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1. TITLE OF RESEARCH PROPOSAL

Welcoming the Unwelcome: Reclaiming space as the Indigenous ‘Other’. A Rainbow Homecoming

2. INTRODUCTION/AIMS & OBJECTIVES

“Queer Indigenous peoples...[dream] for moments of emancipation from colonial rule. We look into a horizon of death to make a life for ourselves, despite the overwhelming hopelessness that can be part of our lived experiences. Colonialism, poverty, homophobia, displacement, suicide, and rejection by our families and communities are parts of our lives...These are the material and political conditions that [we] experience under colonisation...[Often] coming out means making a choice between being Indigenous—and remaining a part of our communities without discussing or disclosing our queer identities—and being queer—without a community of other Indigenous people and exoticised by non-Indigenous queer people”.¹

This is the reality of navigating life in the world as an *Indigenous* person expressing a *diverse gender and/or sexual identity*, and it is one shared by many Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples. Many of whom suffer in silence and who, due to the political, cultural and social climates of their communities, learned early on that silence coupled with invisibility equates to safety. This abandonment of the ‘self’ is none other than self-preservation which stems from the knowledge that LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy identification often leads to ‘Othering’, ridicule and dehumanisation within our communities, including the wider dominant society and legal system.

The term ‘Other’ is used in the context of this study to describe the social, political and cultural position of Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples within their communities in the Cape York Peninsula (Cape York) and Far North Queensland (FNQ) as well as the wider Australian population and legal system (international and domestic). The current political, social and cultural climate of many Indigenous communities in Australia and abroad provide an environment that ‘Others’ Indigenous LGBTQI+ 2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples by treating this minority as inherently different from the rest of the community. This ‘Othering’ manifests as rejection of and/or hostility toward the unfamiliar or unknown which has the effect of organising the community by ‘us/them’ – that is, those who identify as Indigenous heterosexual cisgender individuals and those who identify outside of this (i.e. Indigenous LGBTQI+ 2Spirit, IndigiQueer, Sistergirl and Brotherboy individuals).

This research draws on the specific lived experiences of Cape York Indigenous Australian peoples—who are either from, or living in, a community in Cape York—with non-heteronormative and/or non-binary gender and/or sexual identities, to critically analyse the contextual themes as they relate to the law, race, Indigeneity, community, gender and sexual identity. In practice this translates to:

- Identifying and interrogating prejudiced views that currently oppress and marginalise Indigenous gender and sexuality diverse peoples within and outside their communities;

¹ The Revolution is for everyone, *Imagining an Emancipatory Future through Queer Indigenous Critical Theories*, Qwo-Li Driskill, Chris Finley, Brian Joseph Gilley, Scott Lauria Morgensen, 212-213.

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- *Decolonising* and *Indigenising* existing labels and categorisations used to define and organise gender and sexuality diversity by creating space for the emergence of geographically, culturally specific linguistic terms that possess strong cultural context and which are considered more connected to the lived experience of gender and sexuality diverse Cape York peoples;
- Cultivating space on the international stage for the development, elevation and promotion of human rights relating to Indigenous gender and sexuality diversity. This includes reimagining international human rights instruments like UNDRIP to also protect diverse gender and sexual identities, given that the exploitation, dispossession and control of Indigenous lands is inextricably connected to the exploitation, dispossession and control of Indigenous bodies—with the bodies of Indigenous women, girls and LGBTQI+ peoples being at highest risk of this violence.
- Reinforcing that self-determination and sovereignty over Indigenous bodies, genders and sexualities is equal in importance to self-determination and sovereignty over Indigenous lands;
- Supporting inclusive attitudes that build acceptance and reinforce the position of gender and sexuality diverse Indigenous individuals within their communities; and
- Identifying and addressing the multiple forms of compounded oppression faced by Indigenous gender and sexuality diverse peoples within the international human rights legal system and domestic legal systems in areas concerning domestic and family violence, the criminal and correctional justice system, and discrimination and equal opportunity, particularly in relation to employment and housing.

3. BACKGROUND & FORMULATION OF PROBLEM

Indigenous people with diverse gender and sexual identities occupy a unique position within contemporary Indigenous and non-Indigenous societies—as targets of racism, homophobia, cissexism, transphobia, sexism, heterosexism and misogyny.² Consequently, Indigenous LGBTQI+ 2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples face multi-dimensional discrimination associated with their Indigeneity, gender and sexuality which interlock with culture and colonialism to further compound vulnerabilities they face in daily life.³ Together these intersectional elements lead to invisibility which can have adverse emotional, cultural, spiritual and physical effects.⁴ While visibility has the potential to lead to enfranchisement, reward and opportunity, it can also result in disenfranchisement, marginalisation, violence and even death, depending on the social and political climate of the Indigenous community and dominant society at the time.⁵ The literature illustrates that in Australia and other colonised

² See Damien W Riggs and Kate Toone, 'Indigenous Sistergirls' Experiences of Family and Community' (2016) 10 *Australian Social Work* 1, 9; See also, Kate Toone, 'Sistergirls and the Impact of Community and Family on Wellbeing' (Honours Thesis, Flinders University, 2015) 5, 5; See also, Kooncha Brown, "'Sistergirls'—Stories from Indigenous Australian Transgender People' (2004) 28(6) *Aboriginal and Islander Health Worker Journal* 25; See eg, Kristen Gilchrist, "'Newsworthy" Victims?' (2010) 10(4) *Feminist Media Studies* 373.

³ See United Nations Permanent Forum on Indigenous Issues, *Final Report of the Expert Group Meeting on Combating Violence against Indigenous Women and Girls: Article 22 of the United Nations Declaration on the Rights of Indigenous Peoples*, UN Doc E/C.19/2012/6 (28 February 2012); See also, Gilchrist, above n 1, 374.

⁴ See Brown, above n 1, 25; See also, Stephen Craig Kerry, 'Sistergirls/Brotherboys: The Status of Indigenous Transgender Australians' (2015) 15(3-4) *International Journal of Transgenderism* 173, 182.

⁵ indyamoore, 'Trans visibility' (Instagram, 1 April 2019, 11:31pm) <<https://www.instagram.com/p/Bvr7OMfns5N/?hl=en>>.

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countries,⁶ colonisation displaced and disrupted acceptance of gender and sexual diversity within Indigenous communities through patriarchy and the introduction of religious institutions and medical science.⁷ The study revealed that in 2022, colonisation continues to contribute to the cultural displacement and disruption of non-heteronormative and non-binary gender and sexual identities within Indigenous communities in Cape York/FNQ.⁸ In contemporary Australia—particularly in a Cape York/FNQ context—this commonly manifests as rejection and exclusion of Indigenous gender and sexuality diverse peoples from their community.⁹ As a consequence Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples are disempowered and thus precluded from proclaiming sovereignty over their bodies, sexualities and genders.¹⁰ Such discrimination is referred to as ‘internal’ discrimination and often takes the form of transphobia, homophobia, heterosexism and cultural alienation.¹¹

Cultural alienation refers to exclusion from the community and traditional ceremonies, practices and activities.¹² For example, finding a place within the community is difficult for Indigenous gender and sexuality diverse peoples as many Indigenous traditions define the context in which gender, sex and sexuality are discussed—that is ‘men’s’ business’ and ‘women’s business’.¹³ This places Indigenous gender and sexuality diverse peoples in a precarious position and often results in exclusion, thus obstructing their ability to participate in cultural and community activities.¹⁴ Unfortunately, external discrimination within the wider Australian community including the mainstream LGBTQI+ community further compounds these experiences, taking the form of racism, transphobia, homophobia, cissexism, heterosexism and misogyny which are shaped by ongoing histories of colonisation.¹⁵ Both internal and external discrimination draw attention to the complex matrices of discrimination and difference that intersect cultural traditions, personal and social identity, and colonisation.¹⁶ Consequently, Indigenous gender and sexuality diverse peoples face multiple forms of discrimination associated with their Indigeneity, race, gender, sexuality and culture from both contemporary Indigenous and non-Indigenous societies.¹⁷

Therefore, identifying and challenging multi-dimensional discrimination aligns with the research aims. The study intends to achieve this by way of dismantling these oppressive views to create space to support and encourage the introduction, or reintroduction of inclusive attitudes that reinforce the position of Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy individuals within their communities, and the dominant society more broadly.¹⁸

⁶ See Wilson, above n 5, 1.

⁷ See especially Brown, above n 1, 25; See eg, Wilson, above n 5, 2-3; See also, Woodward, above n 5, 63, 65; See also, Riggs and Toone, above n 1, 2.

⁸ See especially Wilson, above n 5, 2-3; See also, Toone, above n 1, 2, 9.

⁹ See Kerry, above n 3, 181-183; See also, Riggs and Toone, above n 1 3, 9.

¹⁰ See Kerry, above n 3, 181-183; See also, Riggs and Toone, above n 1 3, 9.

¹¹ See Kerry, above n 3, 181-182.

¹² Ibid 181-183.

¹³ Ibid 182-184.

¹⁴ Ibid 182.

¹⁵ See Riggs and Toone, above n 1, 9.

¹⁶ See Kerry, above n 3, 173.

¹⁷ See United Nations Permanent Forum on Indigenous Issues, above n 2, 1-4.

¹⁸ See W Will Owen, ‘Bindi Cole and the Sistagirls’ on Will Owen, *Aboriginal Art & Culture: An American Eye* (Webpage, 6 February 2011) <<https://aboriginalartandculture.wordpress.com/2011/02/06/bindi-cole-and-the-sistagirls/>>; See also, Miranda Garno Nesler, *Gender and Otherness in “The Tempest”* (Webpage, 10 December 2012) *Performing Humanity* <<https://performinghumanity.wordpress.com/2012/12/10/gender-and-otherness-in-the-tempest/>>.

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Part of this will involve decolonising existing labels used to define gender and sexual diversity by creating space for the emergence of geographically and culturally specific language/terms. The study unveiled that many Indigenous communities within Cape York/FNQ resist existing labels used to define gender and sexual diversity due to a belief that such terms are ‘white’ and were imported via colonisation and thus, lack cultural and linguistic context which results in a disconnection from the lived experience of gender and sexuality diverse Cape York/FNQ peoples. While terms such as ‘2Spirit/Two-Spirit’, ‘IndigiQueer’, ‘Sistergirl’ and ‘Bortherboy’ are currently considered examples of this decolonial work—due to emerging directly from Indigenous gender and sexuality diverse communities—the study created space for additional terms to arise that possess stronger cultural and linguistic contexts, and which are considered more connected to the lived experience of gender and sexuality diverse Cape York/FNQ peoples. In doing so, the study attempted to reinforce that self-determination and sovereignty over Indigenous bodies, genders and sexualities is equal in importance to self-determination and sovereignty over Indigenous lands. This approach taken will likely have positive broader implications that may lead to generating better outcomes for Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy people within their communities, where explicit support, understanding and advocacy are currently absent.¹⁹ Indeed, with stronger community support “better outcomes” for Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples may in practice translate to improving access to, and experiences with, the legal system including creating support services that treat Indigeneity, gender and sexuality as synchronous rather than as mutually exclusive separate elements.²⁰

4. RESEARCH QUESTIONS

Through empirical qualitative research, this study seeks to explore, and answer, the following questions:

- 1) To what extent has the social construction of gender and sexuality marginalised and ‘Othered’ Indigenous peoples expressing non-heteronormative and non-binary gender and sexual identities?
- 2) How has such ‘Othering’ manifested within Indigenous communities in the Cape York Peninsula and the Australian legal system?
- 3) What areas of the law are having an adverse impact on the lived experiences of Indigenous LGBTQI+ 2Spirit, IndigiQueer, Sistergirl and Brotherboy peoples?; and
- 4) What consequences, if any, result from being ‘visible’—as both an *Indigenous* and *LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy* person—in the eyes of the law?

5. SIGNIFICANCE OF RESEARCH

Research evidence supports the pre/post-colonial existence of Indigenous conceptualisations of diverse gender and sexual identities, which also suggests that colonisation disrupted

¹⁹ Sandy O’Sullivan, *Protests and Parades: Being Queer and Indigenous* (Webpage, 23 February 2018) NITV/SBS <<https://www.sbs.com.au/nitv/article/2017/02/27/protests-and-parades-40-years-queer-indigenous1>>.

²⁰ Australian Human Rights Commission, *Brotherboys, sistergirls and LGBT Aboriginal and Torres Strait Islander peoples* (Webpage, 3 July 2018) Australian Human Rights Commission <<https://www.humanrights.gov.au/our-work/lgbti/brotherboys-sistergirls-and-lgbt-aboriginal-and-torres-strait-islander-peoples>>.

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acceptance of gender and sexual diversity within Indigenous communities across Australia and the world.²¹ The literature highlights the profound and ongoing emotional, cultural, spiritual and physical effects that the impacts of colonisation and discrimination has had, and continues to have, on Indigenous peoples expressing diverse gender and sexual identities.²² To date research into how this has manifested within Cape York Indigenous communities including the Australian legal system and international human rights legal system more broadly is non-existent. Further, no literature exists on how the law, and what areas of the Australian and international legal system, adversely impact the lives of Indigenous gender and sexuality diverse peoples. This gap in the literature extends to identifying what, if any, consequences are associated with sharpening the visibility of this minority within the domestic and international legal systems. Drawing from Cape York Indigenous gender and sexuality diverse lived experiences this research differs in that it moves beyond examining the extent to which the social construction of gender and sexuality has marginalised and ‘Othered’ this Indigenous minority by critically analysing how the law—and what particular areas—adversely impact their lives. The analysis will likely identify clearly and powerfully, areas of the law that have the most significant impact. As part of this process, the potential consequences that are associated with sharpening the visibility of this Indigenous minority within the Australian legal system and international human rights legal system more broadly, will also be explored.

This research is significant because of its potential to challenge prejudiced views connected to the legacy of entrenched postcolonial heteronormative constructs currently operating within Indigenous communities, domestic and international legal systems. In elevating the lived experiences of Indigenous gender and sexuality diverse peoples with respect to the law and their community, this research will contribute to building rights protections through creating and promoting awareness of diverse Indigenous gender and sexual identities on the international stage. Such is key, and the first step towards generating an improvement in the social, legal, political and cultural outcomes of Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy individuals across the world. This is because with global community support, the legal rights and protections including law reform and policy development are likely to increase and strengthen over time, which will have positive broader implications for the well-being of Indigenous LGBTQI+2Spirit, IndigiQueer, Sistergirl and Brotherboy individuals and their communities more broadly.

²¹ See especially Brown, above n 1, 25; See eg, Wilson, above n 5, 2-3; See also, Woodward, above n 5, 63, 65; See also, Riggs and Toone, above n 1, 2.

²² See Kerry, above n 3, 181-183; See also, Riggs and Toone, above n 1, 9.