

Jumbunna Institute for Indigenous
Education and Research

Submission to Mr. Morris
Tidball-Binz, UN Special
Rapporteur on extra-judicial
summary or arbitrary
executions



6 March 2023

Mr. Morris Tidball-Binz

UN Special Rapporteur on extra-judicial summary or arbitrary executions

By Email: hrc-sr-eje@un.org

Call for Input: Deaths in Custody

Dear Special Rapporteur,

Thank you for the opportunity to provide information on practices for the investigation, documentation and prevention of deaths in custody in the criminal legal context which we understand is to inform a report by you to be presented to the Human Rights Council in June 2023.

Our submission is informed by the many decades our staff have collaborated with Indigenous families in Australia seeking justice for their loved ones killed in state custody.

Tragically, our experience is that Australian governments remain resistant to making the changes that Indigenous communities have, time and again, identified as essential to address Australia's shameful record on Indigenous deaths in custody.

Indigenous people comprise three percent of the Australian population, however, they "made up 32 percent of the average daily Australian prisoner population in the June quarter of 2022".

Underneath this statistic are Indigenous people, families and communities profoundly affected by their contact with the criminal legal system. They are at the heart of our concern around the high rates of incarceration of First Nations and the continuing number of First Nations deaths in custody.

Deaths in custody

Some 32 years after the Royal Commission into Aboriginal Deaths in Custody on this continent, we have seen a chilling escalation in the number of Indigenous people who are being killed in police custody, in prisons and in the disability and mental health care system. We anticipate that you will receive submissions on this from human rights organisations within Australia. We don't seek to replicate them here. We trust that submissions from other Indigenous-controlled organisations will be especially informative.

Consistently over the years state and federal governments in Australia have commissioned reports and inquiries on the causes of Indigenous deaths in custody. The path to address these killings is clear. It is known. The 1991 Royal Commission into Aboriginal Deaths in Custody (RCIADIC) made 339 recommendations that have never been properly implemented and remain apposite today. Their implementation would prevent many of these state killings. Communities are calling for further restraints on state power that could also save lives, including the permanent prohibition of spit hoods and restraint devices covering the head.

What is lacking is action.

We include the following public submissions that Jumbunna has made in relation to Indigenous Deaths in Custody:

- Jumbunna’s submission to the Select Committee *Inquiry on the high level of First Nations people in custody and oversight and review of deaths in custody (Submission No 115)*. We note the resultant parliamentary report ([which we also link here](#)) confirmed that not only were the 339 recommendations of RCIADIC not implemented, ‘governments have even given up monitoring their implementation’.¹ That report made a number of recommendations which remain unimplemented by the NSW Government.
- Jumbunna’s submission to the *Select Committee Inquiry into the coronial jurisdiction in New South Wales (Submission No 31)*. Again, the report by the Select Committee made a number of recommendations for reform of the Coronial system,² and again those recommendations remain unimplemented.

The banning of spit hoods

Driven by surviving First Nations families, there are escalating calls in Australia to ban spit hoods — including through the establishment of the Ban Spit Hoods Coalition (banspithoods.com). A spit hood is a mechanical restraint device which has been implicated in numerous deaths in custody in the last five years, including the deaths of First Nations man Wayne Fella Morrison and a 44-year-old mother in Townsville Women’s Correctional Centre.

The use of spit hoods is obscured by poor or opaque data collection and unclear legal enabling frameworks. Their application is usually coupled with physical force as it is put over a person’s head in order to purportedly prevent them spitting at others. If a spit hood is occluded with spit, vomit or sweat from a restrained person, or in conjunction with prone restraint, it can pose a risk to breath.

Spit hoods were banned in South Australia with Fella’s Bill, following the tireless work of Wayne Fella Morrison’s family. However, no other state or territory in Australia has yet committed to a statutory ban.

We respectfully ask the Special Rapporteur to recommend a national prohibition of spit hoods in law in all places of imprisonment and detention across Australia.

We would welcome the chance to provide further information.

¹ Select Committee on the high level of First Nations people in custody and oversight and review of deaths in custody, Parliament of New South Wales, *Inquiry into The high level of First Nations people in custody and oversight and review of deaths in custody* (2021), ix.

² Select Committee on the coronial jurisdiction in New South Wales, *Inquiry into the Coronial Jurisdiction in New South Wales* (2022). Available here:

<https://www.parliament.nsw.gov.au/lcdocs/inquiries/2809/Report%20No.%201%20-%20Select%20Committee%20on%20the%20coronial%20jurisdiction%20in%20New%20South%20Wales.pdf>

Should you have any follow-up queries, please contact us at Indigenous.Research@uts.edu.au.

Yours sincerely,



Dist. Prof. Larissa Behrendt



Prof. Craig Longman



Alison Whittaker
Snr Researcher



Latoya Rule (per Prof. Craig Longman)
Research Associate