NOT A ONE-WAY STREET: UNDERSTANDING THE OVER-REPRESENTATION OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES ON CHARGES OF ASSAULTS AGAINST PUBLIC OFFICERS

Report provided to:

Queensland Sentencing Advisory Council

[Penalties for Assaults on Police and Other Frontline Emergency Service Workers, Corrective Services Officers and Other Public Officers]

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July 2020

This report was prepared for the Queensland Sentencing Advisory Council.
All views stated in this report reflect those of the authors and not the position of the Council.

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Acknowledgements:

We wish to thank the Queensland Sentencing Advisory Council and the Aboriginal and Torres Strait Islander Advisory Panel for their support and feedback in drafting this report.

We would also like to acknowledge the work of the National Justice Project, a not-for-profit legal service who work to build a fairer justice system and more equitable society.

Finally we wish to pay our deepest respects to the Aboriginal and Torres Strait Islander peoples and their families, whose experiences and accounts we have drawn upon within this report.

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Executive Summary

This expert report was commissioned to advise the Queensland Sentencing Advisory Council as to possible reasons for the over-representation of Aboriginal and Torres Strait Islander peoples on the charge of assault against public officers as part of the Council's review of penalties for such offenses.

We draw on critical race theory (CRT) to illuminate the processes that appear to be at work in this over-representation, placing it within its historical context. We suggest Indigenous over-representation is a reflection of the original and ongoing racialised and adversarial relationship between Indigenous people and the state.

Drawing upon publicly available cases, we examine the narratives surrounding claims and/or charges of serious assaults against public officers by Aboriginal and Torres Strait Islander peoples. From these cases we were able to identify two distinguishing features which may help understand the phenomenon of over-representation:

1) Aboriginal and Torres Strait Islander peoples were falsely accused of assaulting public officers; and
2) The racialisation of Aboriginal and Torres Strait Islander peoples as a risk/threat to public good and/or public officers in the act of seeking care from the state.

While the case studies reveal part of the story of the relationship between Aboriginal and Torres Strait Islander peoples and public officers, collectively they also work to counter some of the presuppositions implicit in the discourse surrounding assaults against public officers, namely: 1) that the public officer in the course of their duties occupies a position of moral/public good which warrants greater protections than the public they serve, and 2) that existing penalties for assaults against public officers are insufficient. The case studies illustrate how laws meant to protect public officers can readily be inverted so that they provide cover for violence exacted against Aboriginal and Torres Strait Islander peoples, with the direst of consequences.

Given Aboriginal and Torres Strait Islander peoples are likely to be disproportionately affected by any proposed changes to the penalties for assaults on public officers, we suggest a number of quantitative and qualitative initiatives that may be undertaken to better understand the adverse nature of the local encounter between Aboriginal and Torres Strait Islander peoples and public officers which include:

- Further interrogating the statistical account illustrating the over-representation of Aboriginal and Torres Strait Islander peoples on charges of assault against public officers and examining the intersection of other factors such as associated charges, location of offence, types of public officers in addition to the 'perpetrator factors' as identified by Christine Bond et al (2020);
- Commissioning further research that examines narrative accounts from Aboriginal and Torres Strait Islander peoples who have had encounters with public officers. These will furnish a greater understanding of the nature and outcome of contact between community and public officers that juridical accounts leave little room for;
- Examining more specifically Aboriginal and Torres Strait Islander women's experiences of encountering public officers. Presently little is known about the intersectional nature of this statistical over-representation, so a more gender focused analysis is clearly called for;
- Investigating the role of training in de-escalating or exacerbating fractious encounters with Aboriginal and Torres Strait Islander peoples;
- Reviewing the effectiveness of various campaigns and measures designed to prevent the assault of public officers;
- Examining remedial responses sought by Aboriginal and Torres Strait Islander peoples who have been victims of serious assaults by public officers, such as formal complaint processes, legal and therapeutic measures.

We propose a more nuanced understanding of the matter of over-representation on the charge of assault against public officers; one that doesn't reproduce the racialising logics whereby criminogenic factors are conflated with Indigeneity, one that recognises the nature of the adversarial relationship and does not automatically impute responsibility for conflict to Aboriginal and Torres Strait Islander peoples. In short, we call for an understanding which acknowledges that Aboriginal and Torres Strait Islander peoples are as much entitled to a safe environment in which to conduct their lives as are public officers in the discharge of their professional duties.

Background

In December 2019, the Queensland Sentencing Advisory Council (QSAC) received Terms of Reference from the Attorney-General and Minister for Justice to review penalties imposed for assaults on public officers. As part of the Council's work, it reviewed the demographic profile of offenders sentenced for these offences and found Aboriginal and Torres Strait Islander peoples to be over-represented in charges of serious assault of a public officer (38% of all charges). Further, Aboriginal and Torres Strait Islander women, while least likely to be sentenced for serious assault, were over-represented in sentencing for the charge of serious assault of a public officer (9.7 per 1000 estimated resident population) when compared to non-Indigenous males (1.4 per 1000) and non-Indigenous females (0.6 per 1000). Aboriginal and Torres Strait Islander men were over-represented in serious assault of a public officer at a rate of 21.3 per 1000 estimated resident population.

The Queensland Courts administrative dataset, which formed the basis of the Council's analysis to date, does not include contextual and case-specific information that might help to explain the drivers of this over-representation. Similarly, a review of the available literature undertaken by Griffith Criminology Institute identified limited research on the individual and systemic factors associated with assaults on public officers. Consequently, we have been tasked with providing an expert report 'drawing on relevant evidence, about why Aboriginal and Torres Strait Islander men and women might be over-represented in the criminal justice system, and specifically in relation to assaults of public officers, and what aspects might be relevant to the legal system's assessment of individual culpability'. We have been asked, in the absence of available literature, to theorise the reasons for the apparent racialised and gendered discrepancies in relation to the charge of assault against public officers from the available data. This brief expert report seeks to achieve this by contextualising the relationship between public officers and Aboriginal and Torres Strait Islander peoples. In so doing we hope that we can advance an understanding of this relationship that serves the shared goal of reducing serious assaults on public officers.

Scope of Report

We draw on critical race theory (CRT) to illuminate the processes that appear to be at work in this over-representation, cognisant that the mention of 'race' and its cognate, 'racism' may be confronting for some, who may wonder whether we are impugning the reputations for fairness held dear by law and order agencies. The foregrounding of race in our analysis is in direct response to the data which suggests there is a particular character to the relationship between the public officer and Aboriginal and Torres Strait Islander peoples. We seek to understand the matter of over-representation as a manifestation of this relationship, rejecting the notion that Aboriginal and Torres Strait Islander peoples are demonstrably more violent.

We also do not presume this over-representation to be a result of a higher rate of the 'perpetrator factors' reported to the review elsewhere (Christine Bond et al, 2020). There is at present no evidence to support such claims. We note research undertaken by the Australian government (AHMAC, 2017), which examined Indigenous over-representation of discharge against medical advice (DAMA) where they found 'Indigenous status was the most significant variable…even after controlling for other factors' typically associated with DAMA. The authors concluded that more work was needed to examine and address the 'significant issues in the responsiveness of hospitals to the needs and perceptions of Aboriginal and Torres Strait Islander peoples' (AHMAC, 2017, 165). Consequently, we consider Indigeneity specifically in terms of the relationship with public officers, and not as a surrogate for other factors.

We have endeavoured to consider the gendered nature of this over-representation though a lack of detailed data and the accelerated turnaround asked of this expert opinion has not allowed us to do more than to reflect on the intersection of race and gender that is compounding the over-representation of Aboriginal and Torres Strait Islander women. We note Crenshaw's powerful formulation 'that if you're standing in the path of multiple forms of exclusion, you are likely to get hit by both' (2004, p. 2).

Finally, this report seeks to contextualise the relationship by examining the narrative accounts of Aboriginal and Torres Strait Islander peoples who have been subject to claims and/or charges of assault against public officers. This methodological approach is fundamental to CRT which recognises the centrality of narratives from those who are racialised to enhancing our understanding of experiences of racial

oppression (Delgado and Stefanic, 2012). An examination of the narratives relating to these encounters is also enlisted as a response to the limited statistical data available. This methodological approach was similarly deployed by the Crime and Misconduct Commission's (CMC) Review of the Public Nuisance Offence for similar reasons. Where the CMC drew from a random sample of narrative police data, here we examine various accounts contained in media reports and coronial inquiries of publicly available cases which we were able to locate. For legal reasons, we have had to exclude several case studies which involve matters that are still before the courts.

This report refers to Aboriginal and Torres Strait Islander peoples who are deceased and includes accounts of racial violence. While these cases are in the public domain, we have elected not to name the individuals named in media reports, as consent to use their names in this context has not been obtained. We apologise in advance for any distress caused to Aboriginal and Torres Strait Islander peoples and communities in revisiting these upsetting accounts.

There is an Indigenous humanity here that needs to be heard above the stentorian claims of the state. We hope that highlighting these cases does something of this work of amplification.

Introduction: Race, Racialisation and the Law

Critical race theory grew out of a movement in the US law where questions were asked of the very foundations of the liberal political order, including notions of equality, legal reasoning, Enlightenment rationalism and the supposed neutrality of the law. Race, racism and power are central to these questions. Leading CRT scholar David Theo Goldberg (2002, p. 4), in exploring the nature of the state, law and race, argues that hierarchical understandings of race and the development of the modern state are aligned, stating: 'The apparatuses and technologies [thus] employed by modern states have served variously to fashion, modify and reify the terms of racial expression, as well as racist exclusions and subjugation'. In this context sentencing becomes not only racialised but also a technology of racist exclusion and subjugation. The law therefore supports a racial state where gradations of humanity are the very conditions of its emergence. Goldberg further argues, 'in authoring the law, the state seeks its own legitimation through the law's claims to justification. Law, legal discourse, and legal consciousness assist in proliferating state control and discipline across the landscape and population' (2002, p. 4).

In Australia, where the law was used to claim that land could be deemed unoccupied or belonging to no one, the state's legitimacy is predictably questioned by the very peoples declared not to exist within its boundaries. Furthermore, the fact that Indigenous sovereignty has never been ceded poses difficulties for claims that the law and attendant sentencing is unremarkable, and that it is not in fact a disciplining and controlling technology necessary for maintaining the fiction of *terra nullius*. In these circumstances one must assume that the relationship between 'public officers', the law and Aboriginal and Torres Strait Islander communities is a racialised and adversarial one, and not one where there is a reasonable expectation that the law is a neutral arbiter. As Cunneen (2001, p. 191-2) notes, 'Challenges against police authority and the criminal justice system by Aboriginal people become part of the daily ritual of resistance…what is defined as public disorder may well represent the active refusal of Aboriginal people to accept their position in the dominant spatial order of non-Indigenous society'.

A key term in understanding the 'symbiotic' and adversarial relationship between the public officer and Aboriginal and Torres Strait Islander peoples is ***racialisation*** which is an analytical concept central to CRT that refers to the socio-historical processes through which people become members of racial groups. There is a dehumanising element to racialisation, whereby racial groups are placed in hierarchical relationship to one another. Those that find themselves in the lower reaches of such hierarchies are considered 'less than' those occupying positions at the apex. This racial taxonomy was starkly captured by Frantz Fanon, who when observing the French settlers in Algeria, declared:

It is not enough for the settler to delimit physically, that is to say with the help of the army and police force, the place of the native. As if to show the totalitarian character of colonial exploitation the settler paints the native as the quintessence of evil…the native is declared insensible to ethics; he (sic) represents not only the absence of values, but also the negation of values. (Fanon, 1977, p. 32)

It is our central contention that sentencing of Aboriginal and Torres Strait Islander peoples for assaults on public officers, and the advice given on sentencing matters is ***racialised***; that is, Aboriginal and Torres Strait Islander peoples are routinely cast as beyond the pale, and as such in need of remedial correction.

From the Frontier to the Frontline: The Role of the Public Officer in the Colonial Situation

In order to establish the nature of the adversarial relationship between Aboriginal and Torres Strait Islander peoples, the public officer and the law in its various expressions, it is necessary to draw on history. An ahistorical analysis of the relationship between the public officer and Aboriginal and Torres Strait Islander peoples, without reference to at least the originary violence that accompanied dispossession of land, leaves a vacuum into which racist tropes, stereotypes, and pathologies can be poured and adduced to explain all manner of phenomena involving contact between the state, policing, law and Aboriginal and Torres Strait Islander peoples. Historically, Queensland has been considered by historians as unique for the level of racial violence deployed against Aboriginal and Torres Strait Islander peoples. The historian Raymond Evans sums up the features that render this place as exceptionally violent:

A correlation of geography, climate and timing of settlement all conspired to promote Queensland's uniqueness. It was the only colony where pastoral, mining and plantation frontiers were being advanced simultaneously, and this occurred as western racist theories were peaking in their certitude, extremism and infiltration. Frontier violence was exacerbated by an advanced weapons technology and the honing of superior conquest strategies from lessons learnt further south. Aborigines (sic) in this region had realised, too, from the tragic experiences of others before them, that these whites were no spiritual sojourners, but inordinate usurpers who must be strongly resisted. (Evans et al, 1993, p. 17)

The inevitability of racial violence and genocide is expressed here in a 19th century justification: 'It is at this time of day, in the nineteenth century of progress and humanity, that Englishmen upon their settlement amongst an inferior race, are to despise the slightest attempt to conciliate or improve it, but to begin at once to war upon it ….to exterminate it' (Heydon, 1874, cited in Evans et al., 1993). Note here how enlightenment principles of progress and an advanced humanity are used to justify racial violence against a 'lesser' peoples. The enlightenment, of course, with its stress on reason and rationalism, is routinely invoked by lawmakers as a means

of shoring claims to neutrality and high morals. Added to genocide are the workings of the 'Doomed Race' theory, which many concerned with health justice argue continues to have purchase in the delivery of healthcare to Aboriginal and Torres Strait Islander peoples. The adversarial relationship between the state and Aboriginal and Torres Strait Islander peoples is not unique to this place; it is a feature of all settler colonial societies. Fanon captures the fraught and violent nature of this relationship in the following formulation:

'In colonial countries [….] the policemen and the soldier, by their immediate presence and their frequent and direct action maintain contact with the native and advise him by means of rifle-butts and napalm not to budge. It is obvious here that the agents of government speak the language of pure force. The intermediary does not lighten the opposition, nor seek to hide the domination; he shows them up and puts them into practice with the clear conscience of an upholder of the peace; yet he (sic) is the bringer of violence into the home and into the mind of the native.' (Fanon, 1977, p. 29)

'Agents of government' comprise a broader coalition than the police and soldier. In Australia, we have variously witnessed the teacher, social worker, doctor and lawyer working in ways that brings violence into Aboriginal and Torres Strait Islander homes and communities. There are many historical, specific and local examples of the violence meted out to Aboriginal and Torres Strait Islander communities. Take the cracking of stock whips over the heads of Aboriginal people on Boundary Street in Brisbane as a reminder to leave the area and observe the curfew (Kidd, 2001); or Raphael Cilento's police-assisted leprosy raids, the sight of whose ambulances sent Aboriginal people into the bush for refuge (Parsons, 2010). Further, there are the police officers, social workers and health professionals who were actors instrumental in the forcible removal of Aboriginal and Torres Strait Islander children from their families (HREOC, 1997). These, and countless other local examples, are assumed to have been relegated to history but community memory is long and more recent examples of the law's firm hand, the over 400 Aboriginal and Torres Strait Islander deaths in custody since the Royal Commission into Aboriginal Deaths in Custody in 1991 cannot have done much for the ever-waning confidence of those communities in the law. Community memory connects the violence of the frontier to contemporary violence of the front line, where Indigenous Australia and the state meet in quotidian

encounters that often prove injurious for Aboriginal and Torres Strait Islander peoples.

We offer as a more recent and related example the introduction of the public nuisance charge in Queensland which 'was first introduced in the context of public interest over an extended period specifically in relation to the behaviour of intoxicated Indigenous homeless people, particularly in Cairns, Townsville and Mt Isa' (Crime and Misconduct Commission, 2008, p. xiii).

The CMC note:

The parliamentary debates and media statements made by Queensland politicians in the lead-up to the introduction of the new offence indicated that the change would 'tighten laws' surrounding anti-social behaviour, raise community standards of conduct and help prevent the unacceptable behaviour of drinkers in public places causing disruption to community and business life. (2008, p. xiii)

A review of the introduction of this law was undertaken in 2008, 12 months after its introduction, in part to consider concerns that the law would disproportionately affect some segments of the population, including homeless, Aboriginal and Torres Strait Islander peoples, mentally ill people and young people. The review found that these marginalised groups were still over-represented, and that Aboriginal and Torres Strait Islander peoples were more likely to be arrested than non-Indigenous offenders, but it was claimed that there was no increase to the existing rate of over-representation. In an examination of the descriptive narratives involving Aboriginal and Torres Strait Islander offenders in the category of offensive language, the review found:

The narratives involving Indigenous offenders do convey a sense of tension between police and Indigenous people. In particular, it appears police often respond to offensive language used by Indigenous people where it could not be suggested that there was any real 'interference' with the police carrying out their duties. (CMC, 2008, p.43)

It is evident that the law and sentencing can be construed as a disciplining measure necessary for the maintenance of state legitimacy in a place where sovereignty was never ceded by the original inhabitants. In this context it is hard to accept that 'criminalising public nuisance behaviours' involves anything other than a further

continuation of the adversarial relationship where, in this instance, another technology is afforded so that Aboriginal movement in public space is curtailed. This is of particular relevance to this review as the charge of public nuisance is among the most common associated offences for those charged with assaults of public officers.

The CMC review noted that the inclusion of offensive language offences in the public nuisance charge was contrary to recommendation 86 of the Royal Commission into Aboriginal Deaths in Custody. The review also noted that the 'completely unjustified' arrest of Mulrunji Doomadgee took place while the review was being undertaken. The circumstances surrounding his arrest and subsequent death in police custody is discussed but cordoned off by a text box in the formatting of the report. This cauterising renders as exceptional the potentially fatal consequences for any Aboriginal and Torres Strait Islander person deemed a public nuisance. Moreover, it surely stretches the limits of credibility to assume, against the backdrop of this adversarial relationship, that a fair balance is continually struck in assessments of public nuisance involving Aboriginal and Torres Strait Islander peoples. Indeed, one of its recommendations was to restate the need for the Queensland Police Service to 'reinforce the message that de-escalation and prevention are guiding principles when dealing with public nuisance offences' (CMC, 2008). As the tragic death of Mulrunji indicates, as well as those later highlighted, mutual animosity between Aboriginal and Torres Strait Islander people and agents of the state borders on a structural and racialised feature of any encounter.

In the following sections we briefly explore examples of publicly available cases where assaults against public officers and Aboriginal and Torres Strait Islander peoples have taken place across the country in order that we may further understand the present nature of this adversarial relationship. In so doing we illustrate how laws meant to protect public officers on the front line can easily be inverted so that they provide cover for violence exacted against Aboriginal and Torres Strait Islander peoples. At the very least we seek to put on display the violence of the law and the state, manifest in interactions with public officers.

Case Studies of Assaults against Public Officers: The Violence of Risk, Threat and Care upon Aboriginal and Torres Strait Islander People

In this section we consider several publicly available examples of claims and/or charges of serious assaults against public officers by Aboriginal and Torres Strait Islander peoples. The cases examined are by no means an exhaustive representation and are not limited to Queensland, but they do illuminate how these laws are working upon Aboriginal and Torres Strait Islander peoples in public and private places. We draw upon the narrative accounts as made available in news media reporting and/or coronial inquiries and associated investigations to better understand the circumstances that may contribute to the over-representation of Aboriginal and Torres Strait Islander peoples on such charges. In examining these cases we observe two distinguishing features which trouble easy explanations for this phenomenon and may go further to partially account for over-representation;

1) Aboriginal and Torres Strait Islander peoples are falsely accused of serious assault against public officers; and/or
2) The racialisation of Aboriginal and Torres Strait Islander peoples as a risk/threat to public good and/or public officers in the act of seeking care from the state.

We were able to identify several cases where claims of serious assault levelled against Aboriginal and Torres Strait Islander peoples were found to be false, or there has been no case to answer. It bears stressing that we are not suggesting that there are never any circumstances where such charges are necessary; rather we seek to reveal how the adversarial nature of this relationship may help in part explain the over-representation of Aboriginal and Torres Strait Islander peoples on this charge. This is significant given the data suggests rates of serious assault against public officers are higher than rates of serious assault among Aboriginal and Torres Strait Islander peoples.

The first case relates to a 29-year-old Aboriginal man who in 2013, had a violent encounter with the police in Kelvin Grove, Brisbane in the course of going to their aid. In a media release the police described the incident thus:

A 29-year old man has been charged with serious assault police, as well as two counts of assault occasioning bodily harm and three of obstruct police. He is due to appear in the Brisbane Magistrates Court on Monday…. Two officers were treated at hospital, one with a fractured hand and bite injuries, the other for ligament damage to a knee and abrasions. The second man was treated at hospital for facial injuries. (Queensland Police Media, 2013)

What is omitted from this release are the details of the injuries sustained by the 'second man' beyond 'facial injuries'. The second man, was the Aboriginal man in question and in the encounter, where he was charged with 'serious assault' he was physically assaulted, tasered and pepper sprayed. The entire episode was captured on mobile phone footage. To judge by photographs, the injuries sustained by the police did not appear commensurate with those claimed in the media release. By contrast, the photograph documenting the Aboriginal man's injuries revealed a battered, bruised and disfigured face. He was later found not guilty of all charges but the episode took an enormous toll on him:

'It changed (my life). I'm more wary of the police system now. Every time I see police now I get that bad anxiety…. I used to work in security and I used to work with police all the time and help them out. Now it's a reversal… just getting attacked. It blew my mind.' (McQuire, 2016)

The second example concerns a Northern Territory police officer who was fined for assaulting two Aboriginal women and a man while responding to a domestic violence call out (Jenkins, 2020). Senior Constable Raymond Nielson-Scott was fined $4000 in the Local Darwin Court after being found guilty of assault and aggravated assault. He had claimed that he had tried to de-escalate the situation and that one of the women spat on him. The judge found his evidence 'unreliable and unconvincing'. Spitting, used here as a defence, plays on the expectation that such behaviour is to be expected in such encounters and appeals to tropes of uncivilised behaviours common to Aboriginal and Torres Strait Islander peoples.

The same trope is at work in a story in The Age newspaper more recently, which cited an 'anonymous senior government official' who claimed that 'spitting against the police' was a planned tactic at the Black Lives Matter march in Melbourne on 6

June 2020 (Pedestrian TV, 2020). The Age was forced to apologise for the lack of veracity for the story:

The claim that some activists had threatened police with spitting and abuse was not backed up beyond one unnamed senior government source. The story put undue emphasis on these claims. The main organisers of the rally, the Warriors of the Aboriginal Resistance, clearly stated that they had no knowledge of any threats to police. The Age apologises. (Towell & Cowrie, 2020)

Again, 'spitting' is invoked as an anticipated behaviour, presumably in the full knowledge that it is a serious offence. It is not an exaggeration to conclude in this instance that the 'serious assault' offence was put in the service of discrediting legitimate protest even before it had taken place. It was also done in the likely knowledge that demotic forms of racism would assume the truth of the story. Indeed, such is the weight of low expectations of behaviour attributed to Aboriginal and Torres Strait Islander peoples, coupled with the work of racist stereotypes, captured by demeaning adjectives such as 'savage' and 'brutal', that it is reasonable to suspect that the threshold for laying the charge of serious assault against public officers is set very low.

The final case concerns that of an Aboriginal teenager in Sydney this year, who was interrogated by the police in a park before having his legs kicked from beneath him and his body slammed to the ground. He was arrested, and received medical treatment for his injuries, only to be released without charge. The 'provocation' was the alleged verbal threat from the teenager to physically assault the police officer, which 'horrified' the NSW Police Minister, David Elliot. The teenager's sister later spoke:

'When he came back home later that night, he was shaken up.
'He was very sore this morning and he was distraught.
'Teenagers, they're lippy, but you don't just abuse children because they're lippy.'
(McKinnell & Thomas, 2020)

Here an Aboriginal teenager is deemed threatening by reason of language and thus warranted a violent physical response. Taken together, these and countless other similar cases, suggest that the Indigenous body, attendant behaviours and speech

are cast at the outset as irredeemably threatening and so deserving of the severest responses. In these circumstances, we ask, ‘who needs protecting from whom?’

We also identified a number of examples in which Aboriginal and Torres Strait Islander peoples held in care/custody or seeking care through the health system from ambulance officers, hospital staff and other public officers have been subject to violence. Here we draw attention to cases that highlight the adversarial nature of the relationship between public officers and Aboriginal and Torres Strait Islander peoples, but the distinguishing feature is that the victim is often found to be seeking care from the state. We observe the construction of Indigenous peoples as risks and threats to the public good and the public officer, rather than warranting or deserving of care or protection.

The first example relates to an Aboriginal woman who in 2014 in Logan, Queensland, was permanently blinded during a social worker visitation which resulted in the police being called. The woman was deemed a threat (despite her claim of compliance with police directives) and tasered in the eye. An internal investigation into the ‘incident’ maintained that the officer acted in self-defence in response to a ‘threat’. The notion of threat in this instance and its use in the justification of excessive force (assault occasioning serious bodily harm) should alert us to the need to critically examine the ways the perception of threat as presented by Aboriginal and Torres Strait Islander peoples is constructed and racialised. That the woman was tragically blinded in an encounter involved a ‘caring’ professional is surely reason enough to suspect that more is at work in the encounter than a commensurate response to a perception of ‘threat’ (Tapim & Withey, 2014).

We highlight the circumstances surrounding the charge of assault against a public officer against another Aboriginal woman in Broome, Western Australia in 2013 (Wahlquist, 2015). After being found by police battered and bloody following a violent attack by her partner, the woman was charged for offences of assaulting and obstructing public officers when she panicked in fear for herself and the well-being of her 10-month old baby. Police arrested the woman and left her baby in the care of the cousins of her attacker. Her baby was later abducted, tortured and killed by her partner while she was in custody, the police deaf to appeals from her family. An investigation appeared to also blame the woman for the failure of police to act upon

the threats to her baby, stating ‘It is possible that officers became distracted by [the woman’s] disorderly and obstructive behaviour and did not stop to examine why she came to be naked and injured’ (Crime and Corruption Commission, 2016). Meanwhile, the woman was charged with assault against police and found guilty, though the court congratulated itself by acting ‘mercifully’ in refusing to send her to jail. This self-ascribed benevolence had worked to both launder the state’s role in the violence suffered by the woman, and the complicity and culpability in the violence she had already endured, and specifically, the complicity and culpability of those public officers who so horribly failed both her and her baby. To date nobody has been held to account for their failures.

The notion of ‘threat’ is further in evidence in this case, where a police officer used the ‘aggressive and agitated’ behaviour of the woman’s grandfather to justify his failure to act on the baby’s disappearance (Wahlquist, 2015). Although we might reasonably interpret the grandfather’s behaviour to be the result of his distress and concern for the safety of his grandchild and that of his daughter, his humanity is elided and is instead reduced to a ‘threat’. This tragic case highlights the rendering of Aboriginal men as routinely aggressive and this casting appears necessary to the various ways the state denies Aboriginal women the care and protection it so readily affords others. Dooris (2019, 6-7), in observing the increasing number of women incarcerated for ‘serious assault/obstruct/wilfully resist a public officer’, points to the intersection of care services and carceral logics in which multiple and intersecting forms of marginalisation including ‘mental illnesses, disabilities and/or substance use problems, in situations of poverty and homelessness’ see Indigenous women increasingly criminalised in the course of seeking care.

This differential is further evidenced in a case where an Aboriginal man presented to Cherbourg Hospital (Queensland) in 2006 in the middle of the night, urgently seeking emergency care for an Aboriginal woman in his company. Unable to bring her to the emergency room he sought to alert medical staff. Approaching the locked glass doors and with the intercom system broken, he banged on the glass to get security’s attention. Banging on the glass, as an Aboriginal man, was deemed threatening to staff and he was denied entry to the hospital. His efforts to get her seen to became more frantic as he realised the woman lay dying in his car. He stated:

'I was yelling and kicking the door, and head-butting it… I could see nurses inside, and there was a security bloke sitting there as well, but nobody came… the cops arrived and they called out to me to settle down because I was going off my head. I had torn a steel railing off and was bashing the door. And when they realised the problem, [she] was taken inside. I had been checking on her, telling her not to worry because we were at the hospital… I done my best.' (Koch, 2006, cited in Health Quality and Complaints Commission, 2007)

A public report later held that the nursing staff 'had an honest and reasonable, but mistaken, belief that [the man] was a present and immediate threat to their personal safety and the safety of inpatients at the Cherbourg Hospital, and it was reasonable for the nurses to refuse [the man] entry to the Cherbourg Hospital until police arrived' (Health Quality and Complaints Commission, 2007). In validating the staff's actions on the basis they followed procedures when faced with a threat, the investigation failed to interrogate the insidiously racialised ways protocols and procedures function to foster racism. The report did not consider how the perceived 'threat' was constructed and confected in this particular instance; nor did it appear to understand how its owns policies and procedures are racialised when deployed in respect of Aboriginal and Torres Strait Islander peoples. Further, the Coroner dismissed the man's actions and account as vague, non-credible and unreliable because he had been drinking, and instead deferred to the 'patently sound' and 'reliable conclusion' of the medical expert that the woman's death while unfortunate, was utterly unavoidable.

While Aboriginal women are denied access to care and protection, we are also witness to the ways in which Aboriginal men are met with force when seeking health and medical care. Two Aboriginal men in Logan, Queensland, who were brothers, were tragically killed in separate events, years apart but both deaths involved public officers who had been called to assist them (Allam et al., 2018). In both situations, there had been no offence committed, but in both cases 'threat' is operationalised to rationalise an escalation in violence via coercive control. This control, characterised by violent techniques of restraint and/or sedation, thwart the capacity to enact care, because a relationship of care requires attending to the full humanity of the person for whom care is given. These cases demonstrate instead how first responders decontextualise the patient, denying histories and obscuring the power relations

which mark their relationships. Most importantly, however, public officers, either wilfully or unwittingly, fail to appreciate the structures of race through which these relations are embedded.

The first brother was taken to Logan hospital in 2011 following a call from a member of the public about his welfare. He had been noticed because he was ‘a large gentleman wearing superman pyjamas and a superman T-shirt’ at a train station (Allam et al, 2018). Although he was never an actual threat to anyone at the train station or hospital, he was transferred to a secluded ward where an unwarranted dispute over clothing resulted in a guard applying two ‘peroneal strikes’ to both legs so that his nerves were disabled. After his second leg was struck, the man collapsed face down on the floor and was left to dress himself. He was later found unconscious and soon after died. Some four years later, the man’s brother was in need of medical assistance and in a state of extreme distress when ambulance and police arrived. He was restrained in a prone position and handcuffed, the police believing that he posed a threat to himself, to officers and to the paramedics. He started to show signs of respiratory difficulties, but paramedics administered a sedative at the directive of police without independently assessing the situation.

Dooris (2019) argues that sedation is one of the most extreme techniques of coercive care, used to manage Aboriginal and Torres Strait Islander peoples who are characterised as ‘a problem’ or ‘risk’ having been deemed a threat (to themselves and/or to others). In the context of the Queensland Ambulance Service (QAS), sedation is an intentional strategy deployed by public officers that deliberately strips a person of their capacity to communicate and resist violence. The use of sedation has had deadly consequences for Aboriginal and Torres Strait Islander peoples as it is used in contexts where there is escalating violence and an ‘out of control’ patient. It works to ‘produce an individualised, decontextualised understanding of violence which masks the structural violence embedded in this policy approach’ (Dooris, 2019, p. 18). Dooris notes how in less than a year after an Aboriginal man’s death after having been sedated by paramedics, QAS representatives were publicly lauding the use of sedatives in minimising physical attacks against paramedics.

The death of another Aboriginal man in Sydney, New South Wales is another tragic example of such violence. What followed out of an alleged concern for his health

around his dietary intake, resulted in various techniques of ‘coercive care’ by corrective service staff. He was met with six officers from the Immediate Action team (IAT) with riot shields to forcibly relocate him and a nurse called to sedate him in order ‘to address [the man’s] agitation and aggression’ (Coroner’s Court of NSW, 2019). The man is pinned to the bed and screams repeatedly ‘*I can’t breathe*’. The officers remonstrate with the man ‘to stand up and to stop spitting blood’. Even as he is unable to stand, and is clearly in extreme distress spitting *blood*, the guards continue to apply violent coercive care. He is deemed an even greater threat because he is struggling for life and further sedation and more physical force is used to control him. The man is killed after the second sedation is administered by force.

Discussion: Reconfiguring Relationships Between the Public Officer and Aboriginal and Torres Strait Islander Peoples

The case studies highlighted here reveal part of the story of the relationship between Aboriginal and Torres Strait Islander peoples and public officers that are routinely dismissed as isolated incidents. While these examples do not represent the full spectrum of experience, collectively they work to counter some of the presuppositions implicit in the discourse surrounding assaults against public officers, namely: 1) that the public officer in the course of their duties occupies a position of moral/public good which warrants greater protections than the public they serve, and 2) that existing penalties for assaults against public officers are insufficient.

These case studies variously reveal the ways in which Aboriginal and Torres Strait Islander peoples are racialised as a greater risk/threat to the public officer (either actual or perceived), the consequences of which appear already disproportionate, violent, inhumane and in several cases wholly unwarranted. The assumption that Aboriginal and Torres Strait Islander peoples should be subject to harsher penalties for assaults on public officers, fails to countenance the very idea that first responders can enact harm through frontline services and that these everyday encounters are racialised. Dooris (2019, p. 35) in her analysis of the Queensland Ambulance Service's policy approach to violence notes the construction of paramedics as one of 'heroic victimhood' which renders patient violence (actual or perceived) as 'particularly egregious'. Dooris explains how 'these mutually constitutive representations' of the violent and risky patient and the 'heroic-victimhood' of the paramedic positions them as 'already blameless, and not implicated in violence'. In operationalising 'threat' in the context of care services, public officers simultaneously erase and authorise the escalation of violence against Aboriginal and Torres Strait Islander peoples and avoid culpability for the violence enacted against them.

A common conclusion of coronial inquiries and investigations relating to the aforementioned case studies, relates to the need for more training of police and other public officers. It would be instructive to further interrogate the role of training in the context of the violent adversarial relationship between Aboriginal and Torres Strait Islander peoples and public officers. The recommendation to increase or improve training assumes an innocence or unknowing in these encounters, when the construction of threat and resulting escalation of violence is deliberate and

intentional. Police, ambulance, medical and other public officers too often and too easily rush to a position of innocence in these encounters, insisting on their 'unknowing' or ignorance of the histories of violence that frame their encounters and inform its reproduction. Conversely, there is little documented evidence about the most effective measures and strategies for Aboriginal and Torres Strait Islander peoples seeking recourse having experienced violence at the hands of public officers.

There remains a need to consider the gendered dimension of racialisation and its intersection with ableism (and, as part of this, mental health), including the responses of public officers to Aboriginal and Torres Strait Islander women who seek care. There may be some initial indication that Aboriginal and Torres Strait Islander women are more likely to suffer harm as a result of encounters with public officers within the health system, and that Aboriginal and Torres Strait Islander men are more likely to be over-represented as experiencing harm at the point of intersection between the health and criminal justice systems. This over-representation of Aboriginal and Torres Strait Islander women and men in the health and health/criminal systems, and the ways in which race and gender function in these systems, needs further interrogation and should include a more considered statistical analysis of available data as well as an examination of the narrative accounts that centre on the voices and experiences of Aboriginal and Torres Strait Islander men, women and children.

Conclusion

There appears to be an inevitability to the demographic findings of Aboriginal and Torres Strait Islander over-representation that will not be ameliorated without some element of structural change. It is our view that the legacy of colonial violence, the policing of Aboriginal and Torres Strait Islander peoples, and the accretion of racist stereotypes that inform the racialised delivery of justice and health care contrive to dim the prospects for lessening the over-representation of Aboriginal and Torres Strait Islander peoples on charges of assault against public officers. This situation, however, does not constitute a macro environment in which these factors are

uncontrollable. A number of quantitative and qualitative initiatives may be undertaken to better understand the nature of the local encounter between Aboriginal and Torres Strait Islander peoples and public officers. These include:

- Further interrogating the statistical account illustrating the over-representation of Aboriginal and Torres Strait Islander peoples on charges of assault against public officers and examining the intersection of other factors such as associated charges, location of offence, types of public officers in addition to the 'perpetrator factors' as identified by Christine Bond et al (2020);
- Commissioning further research that examine narrative accounts from Aboriginal and Torres Strait Islander peoples who have had encounters with public officers. These will furnish a greater understanding of the nature and outcome of contact between community and public officers that juridical accounts leave little room for;
- Examining more specifically Aboriginal and Torres Strait Islander women's experiences of encountering public officers. Presently little is known about the intersectional nature of this statistical over-representation, so a more gender focused analysis is clearly called for;
- Investigating the role of training in de-escalating or exacerbating fractious encounters with Aboriginal and Torres Strait Islander peoples;
- Reviewing the effectiveness of various campaigns and measures designed to prevent the assault of public officers;
- Examining remedial responses sought by Aboriginal and Torres Strait Islander peoples who have been victims of serious assaults by public officers, such as formal complaint processes, legal and therapeutic measures.

These suggested ways forward present a minimum requirement for making progress in ameliorating an over-representation that looks set to continue otherwise. Comprehending the phenomena of over-representation through racialising optics of Indigenous disadvantage and deviance will result in a self-fulfilling prophecy from which neither Aboriginal and Torres Strait Islander peoples or public officers can escape. A more nuanced understanding is called for, one that recognises the nature of the adversarial relationship and does not automatically impute responsibility for conflict to Aboriginal and Torres Strait Islander peoples. In short, a new animating spirit is required; one that acknowledges that Aboriginal and Torres Strait Islander

peoples are as much entitled to a safe environment in which to conduct their lives as are public officers in the discharge of their professional duties.

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