where do mum and the kids go if the safe house won't take them?

She goes back to where it's unsafe for everyone.

Discrimination based on race can also exist in a more insidious form where non-Aboriginal Australians portray Aboriginal people in a deficit discourse that pathologises Aboriginal cultures and communities while denying the intergenerational trauma of past policies.

A prime example of this is Bill Leak's cartoon, defended as just being in good humour.

But here's what I do know.

All these stories and many more that we were told that fit neatly into the definition of racism: that is, they produce avoidable, unfair actions that cause us disadvantage.

Racism in all its forms is a fundamental social determinant of over-representation in the justice system,²⁵ just as much as it is a core social determinant of poor Aboriginal

²⁵ Chris Cunneen, *Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: some conceptual and explanatory issues* (Current Issues in Criminal Justice, 2006)

health.²⁶

However, the links between racism, disadvantage and health outcomes continue to be ignored in much health research where it should become an essential component in research design, analysis and implementation.

Where the key issues of community control and knowledge transfer remain to be addressed.

Where unequal access to resources because of race can also result in poor health and wellbeing.

The very same resources required to for good physical and mental health and wellbeing.

The very resources that can assist me to avoid contact with the justice system.

Lack of access and entitlement to these resources means that I don't get treatment to improve my health that can result in high stress levels and negative emotions that contribute to psychological mental distress.²⁷

The impact of racism can also induce negative responses amongst Aboriginal people, such as an increase in the uptake of smoking, alcohol and drug use, aggressive behaviours, and suicidal thoughts, behaviours that are relevant to Aboriginal peoples' contact with the justice system.²⁸

And it doesn't stop there.

Researchers have found that in Australia, Aboriginal patients with the same need as non-Aboriginal patients are about one-third less likely to receive appropriate medical

²⁶ See, eg, Alan Cass et al, *Exploring the pathways leading from disadvantage to end-stage renal disease for Indigenous Australians* (Social science and medicine, 2004); Barbara Henry, Shane Houston and Gavin Mooney, *Institutional racism in Australian healthcare: a plea for decency* (Medical Journal of Australia, 2004); Yin Paradies, Ricci Harris and Ian Anderson, *The impact of racism on Indigenous health in Australia and Aotearoa: towards a research agenda* (Cooperative Research Centre for Aboriginal Health, 2008); Ann Larson et al, *It's enough to make you sick: the impact of racism on the health of Aboriginal Australians* (Australian and New Zealand Journal of Public Health, 2007); Y Paradies and J Cunningham, *Experiences of racism among urban Indigenous Australians: findings from the DRUID study* (Ethnic and Racial Studies, 2009); Yin Paradies, *Colonisation, racism and Indigenous health* (Journal of Population Research, 2016).

²⁷ Yin Paradies, *Race, Racism, Stress and Indigenous Health* (Victorian Department of Public Health, 2006b)

²⁸ Nancy Krieger, *Embodying inequality: A review of concepts, measures and methods for studying health consequences of discrimination* (International Journal of Health Services, 1999).

care across all conditions,²⁹ especially for particular diseases such as lung cancer³⁰ and coronary procedures.³¹

Aboriginal Australians are three times less likely to receive kidney transplants than non-Aboriginal Australians despite having the same level of need.³²

Aboriginal women are less likely than non-Aboriginal women to receive cervical and breast cancer diagnosis and screening and treatment.³³

Or be turned away from health services, not be believed about illnesses and to receive culturally unsafe health care.³⁴

Many laws, regulations, requirements and decisions have impacted more heavily on many Aboriginal families than other Territorians over several generations even when that is not the deliberate intention.

And the NT has had its fair share of these.

Examples outside the justice system include the NT Intervention and its introduction of income management with the BasicsCard, changes to the welfare employment program, transfer of assets to local shires and more.

Fundamental to these violations of Aboriginal Territorians' civil and political rights is that deficit discourse and its underlying racism I have just outlined.

An example of this was the quarantining of payments for non-school attendance.

Researchers have found no evidence that income management increased school attendance; rather it had the effect of reducing attendance by 4 per cent on average in the first five months after which attendance eventually returned to its initial level.³⁵

²⁹ Joan Cunningham, *Diagnostic and therapeutic procedures among Australian hospital patients identified as Indigenous* (Medical Journal of Australia, 2002).

³⁰ Sarah E Hall et al, *Lung cancer: an exploration of patient and general practitioner perspectives on the realities of care in rural Western Australia* (Australian Journal of Rural Health, 2008).

³¹ M Coory and W Walsh, *Rates of percutaneous coronary interventions and bypass surgery after acute myocardial infarction in Indigenous patients* (Medical Journal of Australia, 2005)

³² Alan Cass et al, *Barriers to access by Indigenous Australians to kidney transplantation: the IMPAKT study* (The George Institute for International Health, 2004).

³³ Paramita Dasgupta et al, *Spatial variation in cervical cancer screening participation and outcomes amongst Indigenous and non-Indigenous Australians in Queensland* (Geographical Research, 2019).

³⁴ Larissa Behrendt, *Speaking Out – Medical and Criminal Injustices Scrutinised* (Australian Broadcasting Corporation, 2019).

³⁵ Rob Bray et al, *Evaluating New Income Management in the Northern Territory: First Evaluation Report* (University of New South Wales, Social Policy Research Centre, 2012) 255.

Another was the impact of income management that was first introduced as a result of the intervention, and still remains today.

Findings suggest that income management does not improve one measure of child health outcomes, and, by extension, income management does not appear to have produced the desired change in household consumption patterns, especially for pregnant women.

Instead, it may have a negative impact on newborn health - with lower than average birthweights and a higher probability of low birthweight resulting in a pre-mature birth.³⁶

What these findings and many others highlight is that we must err on the side of caution when decisions and wide sweeping policies are introduced that have the potential to impact on an already known vulnerable and disadvantaged group of people, particularly when those policies may result in unintended consequences that further entrench disadvantage.³⁷

One could argue that freedom from racism and racial discrimination is well secured, captured within a number of international instruments and Territory and Commonwealth laws that secures a person's ability to complain in our attempts to eradicate racism.

But what we know is that the experiences of racism by Aboriginal Territorians are not matched with the levels of reporting to complaint processes.

Perhaps because it requires access to a phone, computer, an interpreter and a cultural broker and high levels of resilience, strong mental health, and confidence and money to get to town to make or follow up the complaint.

Perhaps it was as we were told that it's just too hard to make it an issue when you're dealing with all the disarray and grief and trauma in our lives then to add this to the list and the heavy burden in my life as it is another fight that I can do without.

Recognising these statements from the consultations:

You're dealing with an entire community of people who have experienced trauma.

³⁶ E Cottrell and J Seckl, Prenatal stress, glucocorticoids and the programming of adult disease (Frontiers in Behavioural Neuroscience, 2019).

³⁷ S Herring and J Spangaro, *The Intersection of Trauma, Racism, and Cultural Competence in Effective Work with Aboriginal People: Waiting for Trust* (Australian Social Work, 2013).

And that everyone here in some way has seen things that they shouldn't have seen, or been a victim to things that they shouldn't have been.

Perhaps that's why here in the NT over a five-year period, the Anti-Discrimination Commission dealt with on average just over 42 complaints per year based on race from Aboriginal people.

I've heard it said: isn't fixing the problem just a matter of changing the policies to make the system more inclusive and accessible.

Yes, changes to policies would assist, but they aren't the only solution to such an entrenched problem.

Combatting racism requires personal qualities of courage, persistence, and determination.

It requires that we refuse to stand by, ignore or tolerate attitudes, behaviours, agency cultures and processes that allow racist outcomes to continue flourish.

It requires we enact legislation, policies, regulations and governance and complaint structures that strengthen and meet the needs of Aboriginal people that enable Aboriginal leadership and self-determination to thrive, while dismantling systemic and institutionalised racism.³⁸

Where transforming the routine and frequent experiences of marginalization and racism for Aboriginal Territorians requires more than vision statements espousing equitable treatment, and access to short cultural awareness courses that typically ignore diversity and intersectionality within the NT Aboriginal population.

Tackling racism requires a whole-of-government, sustained and coordinated approach that has its lens focused on human rights and social justice.

It requires an abandonment of silo thinking and the disorganised, even contradictory interventions that reassure those with power who fail to engage to learn from those impacted and disadvantaged by such assumptions and unconscious bias.³⁹

It demands all of us, but especially governments, to embark on genuine power sharing and strengthening of capacity in all Aboriginal communities to unlock the current paralysis within the systems.

³⁸ Durey, A., Thompson, S.C. and Wood, M., *Time to bring down the twin towers in poor Aboriginal hospital care: addressing institutional racism and misunderstandings in communication* (Internal Medicine Journal, 2012), 42(1), 17-22.

³⁹ Emma Kowal, *Time, indigeneity and white anti-racism in Australia* (The Australian Journal of Anthropology, 2015).

The current policy of Local Decision Making is a step in the right direction.

Perhaps that's why there was overwhelming support from Aboriginal people for community courts, Law and Justice Groups, and the establishment of Alternatives to Custody.

Perhaps that's why people want parenting and respectful relationship programs that are fit for purpose and relevant to their individual communities, and programs delivered with the assistance of interpreters and mentors.

Is it any wonder that community courts and Law and Justice Groups are proposed as strategies within the Aboriginal Justice Agreement as the opportunity to assert real leadership, to empower Aboriginal people, to take responsibility for offending behaviours and to address poor service delivery?

Where implementing short-term, reactive and expensive responses like curfews create little meaningful change because it is these kinds of platitudes that we cannot continue to maintain or support as these views reinforce ill-informed, rhetoric that fail to address the underlying causes.

Because as I've completed this journey with my 30 years' experience in the justice system, I have recognised some undeniable facts.

That eliminating racism is not something that we as Aboriginal people can achieve alone.

Because it is owned by others.

The others are those that cause the pain, and benefit from their unacknowledged privileges.

It is those who need to take the lead, to do most of the heavy lifting and to realize that combating racism benefits everyone.

And whilst Aboriginal people are being denied access to the full range of services that other Territorians take for granted, the delivery of justice will continue to be reflected in disproportionately high rates of imprisonment, homelessness, hospital admissions, substance misuse, and high suicide rates.

And the failure to acknowledge this will continue to impact on all areas of life for Aboriginal and non-Aboriginal Territorians by costing tax payers more money to build bigger prisons, require more police, further clogging of the courts, and even the placement of more children into care.

To conclude:

The reality is that Aboriginal people have endured decades of disadvantage, poverty and ill health, all related to discrimination on the basis of race; much of it systemic and institutionalised.

The impact has been destructive and extensive, and its impact has not been isolated to the justice system.

It has corrosive and ongoing impacts across families, generations and the wider community.

Yet we all want the same outcome.

A society where people can thrive, where we are treated fairly, free from racism.

And it shouldn't be that hard to get there.

But the moral imperative and the recognition that we must do something needs to happen.

I wonder are we mature enough to see beyond the black and white issues that are framed a particular way in the media and distorted today in Australia by the various forms of racism and political handballing.

I wonder if the scales of justice will actually deliver on what they are meant to symbolise, a system that is blind to colour and one that fundamentally challenges racism.

I wonder if one day I will see the beauty that I have seen in the Sea of Change and the Desert Paintings that are on the covers of the Aboriginal Justice Agreement and the Pathways document.

Where the children who painted these artworks describe how we can work as a team with respect for one another, where like in the Desert Painting, nature comes together after rain, where our future looks bright and beautiful.

Where the colour blue in the Sea of Change painting is described as a metaphor for an undercurrent of change led by our young people, to give them a better chance of going to university than going to prison.

Where we acknowledge and accept that the scales of justice will have to be unbalanced for some time in favour of Aboriginal people to achieve the outcomes so

desperately needed for Aboriginal people to achieve parity, whether it be in the health space or the justice system or elsewhere.

Where the heavy lifting that is needed is done mostly by non-Aboriginal people.

Where the change that needs to happen is not confined to the water cooler or the BBQ or the local football game; or for the solutions to be owned just by 'experts'.

Instead, it requires a recognition that you need to ask difficult questions to find the right answers.

And the answers to these questions are held by those most affected.

Now is the time that we need to accept and acknowledge that no matter how good a policy, no matter how good the legislation, no matter how much money is directed to the issue, no matter how well intended we are, if you have a system that is built on foundations that support any form of racism and if it remains unaddressed, we will never be able to close any gap.

And we will never be able to address the disparity and disadvantage that exists for Aboriginal people on any level and the injustices will remain.

And we will continue to ask ourselves the same question:

How did this happen?

Thank you and goodnight.