

# Law enforcement

## NGO Coalition Fact Sheet 6 (LOIPR 22)

There are serious human rights problems with law enforcement in Australia

### Excessive police powers (page 26)

Police have excessively broad discretionary powers to lock people up.

In the NT, “paperless arrest laws” allow police to detain people for four hours without charge for trivial offences. In 2016, 70% of people detained under these laws were Indigenous people (see page 27 for case study).

Similarly, between 2008-09 and 2015-16, 92% of people locked up under NT protective custody laws relating to public drunkenness were Indigenous.

And in WA, fine default laws allow police to lock people up who can't afford to pay their fines. In 2014, Ms Dhu was locked up under these laws after she called the police about a family violence incident. She died in custody less than 3 days later (see page 30 for Ms Dhu's case study).

More than 3 years later and this practice of locking up people, predominantly Indigenous women who can't afford to pay their fines, continues.

In September, an Indigenous woman who called police about a family violence incident, was ordered to spend 2 weeks in jail for unpaid fines. Only after an anonymous donor paid her fines (from a civil dispute over an unregistered dog 5 years ago), was she able to return home to her five children.<sup>[i]</sup>

#### Australia should:

- ensure that the Northern Territory Government repeal the paperless arrest provisions of the *Police Administration Act (NT)*.
- ensure that state and territory governments limit protective custody powers to situations where the person is likely to cause significant harm to themselves or others, damage to property, or is incapable of protecting themselves from physical harm; and require police to exhaust all reasonable alternatives to detention.

#### SOURCE:

[i] Calla Wahlquist, "Indigenous woman to be released from WA jail after donor pays \$3,000 fine" *The Guardian* (29 September 2017) <https://www.theguardian.com/australia-news/2017/sep/29/indigenous-woman-to-be-released-from-wa-jail-after-donor-pays-3000-fine>.

### Over-policed and under-policed

(pages 28)

Indigenous people are over-policed as offenders, and under-policed as victims of violence.

The Chief Justice of WA recently stated that “Aboriginal people are much more likely to be questioned by police than non-Aboriginal people. When questioned they are more likely to be arrested...at every single step in the criminal justice process, Aboriginal people fare worse than non-Aboriginal people”.

In 2014, two police officers tasered an Aboriginal man in custody 13 times after he refused to be strip searched. Only in May this year, an Aboriginal man who required urgent medical assistance was tasered by police, and died soon after.

And for Indigenous women, at the same time that they over-policed as offenders, they are also under-policed as victims. Police minimise Indigenous women's experience of violence, instead viewing their experiences as atypical and difficult (see page 29 for Ms Mullaley's case study).

#### Australia should:

- ensure that a substantial component of police training involves cultural awareness to promote better understanding and relations between police and Aboriginal and Torres Strait Islander people, which is delivered by Aboriginal and Torres Strait Islander people, and incorporates information on the history of Aboriginal-police relations and the role of police as enforcers of previous policies of expropriation, protection and assimilation.
- commit to increased funding and support for Aboriginal and Torres Strait Islander community-led prevention and early intervention efforts to reduce violence against women and offending by women.
- ensure police protocols, guidelines and training prioritise the protection of, and provision of support to, Aboriginal and Torres Strait Islander women and children subjected to violence, and emphasise gender-specific and culturally-appropriate police responses.

## Deaths in custody (page 29)

Reports indicate that between 1980 to mid-2013, 209 Indigenous people died in police custody or custody-related operations.

The 1991 Royal Commission into Aboriginal Deaths in Custody made it clear that to reduce Aboriginal deaths in custody, governments need to reduce the rates at which Aboriginal people are taken into custody.

However, as is clear from the previous page, Aboriginal people are still being taken into custody for minor offences such as public drinking and for not being able to pay their fines.

### Australia should:

- **implement the remaining recommendations of the Royal Commission into Aboriginal Deaths in Custody aimed at reducing the over-incarceration of Aboriginal and Torres Strait Islander people by police, including legislation that places a statutory duty upon police to consider and use alternatives to arrest, charging and police custody.**
- **ensure that state and territory governments introduce laws for fully-funded compulsory custody notification services, which require police to notify the relevant Aboriginal legal service every time an Aboriginal or Torres Strait Islander person is taken into custody.**

## Death penalty abroad

(page 33)

Between 2009 and 2014, the AFP reported more than 370 people a year to authorities in death penalty jurisdictions. More than 95% of those were for drug cases.

And in 2014, two Australians were executed in Indonesia after the AFP shared information with Indonesian police that led to their arrest (see page 33 for the case study).

Yet there is nothing in Australian law nor the AFP's guidelines to prevent police from sharing information, prior to arrest, that might lead to the death penalty.

## Policing of ethnic minorities

(page 31)

In 2015 it was reported that African-Australian and Pacific Islander communities in Victoria are deeply affected by racial policing. Not only do they feel vulnerable to police harassments and assaults, but they don't lodge complaints for fear of police retribution.

And an analysis of Victoria police's databases in 2013, found that African Australian men were two and half times more likely to be stopped and searched by police.

This analysis was part of a landmark case brought by a group of African-Australian men against several Victorian police officers, the Chief Commissioner and the State of Victoria. They claimed racial discrimination, on the basis that they were regularly stopped, assaulted and searched for no legitimate reason.

### Australia should:

- **ensure that state and territory governments mandate human rights and anti-racism training for police officers at all levels.**
- **ensure that state and territory governments implement data-collection schemes to monitor and publicly report on incidences of racial profiling by police.**

## No independent investigations

(page 31)

Police misconduct is not independently investigated. Police continue to investigate other police, including where deaths occur in police custody (see page 32 for a case study).

Queensland has implemented a model which more directly involves the State Coroner into deaths with police contact. However this is far from being fully impartial investigations by a body independent from the police.

NSW has recently introduced an independent body for police oversight, the Law Enforcement Conduct Commission. However it has limited investigative powers and critical incidents (including shootings) are still investigated by NSW police.

**Australia should establish an independent body for investigating complaints against police and deaths in police custody that is hierarchically, institutionally and practically independent of the police. The independent body must have features to ensure that investigations are effective, comprehensive, prompt, and transparent, subject to public scrutiny and, in the case of deaths in custody, involve the family of the deceased.**