

Jury Issues — Why the Lack of Indigenous Participation?

The Australian Jury
in Black & White

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Acknowledgement of Country

The Australian Jury in Black & White

Barriers to
Indigenous
representation on
juries

Report to the Australian Institute
of Judicial Administration

Professor Jill Hunter
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... from the High Court

1936: 'The right to a jury is one of the fundamental rights of citizenship ... *



1985: 'The guarantee of s.80 of the Constitution ... reflected a deep-seated conviction of free men and women about the way in which justice should be administered in criminal cases. ... as a bulwark against the tyranny of arbitrary punishment'.**



1990: '[T]he purpose and the genius of the jury system is that it allows for *the ordinary experiences of ordinary people* to be brought to bear in the determination of factual matters. ... [going on to describe as fundamental to the jury's task] that [it,] the jury be allowed to determine [what evidence is truthful] ... from its collective experience of ordinary affairs'.***

'I despair of justice being done to the natives. White men may shoot a poor black boy in a tree... and no jury will convict'

- (1889) Western Australian AG to Colonial Secretary*

A snapshot of history

1884: - Thackabiddy*

1889: - Bungordy and Koolgunmoongajarra*
- Joolagoora*

* H. McGlade & J. Purdy, "'... No Jury Will Convict": An Account of Racial Killings in Western Australia', (2004) 22 *Studies in Western Australian History* 91

And there are many cases going into the 20th century ...

Justice being seen to be done ...

WA Aboriginal Legal Service urges police to improve relations after JC trial verdict

By Herlyn Kaur

Posted Sat 23 Oct 2021 at 12:11pm, updated Sat 23 Oct 2021 at 6:44pm



JC's sister Bernadette Clarke receives support outside the Perth District Court building. (ABC News: Keane Bourke)

<https://www.abc.net.au/news/2021-10-23/aboriginal-legal-service-urges-police-improve-relations-jc-trial/100562424>

In harrowing scenes following the verdict, family members and friends of Walker, and Yuendumu elders urged an end to the use of guns in remote communities, and made clear their hopes that an inquest into Walker's death scheduled for later this year would provide a modicum of closure.

They also questioned why there had been no Aboriginal people among the 12 members of the jury. About 30% of the population of the Northern Territory is Aboriginal.

"We do not want to see another black fella, or a girl, to be shot," Ned Jampijinpa Hargraves, a Yuendumu elder, said.

March 2022

Rolfe trial

March 2023 Kumanjayi
Walker coronial inquiry



The Yuendumu community ...

“It was hard to come here. We thought we were coming to a **neutral** ground, where we would have a **multicultural jury**, instead of **just non-Indigenous people**, but there were **no Yapa** (Indigenous) people on that jury. We felt we were left out. **Are we not part of Australia?** We want Yapa people on that jury. It’s always Kardiya (white) people on that jury, **they see through their eyes but they need to see through our eyes too.**”

Hannah McGlade, ‘All-white Juries are a Symptom of Structural Racism’, *SBS*, 14 March 2022, <http://www.sbs.com.au/nitv/article/2022/03/14/opinion-all-white-juries-are-symptom-structural-racism>

What do the statistics show?

- § What percentage of jurors *summonsed* are Indigenous?
- § What percentage of Indigenous people *sit* as jurors ... 'typically' (metro, regional, NSW, other states or territories)?
- § What is your experience of jurors who you can identify as Indigenous?

Wot statistics?

Northern Territory

Alice Springs, 2010: *no Indigenous jurors*
R v Woods & William

Darwin, 2020 *Mildren J*: The jury panel does not include residents from Yuendumu, ... **For various reasons** ... the jury pool will be unlikely to have many people of Aboriginal descent amongst their numbers. In my experience, when an Aboriginal person is on trial, jury panel members who are connected with the Accused invariably seek to be excused. ... *R v Rolfe (No 1)* [2020]

Queensland

1988 *Binge v Bennett*
Mr Horler Q. Have you seen an Aboriginal on a jury in *Warwick* this year?
Sergeant Bennett A. No
Q. ... ever see an Aboriginal on a jury in *Brisbane*? *A*. Once.
Colin Bennett: ... I have never seen an Aboriginal person selected to actually sit on a jury for a trial.

2011: QLRC extremely rare to have an Indigenous juror in Mount Isa 'despite the relatively high local Indigenous population'

Western Australia

Perth, 1989 *Vodanovich*: 'over an 8-year period that there were **only 3 or 4 Indigenous potential jurors on the 'selection roll''**: *Deputy Sheriff*

1977-1999 (2011) *John Quigley WA MP* [In 23 years] I have never appeared before or addressed a jury with an Indigenous person on it ...

2009 *Martin CJ*: '... Aboriginal accused are almost always tried by juries made up entirely, or almost entirely'

2011 WA LRC: ... **only 1%** of Aboriginal and Torres Strait Islanders sat on juries in metropolitan areas

South Australia, NSW, Victoria

2007 *Goodman* Of 1696 [1,048 non-empanelled **eligible** jurors and 628 empanelled] (District Courts, County Courts and Supreme Courts, mostly metro) - **only three empanelled jurors self-identified as Indigenous .. <1%** of the eligible juror population.

2004: The defendant 'had not observed anyone that he identified as an **Indigenous person in it**' despite ... it is 'well known that many persons of Indigenous origin resided' *R v Badnoch* [2004] VSCA 95, [66].

NSW

1986 NSW LRC **0.4%** of jurors were Indigenous

1994 *Findlay*: **<0.5%** Indigenous

Victoria

Why so few? ...

Not on the electoral
roll

Not on the jury roll

Non-delivery/summons

Non-
response/summons

Excusals:

Caring

health

sorry business

Disqualifications

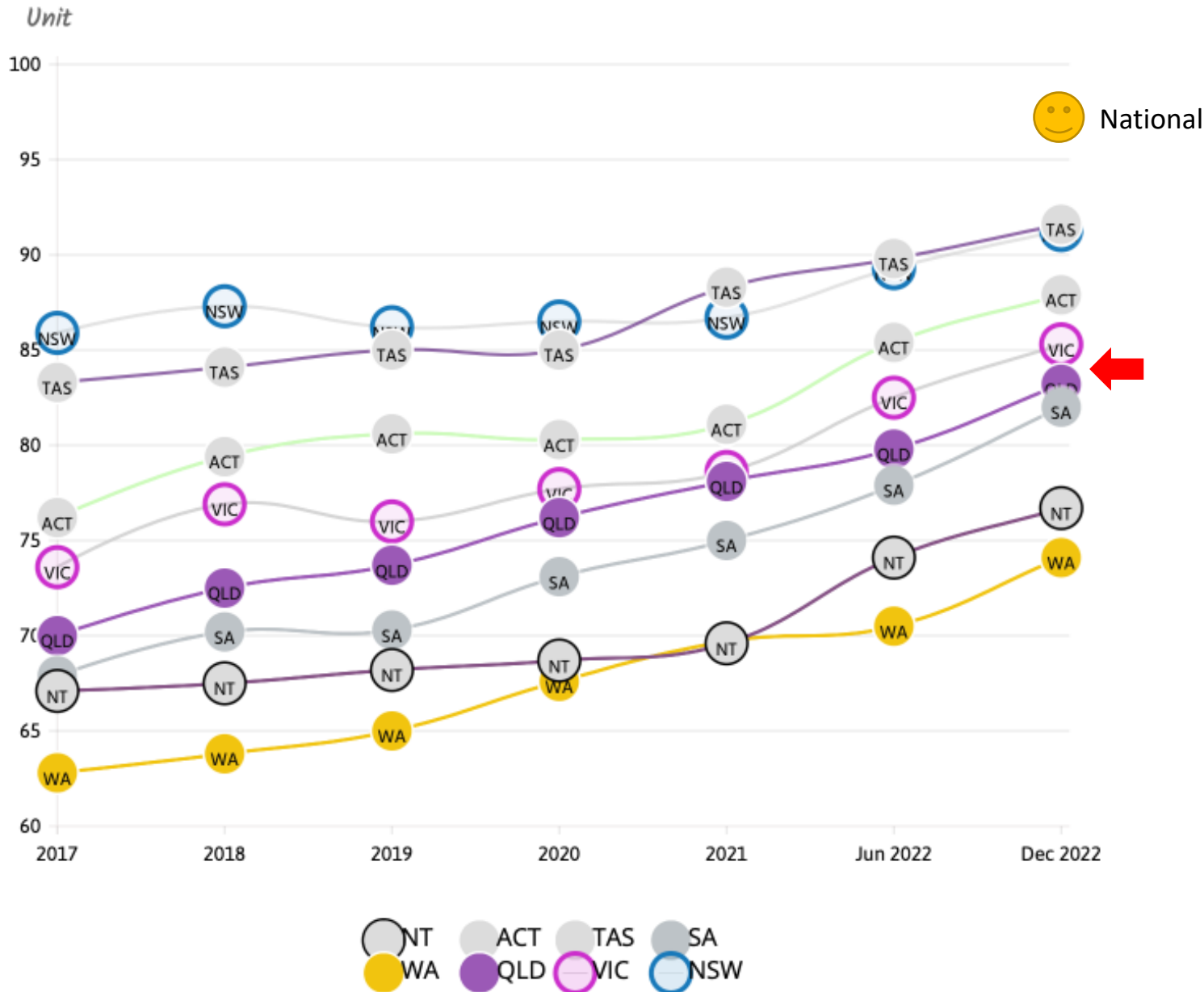
Peremptory challenges

Stand asides

Stage 1: Jury roll

Electoral enrolment, jury
districts

Indigenous enrolment (AEC estimates)



The AEC estimates that Indigenous Australians are substantially over-represented in the *non-enrolled eligible voter* population across Australia.

Non-enrolled Indigenous Australians,
nationally = **17%**

Western Australia = **26%**
Northern Territory = **23%**

South Australia = **18%**
Queensland = **17%**

Victoria = **14%**

ACT = **12%**

Tasmania = **8%**

Enrolment isn't enough... enter jury districts

'To be placed on the jury list you have to enrol as an elector and be placed on the electoral rolls. **Next, you must live within a jury district.** In Brisbane this means within specified electorates and broadly they seem to cover the area within **a radius of 15-20 km from the centre of Brisbane.** There are specific jury districts for some cities and towns. **Where there is no specification the jury district of every court town shall be the area within a radius of 10 km from the court house'**

In *Binge v Bennett* (1989) 42 A Crim R 93 Smart J summarised DPP (Mr Sturgess) evidence.

Electoral roll and Jury Roll

QLD: *Jury Act 1995*

Sect 4 Qualification to serve as juror

(1) A person is qualified to serve as a juror at a trial within a jury district (*qualified for jury service*) if—

(a) the person is enrolled as an elector; and

(b) the person's address as shown on the electoral roll is within the jury district; and

(c) the person is eligible for jury service.

NSW: *Jury Regulation*

Jury districts--the Act, s 9

REG 4 *Jury Districts*

(1) For the Act, [section 9\(2\)](#) and (3), the sheriff must determine [jury districts](#) in a way that ensures--

(a) each person on the [Electoral Information Register](#) is included in one or more [jury districts](#), and

(b) each [jury district](#) includes, in the sheriff's opinion, a sufficient number of persons qualified and liable to be called for jury service.

Table 1: Jury Districts: ACT, NSW, SA, Tasmania & Victoria.

Jurisdiction	Definition of Jury District Area	Area of State/Territory ¹⁶³⁸
ACT	There are no separate jury district areas in the ACT. ¹⁶³⁹	2 351.4 km ²
NSW	A jury district comprises 'such electoral districts or parts of electoral districts' as the Sheriff may determine 'from time to time'. ¹⁶⁴⁰	801 315.4 km ²
NT	NT has two jury districts. The jury district for Alice Springs comprises the municipality of Alice Springs. The jury district for Darwin comprises the area of land in the electoral divisions of Blain, Brennan, Casuarina, Drysdale, Fannie Bay, Fong Lim, Goyder, Johnston, Karama, Nelson, Nightcliff, Port Darwin, Sanderson and Wanguri. ¹⁶⁴¹	1 352 176.1 km ²
SA	The whole of SA is divided into three jury districts: Adelaide, Northern (Port Augusta) and South-Eastern (Mount Gambier). The jury districts consist of the electoral district subdivisions declared by the Governor by proclamation. ¹⁶⁴²	985 338.3 km ²
Tas	There is a jury district for Hobart, Launceston and Burnie (comprising the areas shown as bounded by heavy black lines on Plan No. 3156–8 in the Central Plan register). ¹⁶⁴³	67 914.2 km ²
Vic	There is a jury district for Melbourne and each circuit town (Ballarat, Bendigo, Geelong, Hamilton, Horsham, Mildura, Sale, Shepparton, Wangaratta, Warrnambool, Bairnsdale, Kerang and Morwell), comprising the electoral district or districts for the Legislative Assembly around each town. ¹⁶⁴⁴	227 415.6 km ²

A quick look at jury district areas in other jurisdictions

QLRC, *A Review of Jury Selection*, Report 68 (Brisbane: 2011), [11.6], 350

Table 2: Jury Districts: Queensland

District Name	District Area and Boundaries
Kingaroy	The area within a 20 km radius of the Kingaroy courthouse, and Cherbourg Shire. ¹⁶²³
Maryborough	The area within a 15 km radius of the Maryborough courthouse, to the extent that area falls within the Maryborough District Court district.
Southport	The Southport District Court district, which is the area within Gold Coast City ¹⁶²⁴ and south of the Beenleigh-Gold Coast dividing line.
Townsville	The area within a 25 km radius of the Townsville courthouse.

QLRC, *A Review of Jury Selection*, Report 68 (Brisbane: 2011), [11.6], 351.

R v Rolfe (No 1) [2020] NTSC 80

‘it is sufficiently remote from Alice Springs to provide only a weak claim to be in the locality where the crime was committed. **The Alice Springs jury roll does not extend to Yuendumu.** It is unlikely that any potential juror would have had reason to visit the area unless the potential juror was a police officer, nurse, relative of a resident, teacher or government worker or contractor. Some of these potential jurors would not be eligible to serve as a juror.’ [11]

JURIES ACT (NT)

S 12 Jurors to serve within own jury district

Except as a talesman:

(a) a person who does not reside within the jury district for Darwin **is not qualified to serve as a juror at Darwin**; and

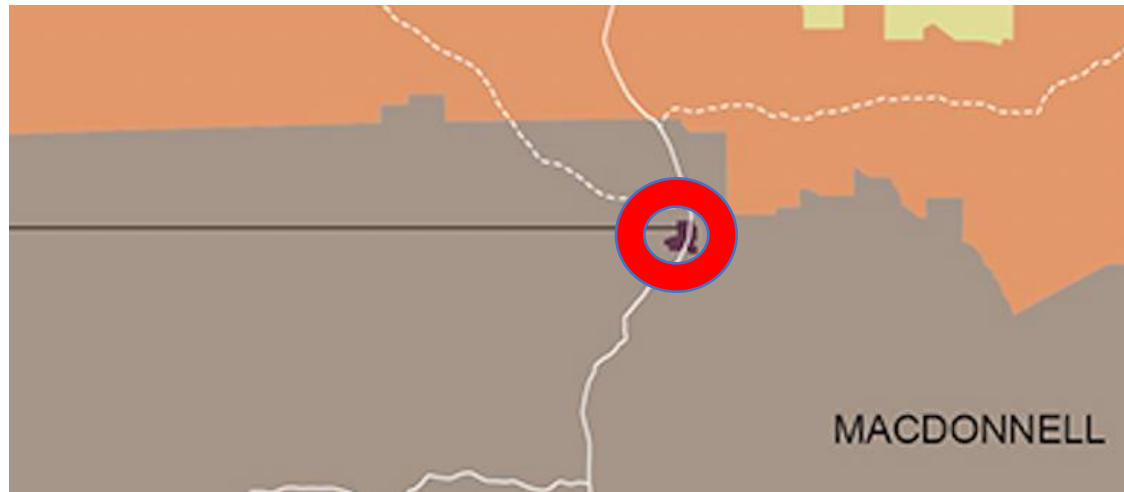
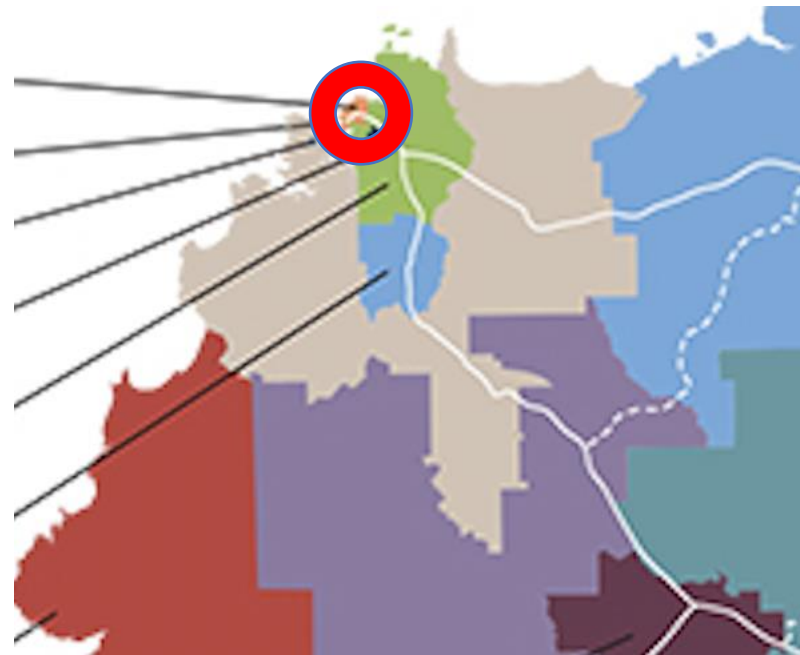
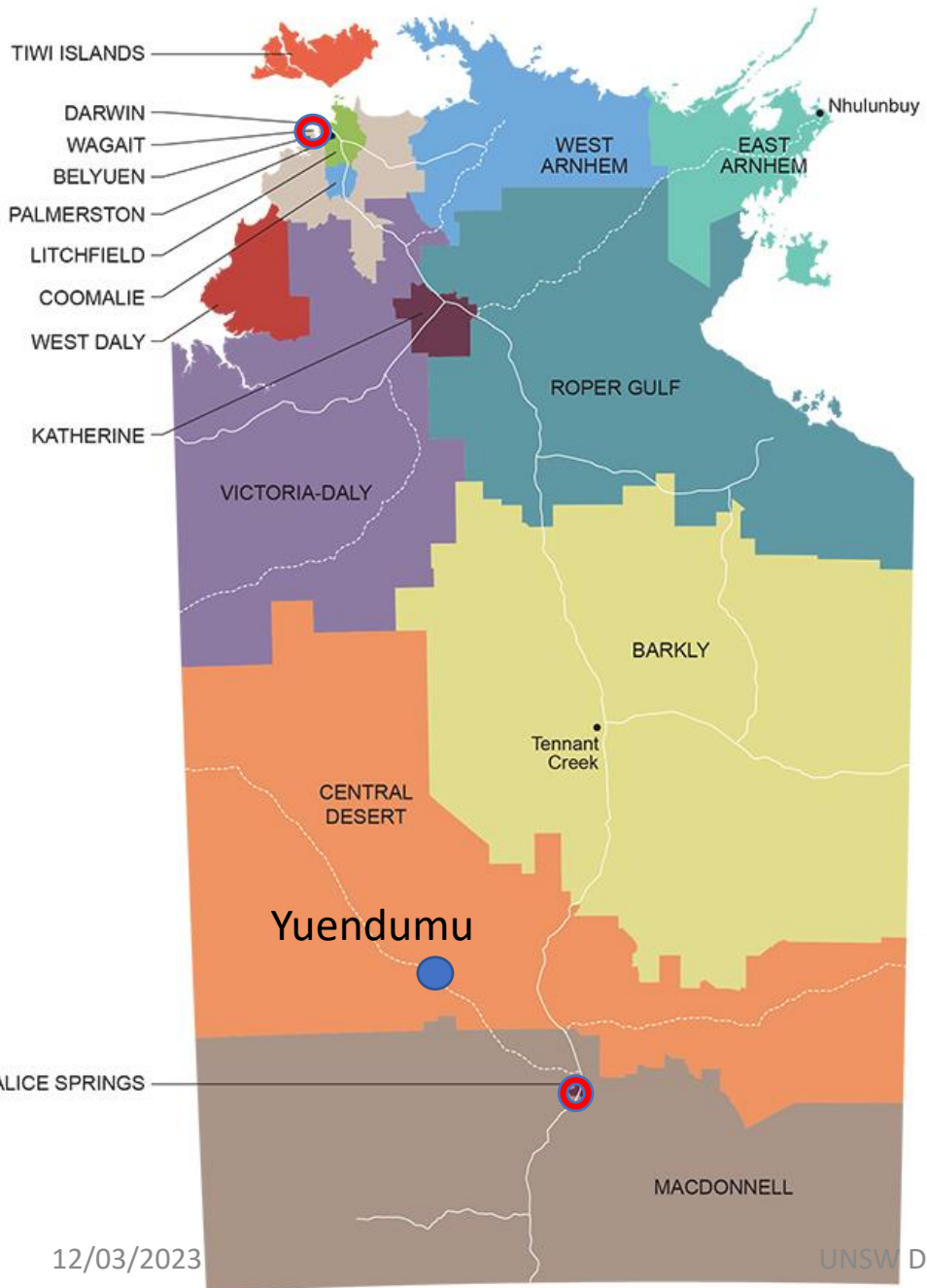
(b) a person who does not reside within the jury district for Alice Springs **is not qualified to serve as a juror at Alice Springs**.

Northern Territory Law Reform Committee

7. Review of Jury Districts

It is understood that the formation of jury districts outside Darwin and Alice Springs is presently impracticable since the Supreme Court sits only in Darwin and Alice Springs (although, occasionally in Katherine).

However, the Jury Districts of Darwin and Alice Springs could be widened to include additional Indigenous communities within reasonable reach of these two cities. To take one example, the community of Santa Teresa is sufficiently close to Alice Springs to warrant inclusion. This may increase the representation of Aboriginal citizens on juries, particularly in Alice Springs.



Stage 2: Summons

Service of and response to
summons, excusals

Service of summons

2010 NT Supreme Court case *R v Woods & William*

- the non-delivery of the jury summons identified as one that may specifically impact Indigenous Australians.
- An example cited in Alice Springs for residents of town camps for whom mail is delivered to Tangentyerre Council and held for approximately six weeks. The evidence suggested that very little of the mail was collected.

Excusals

Some stats for Perth jury district in 2009, provided to LRCWA for its review:

EXCUSED (prior to court)
50% (26,264)

Sheriff's Office: Jury Information System Statistic Report: Breakdown of Juror Excusals – Perth Jury District 2009

What is 'good cause' in NSW: *Jury Act 1977*

14A What constitutes good cause for the purposes of an exemption from jury service

For the purposes of this Act, a person has good cause to be exempted or excused from jury service if—

- (a) jury service would cause undue hardship or serious inconvenience to the person, the person's family or the public, or
- (b) some disability associated with that person would render him or her, without reasonable accommodation, unsuitable for or incapable of effectively serving as a juror, or
- (c) a conflict of interest or some other knowledge, acquaintance or friendship exists that may result in the perception of a lack of impartiality in the juror, or
- (d) there is some other reason that would affect the person's ability to perform the functions of a juror.

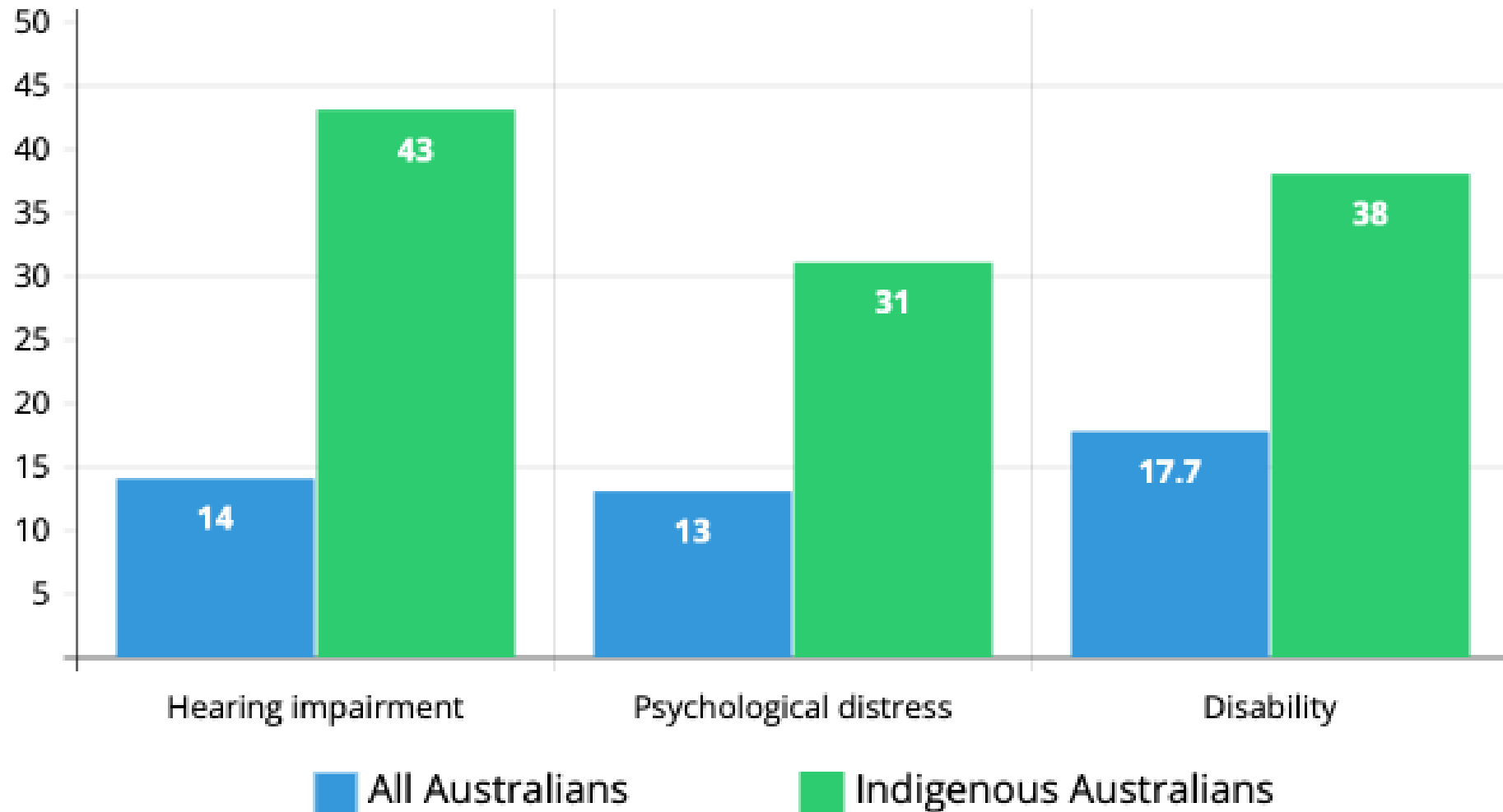
Health issues, caring responsibilities and sorry business

'Lack of data specific to health issues in the context of jury service means it is not possible to definitively identify the impact of these chronic health conditions on the ability to and likelihood of First Nations Australians serving as jurors. Nevertheless, it remains likely that the major health gaps between Indigenous and non-Indigenous Australians have some potentially quite significant flow-on effects for jury service.'

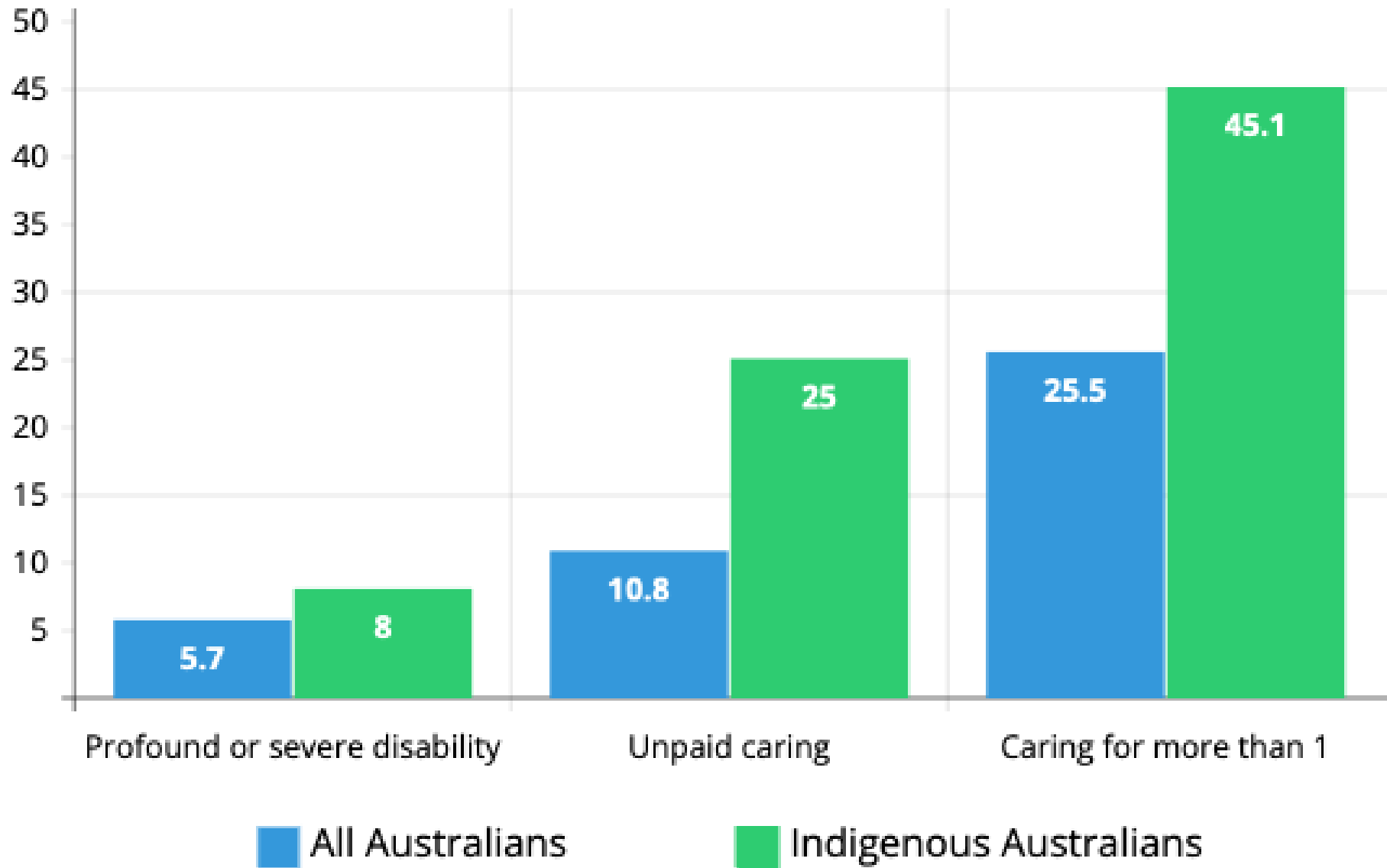
Hunter and Crittenden, *The Jury in Black & White*, AIJA, 2023

National Health Surveys (ABS)

2018



Disability and Caring



Sorry business

- Poorer health outcomes of First Nations Australians compared to non-Indigenous Australians translates to **a mortality rate that is 1.7 times higher than the rate for non-Indigenous Australians***
- The impact of bereavement is likely to be compounded by community focus of Indigenous culture. This can mean that for many communities there is 'the expectation ... that funerals will involve the whole community ... [and not] just family and close friends as is common in some non-Indigenous communities'**

*Australian Institute of Health and Welfare, *Deaths in Australia* (2022)

**R. Glynn-McDonald, 'Death and Sorry Business', *Common Ground* (27 May 2019)

Stage 3: Elimination

Peremptory challenges,
stand asides, challenge for
cause

Disqualifications

WESTERN AUSTRALIA

2009 – [53,000] SUMMONSED JURORS (Perth)

INELIGIBLE/UNQUALIFIED **6.5%** (3,434) 6.5%

EXCUSED (prior to court) 50% (26,264)

FAILED TO ATTEND 15% (7,316)

NOT SERVICE/SUMMONS

WITHDRAWN <5% (2,213)



ATTENDING COURT 25% of eligible people served & summonsed

Sheriff's Office: Jury Information System Statistic Report: Breakdown of Juror Excusals – Perth Jury District 2009

VICTORIA

1997 - JURY LIST

INELIGIBLE/UNQUALIFIED

'38 people out of 12,000'

— that is, **0.3%** (compared to WA 6.5%)

Katsuno v The Queen [1999] HCA 50, [14] (Gaudron, Gummow and Callinan JJ).

Criminal history disqualifications

	FEDERAL	NSW	Vic	ACT	NT	WA	QLD	SA	Tasmania
For the duration of a ...	- GBO - CSO - in custody - charged,bail	Disqual driver licence >12 mth							
3 yrs post serving		detention / offence <18		- GBO -detention/ offence <18					
5 yrs post serving ...			<3mths - other minor sentences	<3 mths		- CSO - convicted >3 RT offences. - convicted/detained in juvenile justice - Imprisonment - probation		- GBO - Disqual driver licence > 6 mths - Offence (or charge not finalised) punishable by imprisonment	> 3 mths
7 yrs post serving		<3 mths consec've			Imprisonment				
10 yrs post serving	Imprisonment	> 3mths consec've	>3mths					- probation/ parole - imprisonment (incl juv. justice)	
Life Disqual'n	>12 mths imprisonment/detention	More serious offences	> 3 yrs imprisonment (aggregate, indictable off)	Certain serious offences	Life imprisonment	> 2 yrs imprisonment - Other convictions	- Convicted/ any indictable offence - Imprisonment	> 2 yrs imprisonment	>3 yrs/ indictable offence

KEY: GBO - Good behaviour order/bond; RT – Road traffic; CSO – Community service order/community order; imprisonment – sentence of imprisonment.

(i) Driving offences/fines

(ii) short term imprisonment

(i) 'In 2011, a quarter of the Northern Territory's entire prison population was there for driving offences'.

- Gerry McCarthy MLA, NT Leg Assembly: 5 March 2011

(ii) 23. The adoption of the criterion of **serving a sentence of imprisonment as the method of identifying serious criminal conduct** for the purpose of satisfying the rationale for treating serious offenders as having severed their link with the community, **a severance reflected in temporary disenfranchisement**, breaks down at the level of **short-term prisoners**. They include a not insubstantial number of people who, by reason of their personal characteristics (such as poverty, homelessness, or mental problems), or geographical circumstances, do not qualify for, or, do not qualify for a full range of, non-custodial sentencing options. **At this level, the method of discriminating between offences, for the purpose of deciding which are so serious as to warrant disenfranchisement and which are not, becomes arbitrary.**

	FEDERAL	NSW	Vic	ACT	NT	WA	QLD	SA	Tasmania
For the duration of a ...	- GBO - CSO - in custody - charged bail	Disqual driver licence >12 mths							
3 yrs post serving		detention / offence <18		- GBO -detention/ offence <18					
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- Roach v Electoral Commissioner (2007) 233 CLR 162, Gleeson CJ

Peremptory challenges

NSW 1981

Prosecutor exercised its peremptory right of challenge – 3 Indigenous jurors -> all-white jury.
Judge Martin discharged the jury – perception of unfairness, now in s 47A *Jury Act 1977*.

R v Smith
[1981]
NSWDC

Northern Territory, 2022

To the eye, they were an all-white jury bar one young Asian woman, after the defence had issued the majority of their 12 challenges to potential jurors as soon as a person of colour was called. Out the door went Africans and several Asians.

Anna Krien, *The death of Kumanjaji Walker* *The Monthly*

Abolition of peremptory challenges: Canada, United Kingdom ...

Canada abolished peremptory challenges (defence/prosecution) in 2019. Introduced power for trial judge to stand aside on ... a case-by-case basis and... based on all relevant circumstances, including the importance of ensuring that the jury is impartial, competent and representative. The amendment recognizes and enhances the role of judges in promoting an impartial, representative and competent jury.

United Kingdom abolished peremptory challenges (but retained stand asides) in 1988. Stand aside guidelines – ‘only sparingly and in exceptional circumstances. It is generally accepted that the prosecution should not use its right in order to influence the overall composition of a jury or with a view to tactical advantage’.

Peremptory challenges/stand asides

	Federal	NT	VIC	QLD	WA	NSW	ACT	SA	TAS
No. Peremptory challenges: single accused	4 defence peremptory challenges available	Crown and person arraigned may each challenge 12 'in the case of a capital offence'. 6 jurors 'in any other case'	3 defence peremptory challenges available	8 for Pros'n and defence	3 each for each accused. 3 for the pros'n.	3 for defence: 3 Pros'n	8 for Pro'sn & accused	3 peremptory challenges for each party, including prosecution	6 for '[e]ach person arraigned'
Crown Stand-asides	4 stand asides	6 stand asides	3 stand-asides if 1 person arraigned.	Nil provision	Nil provision	Not permitted	Nil provision	Nil provision	Unlimited stand-asides
More than 2 accused arraigned (if not in primary provision)		see above	Defence & Crown: 2 for each accused arraigned.	8 challenges per accused. Pros'n entitled to total available to accused persons				3 challenges each for jointly charged persons (s65).	See above

How often are stand asides (improperly) used?

Qld, 1980s/2011 ...

Smart J: *it is the 'almost unbroken uniformity' of stand asides where there is an Indigenous juror ...*

Barrister Colin Bennett: 5. ... Crown Prosecutors regularly 'stand by' any Aboriginal person empanelled for jury service. ...

7. I recall the trial at **Mt Isa** of an accused Aboriginal man whom I represented ... **1984**. ... there were **three or four Aboriginal persons empanelled for jury service**. The Crown exercised its right of 'stand by' against each of those Aboriginal people.

Qld, 2011: ATSILS submission to QLRC

... it may have continued to be prosecution practice in Brisbane to stand down the small number of Indigenous jurors that made it on to the panel, and that it was extremely rare to have an Indigenous juror in Mount Isa 'despite the relatively high local Indigenous population'.

An incident that indicated how difficult it is for Aboriginals to serve on juries - of 'a well-presented Aboriginal lady being stood aside by the Crown in **Brisbane** in February **1989**'

- had prosecuted an Aboriginal with the same reasonably common surname (Currie) as the potential juror from same residential area months earlier
- a no of large Aboriginal families who frequent the criminal courts in Queensland, Currie is the name of one family.
- The Prosecutor accepted that there were between 50 & 60 people with the name "Currie" in the Brisbane phone directory
- she had no convictions. He had no material suggesting that she was related to or knew the defendant Currie.

Victoria, 1988 & 1996

Prosecution stand asides

In the Trial of D [1988]

- Vincent J described the then current **Victoria Police Manual** provided for police to furnish to prosecutors information re potential jurors: 'Disqualified', 'Ineligible' or 'Unsuitable' ['[p]ersons with known antagonism to police or those associating with undesirable persons'].
- The prosecutor assured the court that the practice of including the 'unsuitable' category was **no longer followed** (but then came Mr G 10 years later).

Katsuno v The Queen (appeal dismissed): standing aside of potential juror, **Mr G** where **police passed on non-disqualifying convictions and/or suspected criminal involvement to prosecutors.**

- One offence, as a juvenile, more than 10 years earlier (ie, spent); other offence, over 20 years old - suspended sentence + good behaviour bond, conditions satisfied.
- Kirby J, this ***'is currently practised in Western Australia, Tasmania and the Northern Territory. It is not practised in New South Wales, Queensland, South Australia or the Australian Capital Territory'***.
- The Court held that to hand over such information is unlawful without statutory authority.

Jurisdictions that provide access to

(I) Non-disqualifying offences information

Tasmania: information regarding potential jurors' non-disqualifying offences to be provided to DPP upon request + parties and police are provided with a list of the names of those summonsed for jury service.

(II) Juror ID

ACT: Prosecution, defendant, defendant's legal practitioner may, *on the day fixed for a trial*, inspect/obtain from sheriff a copy of the jury pool for the trial. But police cannot pass on results of criminal history disqualifications to anyone other than the sheriff

Western Australia: a copy of every panel or pool of jurors who have been summoned to attend for a criminal trial is available for parties to inspect from 8 a.m. on the day on which the trial is listed to begin

Lord Denning, 1987

... when I was trying cases, there was **never a peremptory challenge before me at all.**

... **because ... of a household qualification. The jurors, in Lord Devlin's words, were all "male, middle-aged and middle class"**. There was no possible ground for any challenge of them; nor was any challenge made.

... The first use of challenges arose when women appeared on juries.

VLRC 2014 ... the exercise of peremptory challenges **[has] little adverse impact**, given the limited information available about prospective jurors and the resultant reliance on stereotyping.

The VLRC findings however showed for

- **2011-2012 criminal trials - 68% of challenges to women**
- **2012-2013 criminal trials - 67% of challenges were to women**

The way forward ...

Possible solutions?

How to proceed ...

- Indigenous led, collaborative,
- National focus
- Well resourced (statistics and community views)
- Canada provides insights & inspiration.

Debwewin Report, Ontario, Canada

- Peremptory challenges [now removed]. ...
- Reviewing criminal history exclusions to reduce ineligibility timelines to develop an automatic pardon program for First Nations people to have convictions removed 5 years after the completion of a sentence, possibly limited to non-indictable offences, recognizing the authority of an Indigenous community to offer its members amnesty/a pardon.
- Establishing First Nations liaison officers, ideally from local communities, who are tasked with consulting First Nations reserves on juries and on justice issues to reduce hesitancy to respond to juror summonses and improve Indigenous representation on juries by better informing Indigenous people of justice system processes.
- Simplifying the questionnaire sent to prospective jurors, lengthening its return date and removing threats of fines for non-compliance, replacing such language the importance of the jury to ensuring fair trials.
- Creating strategies for replacing a non-responsive potential juror with another from the same post code.
- The costs, accessibility and other logistical challenges of attending courts where extensive travel is involved. (eg, travel, childcare, meals etc)
- Creating a focus on including and educating Indigenous youth (12-16 years) through a Youth Action Plan and a Youth Council.
- Adding the option for a First Nations member to identify themselves as First Nations citizens.
- Enabling elected First Nations officials (Chiefs, Councillors, Elders) to be excluded from jury duty

Debwewin Report, Ontario, Canada *cont'd*

- Considering a volunteer option for jury service for First Nations people on reserves
- Creating a Volunteer Juror Pilot Project for coroner's inquest juries.
- The Attorney General established an Advisory Group to the Attorney General on matters affecting First Nations and the Justice System, the Indigenous Justice Advisory Group
- The creation of a cultural competency curriculum and training for staff in the justice sector: those working in Gladue courts, police, defence counsel and Crown Prosecutors
- The creation of an Assistant Deputy Attorney General position responsible for Aboriginal issues, including the implementation of the Debwewin Report to the Indigenous Justice Division [IID] of the Ministry of the Attorney General
- Consideration of how the IID can provide guide revisions to the Crown Policy Manual regarding the prosecutions of Indigenous people, including potentially extending the application of the Gladue principle.
- the creation of Elders and Youth Councils to advise the IID.
- Expanding specialty courts, including mental health, addictions and Gladue Courts/Indigenous People's Courts.
- Prioritising Indigenous community-based justice programs to reduce the impact of the Canadian justice system within Indigenous communities. This would contribute to recognising the inherent right of Indigenous people to self-government, and to tailor approaches to particular communities

'When I think of the legal system, I think of it as an enemy. It is not there for my benefit. It has imposed gross injustices on my people and crushed my people's way of life'

Richard Frankland

K Auty & S. Toussaint, A jury of whose peers? : the cultural politics of juries in Australia (UWA Press, 2004)

The Australian Jury in Black & White

Barriers to Indigenous representation on juries

Report to the Australian Institute of Judicial Administration

**Professor Jill Hunter
Sharleigh Crittenden**

March 2023

Questions?

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History of the (un)representative jury



Jury service eligibility

- **Jury service**
- **All male** abolished ie, equal eligibility
 - Victoria (1975) , SA (1976)& NSW (1977)
 - NT & ACT (1980); WA (1985)
 - Tas (1991) & Queensland (1991)
- **property qualifications** abolished
 - Qld in 1923, NSW in 1947, Victoria 1956, WA & Tas in 1957)
- **Race requirement** ('European') abolished
 - NT (1962), ACT (post-1965)