

A REFLECTION ON THE ROYAL COMMISSION INTO ABORIGINAL DEATHS IN CUSTODY AND ITS CONSIDERATION OF ABORIGINAL WOMEN'S ISSUES

Megan Davis*

Following the Royal Commission into Aboriginal Deaths in Custody ('RCIADIC') criticism emerged that it failed to adequately consider Aboriginal women in its inquiry into Aboriginal deaths in custody. On the anniversary of the RCIADIC, this article reflects on that criticism. First, this article will provide a brief overview of the RCIADIC and the feminist critique of its failure to adequately incorporate Aboriginal women's issues in its work. Then, this article will describe in more detail the research of Marchetti into the RCIADIC and gender. Next, this article will analyse the RCIADIC'S reliance on the right to self-determination as a guiding principle through a gender lens. Finally, this article will problematise a stock standard narrative reflected in the RCIADIC report that, women fared better during colonisation. The valid critique made about RCIADIC and its failure to adopt an intersectional approach is a challenge shared today by the state and the Aboriginal and Torres Strait Islander political community: the tendency to essentialise the 'Aboriginal person' skews if not hampers responses to the serious challenges facing the Aboriginal and Torres Strait Islander community. If it is true that RCIADIC failed to adequately incorporate an intersectional approach taking into account the very different experiences of Aboriginal women and Aboriginal men, the question still remains today, how can the state ever adequately gauge what Aboriginal women experience and what Aboriginal women think, when the identity is so politically and legally framed as a collective?

I The Royal Commission into Aboriginal Deaths in Custody

The RCIADIC was established in October 1987 following national outrage over the number of Aboriginal deaths in custody.¹ The RCIADIC investigated 99 deaths that had occurred between 1 January 1980 and 31 May 1989, in prisons,

police stations or juvenile detention institutions.² According to the RCIADIC, it was a

revealing commentary on the life experience of Aboriginal people in 1987 and of their history that it would have been assumed by so many Aboriginal people that many, if not most, of the deaths would have been murder committed if not on behalf of the State at least by officers of the State.³

One significant finding of the RCIADIC was that the deaths in custody investigated were not the product of deliberate violence or brutality of police or prison officers.⁴ Another was that Aboriginal people did not die in custody at a greater rate than non-Aboriginal people; rather they were simply in custody at much higher rates.⁵ The RCIADIC did, however, find that there was a lack of regard for the duty of care that is owed to persons in custody by police officers and prison officers.⁶ At the time of the *National Report*, the degree of Aboriginal over-representation in custody was 29 times greater than the rate for non-Indigenous people – the 99 who died in custody were victims of that.⁷ The report examined the implications of over-representation including the role played by the history of colonisation in that statistic.

Of the 99 deaths investigated, only 11 were of women. After the report was handed down, questions were raised about the failure of the RCIADIC to investigate Aboriginal women's deaths in custody and their interactions with the criminal justice system.⁸ These voices challenged the RCIADIC's position that, at the time of the Royal Commission, Indigenous women were in a better position than Indigenous men.⁹ Indeed the *National Report* described colonisation as having a lesser impact on Aboriginal women than on Aboriginal men, arguing that women were shielded from the ravages of colonisation because of their role as mothers:

For women ... although not even motherhood is an absolute or unquestioned position, the bearing or raising of children does provide a stable basis from which entry into adulthood and the negotiation of status may be undertaken. Moreover, the division of labour defined in relation to the domestic and public spheres is also related to gender roles. Precisely because of this, the impact of colonisation has been different for men and for women. Despite the enormous changes effected, women's roles in the domestic sphere and their tasks – nurturing, providing food, 'worrying for the 'lations' – have not substantially altered. The public sphere, and hence the context of men's role and status, is precisely the area that has been most under attack in the transformation to a new order. The group most sociably vulnerable in these processes are young men.¹⁰

Similarly it was observed that

Aboriginal women have been instrumental in withstanding the enforced cultural indoctrination, ironically, through their role as culture bearers While forced cultural change has had substantial impact on the traditional role of Aboriginal men, Aboriginal women even though they have been exposed to the same cultural forces have basically retained the role of gatherer and child carer.¹¹

In addition, the report also canvassed the idea that the competition for affection between non-Indigenous men and Indigenous men for Aboriginal women was a possible contributing factor to men committing suicide.¹²

II Marchetti's Gender Analysis of RCIADIC

Elena Marchetti investigated the role of gender in the RCIADIC's work in a doctoral thesis, which is to date the only comprehensive gender analysis of the Royal Commission.¹³ In her thesis, Marchetti examined the official RCIADIC reports, comparing them to texts prepared by the Aboriginal issues units ('AIUs'), semi-independent research units that organised meetings and conducted interviews with Aboriginal people and their organisations. These units had to report to each regional commissioner of the RCIADIC, constituting the 'Indigenous voice' in the investigation. The AIU texts were to inform RCIADIC's regional and national reports.

Marchetti found that the AIU texts raised extensive issues regarding the problems of Aboriginal women. These included

the prevalence of family violence and alcohol abuse; the violent treatment of Indigenous women by police; the need for victims of violence to be provided with access to legal representation; the need to recognise women's customary law; the problems with accessing appropriate hospital care when giving birth; lack of support from partners; and the need for women to be employed in the criminal justice system.¹⁴ Yet, as Marchetti noted, the final, official RCIADIC texts did not reflect these issues:

[a]side from the topics of housing, offending patterns of Indigenous women, visiting family members in prison, and informing families of a death in custody and of post-death investigations, other problems which concerned Indigenous women were not reported in the official RCIADIC reports to the same extent as in the AIU texts. This was particularly apparent in relation to the topics of family violence, police treatment of Indigenous women, the importance of employing Indigenous women in various service roles, and birthing facilities. Notably, the official RCIADIC reports lacked a gender specific analysis of the problems that had the most harmful impact on Indigenous women: family violence and police treatment of Indigenous women.¹⁵

Marchetti concluded that because the majority of the deaths investigated were men it 'supported the assumption [now embedded in the criminal justice sector] that young Indigenous males were more disadvantaged than Indigenous females'.¹⁶ In her interviews with people who worked on the RCIADIC, Marchetti found that there was no gender analysis applied, because the focus of the inquiry was 'race'.¹⁷ There was no explicit or conscious agreement to ignore Indigenous women; 'instead the oversight had occurred unconsciously'.¹⁸ Even so, Marchetti also found that almost half of the people interviewed understood that the focus of the inquiry was Indigenous males. On this the *National Report* was explicit:

Aboriginal juveniles particularly males require very particular consideration in this Report ... Whilst the increasing involvement of Aboriginal females in the juvenile and adult justice system and the deaths of some of them is a matter of great concern, overwhelmingly the typical portrait of the Aboriginal deaths in custody was that of young males.¹⁹

According to Marchetti, 'the problems facing Indigenous people were therefore assumed to primarily relate to males'.²⁰

Even though empirically the research on which RCIADIC was based found that young Indigenous men did suffer many disadvantages and were 'greatly marginalised', important statistics emerged at the time that the number of deaths of Indigenous women by alcohol-related murders was more than the deaths in custody for the period of RCIADIC. Marchetti found that, in New South Wales between 1968 and 1981, 43 per cent of homicides were within the family and almost 47 per cent of female victims of homicide were killed by their spouse, compared to 10 per cent of male victims.²¹ In Queensland the data that was collected from former missions and reserves during the period 1987–89 indicated the death rate of Indigenous women was four times that of all Australian women as compared with Indigenous men whose death rate was three times that of Australian men.²²

Marchetti concluded that, despite these alarming statistics about the deaths of Aboriginal women at the time – due mainly to interpersonal violence between Aboriginal men and Aboriginal women – the problems concerning Indigenous women were 'overshadowed by the problems facing Indigenous "people", which in reality equated to problems facing Indigenous men'.²³ Audrey Bolger made the same point in her 1991 report *Aboriginal Women and Violence*. Bolger noted that during 1987 and 1988 three Aboriginal men died in custody in the Northern Territory (and no Aboriginal women) yet in 1987 and 1988 of the 39 homicides recorded in the Northern Territory, 17 of them were Aboriginal women.

When the number of Aboriginal people dying in custody was brought to public attention it caused such consternation that the Royal Commission was set up, and rightly so. Yet the fact that Aboriginal women particularly suffer far greater violence in their own communities and are much more likely to be killed and injured in and around their own homes has caused no similar public outrage.²⁴

Even so Marchetti argues that the RCIADIC has been unfairly criticised for ignoring Aboriginal women per se, noting that, in fact, Aboriginal women are mentioned in numerous parts of the report and recommendations and were therefore not 'ignored'.²⁵ For Marchetti, critics unfairly base their conclusions *only* on the content of the *National Report* and the recommendations. She says that Indigenous people's own reflections on the RCIADIC are informed by conscious and unconscious race and gender bias. According to Marchetti, 'community rights and concerns about male deaths in custody weren't raised by Indigenous women because it was

culturally inappropriate for them to discuss individual rights and female deaths'.²⁶ And because RCIADIC was ignorant of these 'norms', they did not use a methodology that would have allowed female voices to surface.²⁷ Marchetti cites Aboriginal scholar Moreton-Robinson as evidence of the existence of this cultural norm: 'Indigenous women give priority to the collective rights of Indigenous peoples rather than the individual rights of citizenship'.²⁸ One of the RCIADIC commissioners interviewed by Marchetti noted that, while Aboriginal women were active participants in the Royal Commission's consultations, they rarely expressed concerns related specifically to women.²⁹ The non-Indigenous lawyers of RCIADIC said it was up to Indigenous women to raise their own issues and not for non-Indigenous people to force the issues.³⁰

For Marchetti, the rationale for her research was to explain why RCIADIC did not take an intersectional approach. She concluded that, among many things, the RCIADIC's Letters Patent were restrictive, Aboriginal women did not want an intersectional approach, and while women were excluded in a sense, 'ultimately [the exclusion] occurred unintentionally'.³¹ According to Marchetti, 'the commissioners conducted a predominantly legally directed investigation about "race" without realizing that by doing so, Indigenous males would be favoured'.³² On this point Marchetti concluded that the absence of an intersectional analysis occurred 'unintentionally', despite the fact that her entire analysis is about how Western legal processes and liberal legal ideology 'erase' the experiences of women.³³ Marchetti also added a personal note:

[i]t has not been easy to summarise how the RCIADIC considered or portrayed problems relating to Indigenous women. Researching and writing ... has made me more sympathetic to the task the RCIADIC was required to undertake. The information and material available for the RCIADIC to use was enormous, and deciding what material to use and how to interpret that material would not have been an easy or enviable task.³⁴

Yet was the substantial omission of Aboriginal women unintentional? The absence of due consideration of Aboriginal women in the publicly available text of a national report is arguably equivalent to the state ignoring them, even if they were mentioned in part. Since the RCIADIC, there has been an increase in the overall national Indigenous women's prison population by nearly 50 per cent.³⁵ Indigenous women

are reported to be the fastest growing prison population and incarceration rates for women have increased more rapidly than for men.³⁶ According to the Aboriginal and Torres Strait Islander Social Justice Commissioner, in Queensland in 2003, 45.3 per cent of Indigenous female inmates were sentenced for a violent crime, 28.3 per cent for property crime, 24.5 per cent for other crimes.³⁷ Many of the people interviewed by Marchetti said that, if the inquiry was held today, the focus might have been different given the dramatic increase in the rate of imprisonment of Indigenous females since the late 1980s. Is there a relationship between RCIADIC's failure to consider/profile Aboriginal women and the silent doubling of Aboriginal women's imprisonment since the RCIADIC? Aside from the Social Justice Commissioner's ongoing examination of the escalating crisis of the over-representation of Aboriginal women, there has been little public attention given to this.³⁸

III RCIADIC and the Right to Self-Determination

The RCIADIC put the right to self-determination at the forefront of its work, arguing that Aboriginal people must be consulted as a matter of urgency on law and policy decisions made about their lives: 'The thrust of this report is that elimination of disadvantage requires an end of domination and an empowerment of Aboriginal people; that control of their lives, of their communities must be returned to Aboriginal hands'.³⁹ But like all of the discourse surrounding self-determination this needed to be unpacked when reflecting on how RCIADIC dealt with Indigenous women.

Indigenous peoples around the world including Aboriginal and Torres Strait Islander peoples invoke the right to self-determination as the normative basis of their relationship with the state. This has been influenced by the development of international human rights law and Indigenous peoples' engagement with the United Nations. For most Indigenous peoples, the right to self-determination involves exercising control over their own communities and participating in decision-making processes and the design of policies and programs that affect their communities.⁴⁰ But how do we understand self-determination in the context of the unique needs and experiences of Aboriginal women, not only those shared with men and children? If we look to international law, it is silent on the position of Aboriginal women, as evidenced by international instruments such as the *United Nations Declaration on the Rights of Indigenous Peoples* ('UNDRIP'),⁴¹ and the *International Labour Organization*

Convention (No 169) Concerning Indigenous and Tribal Peoples in Independent Countries ('ILO 169'),⁴² which appear to assume that the experiences of Indigenous men and women within the state are equivalent; and where mentioned it pre-empt their discrimination and subjection to violence. Next, if we look to the so-called self-determination era which ostensibly began in 1972 and lasted to 2005 with the repeal of the *Aboriginal and Torres Strait Islander Commission Act 1989* (Cth) ('ATSIC Act'), it is an era dominated by political debates about Aboriginal sovereignty, Aboriginal land rights and political representation.⁴³ During this period the developing norm of self-determination became state-centric – focused on the state – and less attention was paid to how the right to self-determination should be managed internally within communities, especially in regard to Aboriginal women and gender equality. A picture emerges of a notion of self-determination where women are lost within the male narrative that drives Indigenous politics. It raises important questions then about the capacity of Aboriginal women to enjoy self-determination when the content of Indigenous rights is influenced by a narrative which is calibrated according to the dominant idea of what it means to be Indigenous, and this invariably is male: the male prisoner, the male spiritual custodian of culture, the male victim of colonisation, the male perpetrator as victim.

While Aboriginal women have long been the subject of anthropological study, until recently little attention has been given to the political, economic and social aspirations of Aboriginal women.⁴⁴ Still, RCIADIC was established one year after the publication of *Women's Business* – a report that remains the first and only document to have been commissioned by the Commonwealth Government providing a comprehensive study of Aboriginal women's issues based on consultation with Aboriginal women.⁴⁵ It was intended to be a unique contribution to the Commonwealth Government's knowledge of the needs and views of Aboriginal women. It is a moving and comprehensive report that reveals the detail of the daily struggle of Aboriginal women. The authors of the report were Aboriginal women, Phyllis Daylight and Mary Johnstone. The report was ground-breaking in many ways. It found that separating issues of health, housing, education, employment, legal aid, childcare, land rights and culture was impossible because they were interlinked.⁴⁶ It also found Aboriginal women viewed themselves as a 'forgotten group' who despaired for the future of their children and felt that they had no control over their lives.⁴⁷ And the report revealed for the first time

the profound amount of stress Aboriginal women were enduring within communities:

Women ensure that clothes, food and sleeping arrangements are provided for all the family members residing with them. Stress and tension are ever present because the struggle is accompanied by low incomes, little education or training, and unemployment. Drug and alcohol abuse, poor health and early deaths are all too often the result for those who cannot cope with the continual pressure which affects all members of the family.⁴⁸

The report confirmed that Aboriginal families revolve around Aboriginal women and 'depend upon them to counter outside influences and maintain the strength and togetherness of their families'.⁴⁹ Indeed it had been the case that, while men were acting out the trauma of colonisation through drinking and anti-social behaviour, Aboriginal women's role as the centre of families, of communities and of culture had become even more critical. In this way women were 'heavily relied upon for the continuation of Aboriginal values and practices within their family', placing an enormous burden on Aboriginal women who were also dealing with their own trauma.⁵⁰ As the report revealed, the issues Aboriginal women have had to traverse in looking after the wellbeing of their communities, families and selves are diverse. Yet the report was not cross-referenced once.

The state, and indeed Aboriginal organisations themselves, often make mistaken assumptions about the shared experiences of Indigenous men and women within the state. And because of this, the political, economic and social aspirations of Aboriginal women lack precision or definition or the nuance necessary to match the unique challenges they face as women. In the case of self-determination as practiced by and envisioned in the RCIADIC's own work, the 'self' was male. Whether 'unintentional' or not, the RCIADIC was, after all, simply following the state convention of the time and, arguably, Indigenous convention of the time, when it came to the character of self-determination.

IV Did Women Fare Better During Colonisation?

The RCIADIC report was a confirmation of an unquestioned and untested assumption that men have suffered more than women under colonial and post-colonial regimes. According to Marchetti the report reflected the narrative that in the post-colonial era Indigenous women were 'in a better position than

Indigenous males'.⁵¹ This view has become consolidated in the narrative of the indigenous political domain. Yet there is no evidence at all to suggest that either sex fared worse than the other as a result of colonisation. Historian Raymond Evans challenges the narrative that women have fared better under colonisation:

colonialism represented a process of severe loss rather than substantive gain for most Aboriginal women: that the traumas of capture, rape, prostitution, concubinage, venereal disease, institutionalisation and the production (and often forcible removal) of so-called 'half-caste' children substantially outweighed any putative benefits, in relation to promises of European reciprocation, payment for services rendered or better accommodation and survival conditions, provided closer to the rumbled beds of white men. Even without factoring in the many other difficult labour roles, largely in the domestic service arena, which these women were required to perform for little reward, or the generally denigratory way they continued to be regarded and treated in white society, it seems clear that their lot remained an extremely deprived and perilous one.⁵²

Of Aboriginal women today, he says that their stoical cultural survival in the face of all of these 'dehumanising' experiences, is all the more remarkable when the 'full quotient of their lengthy endurance under the rigours of colonialism is considered'.⁵³ Marcia Langton also problematises the dominance of the 'women fared better' narrative by arguing that it is used to 'preserve male dominance in ideology, in structures and relationships'.⁵⁴ Langton argues that ultimately 'anomie, poverty and the rigours of the struggle to survive, allow Aboriginal men to use force, arbitrarily, to inhibit and terrorise women, and to cast them as whipping posts for their frustrations'.⁵⁵

The impact of colonisation upon men cannot be compared with the impact of colonisation upon women. The assertion by men that women fared better because they were shielded from the impact of colonisation in their roles as mothers, carers and/or domestic servants is coloured by the fact that domestic work is not afforded the same value as men's work. Caring, nurturing and serving, conventionally female functions are presented as less important than the role of Aboriginal men. Where this devaluing occurs it can be viewed as an inevitable consequence of the influence of the dominant patriarchal society upon Indigenous communities.⁵⁶ Scutt has observed that:

in the dominant culture, white women are unlikely to be seen ... as 'landowners', 'business leaders', bearers of (worth-while and significant) traditions ... It is therefore hardly surprising if Aboriginal women's views and realities are less likely to be taken into account.⁵⁷

This narrative fails to appreciate the different experiences of men and women today. It is not useful to compare the experiences of Aboriginal men and women. By whose standards should such comparisons be judged? In the past some Aboriginal women have agreed that colonisation has impacted upon men more severely than women because they had 'controlled the society, had been the chief sacred and political figures' and therefore had 'further to fall'.⁵⁸ (Although this reveals an inconsistency with the idea that Aboriginal women were equal but separate – if this were the case then surely Aboriginal women would have just as far to fall as a result of colonisation.)

Another example of its contemporary use is a public apology issued by Aboriginal men following the intense media scrutiny of violence in Aboriginal communities as a result of the Northern Territory Emergency Response ('NTER') in 2007. Aboriginal men met in Alice Springs and issued a public apology to Aboriginal women and children for the violence men have perpetrated against them.⁵⁹ The apology included a reminder of the impact of colonisation on Aboriginal male behaviours and reinforced the standard narrative about how Aboriginal men have suffered greater than Aboriginal women:

When you add to this the rapid changes in the role of males within that colonising society and the consequent dislocation of Aboriginal males and their struggle to define new self-images, it is no wonder that Aboriginal males may struggle to make sense of the contemporary world. And if those critical views of us as Aboriginal males are expressed with no effort to understand our cultural values, or the pressures caused by the colonial relationships and contemporary social transformations, then we become alienated from this society. This alienation is at the core of the struggle for male health and wellbeing, as it acts to debase men, stripping away their dignity and the meaning in their lives.⁶⁰

A corollary to this narrative is the enduring notion that Aboriginal women are doing better today than Aboriginal men because of the mode of colonisation. As already discussed, in the RCIADIC it was suggested that, for

Aboriginal women, 'the bearing or raising of children does provide a stable basis from which entry into adulthood and the negotiation of status may be undertaken'.⁶¹ RCIADIC argued that Aboriginal women benefited because their historical and contemporary roles in the private sphere concerned provision of food, nurturing and looking after family, in contrast to men, whose roles and status were the most 'under attack in the transformation to a new order'.⁶² Indeed the high rates of young Indigenous pregnancy have been deemed as 'protective' of Aboriginal women in that pregnancy is said to provide 'economic resources of maternal benefits denied to males' as well as 'access to motherhood, an ego-ideal valued by the majority culture'.⁶³ Thus Paul Memmott et al, in *Violence in Indigenous Communities*, assert that, in contrast to men's declining status, the status of women in post-traditional communities is increasing.⁶⁴ In particular the authors refer to the ability of women to receive welfare:

In some cases, men's helplessness is perpetuated by their reliance on women for access into a cash economy. In the 1970s, Indigenous women as mothers and invalids were the first to receive welfare benefits and thus brought significant economic resources into their communities. For Indigenous men dispossessed of their own roles ... access to and reliance on women continues to be of significant importance.⁶⁵

Thus Aboriginal women have been shielded from the ravages of colonisation because of their role as mothers and nurturers. The introduction of social security meant that they had more independence whereas Aboriginal men were diminished because they had to rely on Aboriginal women for income support. This reliance on Aboriginal women is viewed in the literature as deleterious to Aboriginal men's self-esteem.⁶⁶ Of course, less attention is given to how this 'reliance on women' has transformed into a situation of intimidation, harassment and often violence against Aboriginal women, known as 'humbugging'.⁶⁷ Humbugging – which means putting pressure on relatives or friends for money in Aboriginal Australian patois – has been categorised by some senior Aboriginal women as another form of 'family' violence with its genesis in colonisation.⁶⁸ The problem of humbugging identified by the *Little Children Are Sacred* report was one of the reasons given by former Prime Minister John Howard for the welfare quarantining that was introduced with the NTER in 2007.⁶⁹ He gave the following example: a responsible carer for her grandchild faces intimidation and threats of violence from intoxicated young men if she does not go to an automatic teller and hand over money.⁷⁰ Although

generosity and sharing is recognised as being integral to Aboriginal culture, the proclivity toward humbugging in both urban and remote Aboriginal communities, for example as identified in the *Little Children Are Sacred* report, has been detrimental to Aboriginal women and is known to result in violence against Aboriginal women, especially Aboriginal grandmothers.⁷¹

V Conclusion

One of RCIADIC's legacies is to give prominence to the image of the Aboriginal prisoner as male when today the prison population is increasingly female. This puts stress on communities because of the responsibilities women have in maintaining not only their own families but also entire communities. If mothers are incarcerated, then it is grandmothers who are looking after the children. The RCIADIC has had far reaching influence in the criminal justice system and the Aboriginal political domain. Its failure to adequately consider the challenges of Aboriginal women has been well-rehearsed as has the fierce defence of the work of RCIADIC. The challenge for the Aboriginal community and Aboriginal women is to conceive of more effective ways to unhitch Aboriginal women's experiences and issues from the collective identity in a way that does not undermine self-determination as a collective right but also in a way that does not threaten men. It is true that many Aboriginal women's beliefs and lives are aligned with Aboriginal men. Still, it may be that adopting a more nuanced and textured approach to understanding Aboriginal disadvantage likely to elicit results than the status quo.

The criticism of RCIADIC's approach to gender and Marchetti's interviews with RCIADIC employees reminds me of what Amartya Sen has written about in regard to the tendency of groups to muzzle 'many-sided human beings into one dimension' through the 'ascription of singular identities'.⁷² The problem with the reductionist approach is that it disregards the importance of autonomy. It may be that, in prescribing a universal project in which Indigenous women's aims and objectives are aligned automatically with men's, as that which occurred during the RCIADIC, a 'neglect of autonomy' is socialised.⁷³ As Sen argues, communitarian thinkers tend to argue a dominant communal identity as 'only a matter of self-realization, not of choice'.⁷⁴ This is salient when reflecting on the legacy of the RCIADIC.

- * Professor of Law and Director, Indigenous Law Centre, University of New South Wales; Expert Member, United Nations Permanent Forum on Indigenous Issues.
- 1 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991).
- 2 Ibid vol 1, 1.
- 3 Ibid vol 1, 1 [1.1.3].
- 4 Ibid.
- 5 Ibid vol 1, 6 [1.3.2].
- 6 Ibid vol 1, 3 [1.2.3].
- 7 Ibid.
- 8 See, eg, Adrian Howe, 'Aboriginal Women in Custody: A Footnote to the Royal Commission' (1988) 1 *Aboriginal Law Bulletin* 5; Marina Paxman, 'Women and Children First (1993) 18 *Alternative Law Journal* 153; Kate Kerley and Chris Cunneen, 'Deaths in Custody in Australia: The Untold Story of Aboriginal and Torres Strait Islander Women' (1995) 8 *Canadian Journal of Women and the Law* 531; Judy Atkinson, 'A Nation Is Not Conquered' (1996) 3 *Aboriginal Law Bulletin* 4; Elena Marchetti, *Missing Subjects: Women and Gender in the Royal Commission into Aboriginal Deaths in Custody* (DPhil Thesis, Griffith University, 2005); Elena Marchetti, *Missing Subjects: Women and Gender in the Royal Commission into Aboriginal Deaths in Custody* (VDM Verlag, 2009) ('*Missing Subjects*').
- 9 Marchetti, *Missing Subjects*, above n 8, 178.
- 10 RCIADIC, above n 1, vol 2, 90.
- 11 Commonwealth, Royal Commission into Aboriginal Deaths in Custody, *Regional Report of Inquiry into Underlying Issues in Western Australia* (1991) vol 1, 376.
- 12 Ibid; Marchetti, *Missing Subjects*, above n 8, 181.
- 13 Howe, above n 8; Audrey Bolger, *Aboriginal Women and Violence: A Report for the Criminology Research Council and the Northern Territory Commissioner of Police* (Australian National University, North Australia Research Unit, 1991).
- 14 Elena Marchetti, 'Indigenous Women and the RCIADIC – Part I' (2007) 7 *Indigenous Law Bulletin* 6, 7.
- 15 Ibid 8.
- 16 Ibid.
- 17 Marchetti, *Missing Subjects*, above n 8, 215.
- 18 Marchetti, above n 14, 7.
- 19 Ibid.
- 20 Ibid.
- 21 Ibid.
- 22 Ibid.
- 23 Ibid.
- 24 Bolger, above n 13, 3.
- 25 Elena Marchetti, 'Intersectional Race and Gender Analyses: Why

- Legal Processes Just Don't Get It' (2008) 17 *Social and Legal Studies* 155.
- 26 Ibid.
- 27 Ibid 167.
- 28 Ibid 161.
- 29 Ibid 162.
- 30 Ibid.
- 31 Ibid 169.
- 32 Ibid.
- 33 Ibid.
- 34 Marchetti, *Women and Gender in the Royal Commission*, above n 8, 210.
- 35 Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2008*, Australian Human Rights Commission (2008) 304; Aboriginal and Torres Strait Islander Social Justice Commissioner, *Social Justice Report 2004*, Human Rights and Equal Opportunity Commission (2005) 15.
- 36 Ibid.
- 37 Ibid 17. These 'other' crimes include: social security fraud, procedures offences, unlawful possession of weapons, driving-related offences and drug offences.
- 38 Ibid 35.
- 39 RCIADIC, above n 1, vol 1, 15 [1.7.6].
- 40 See, eg, Christine Fletcher (ed), *Aboriginal Self-Determination in Australia* (Aboriginal Studies Press, 1994); Aboriginal and Torres Strait Islander Commission, *Recognition, Rights and Reform: A Report to Government on Native Title Social Justice Measures* (1995).
- 41 GA Res 61/295, UN GAOR, 61st sess, 107th plen mtg, Supp No 49, UN Doc A/RES/61/295 (13 September 2007).
- 42 Opened for signature 27 June 1989, 28 ILM 1382 (entered into force 5 September 1991).
- 43 See, eg, Kevin Gilbert, *Living Black: Blacks Talk to Kevin Gilbert* (Allen Lane, 1977); John Chesterman, *Civil Rights: How Indigenous Australians Won Formal Equality* (University of Queensland Press, 2005) 222; Jennifer Clark, *Aborigines and Activism: Race, Aborigines and the Coming of the Sixties to Australia* (University of Western Australia Press, 2008) 239; John Maynard, *Fight for Liberty and Freedom: The Origins of Australian Aboriginal Activism* (Aboriginal Studies Press, 2007).
- 44 See, eg, Phyllis Kaberry, *Aboriginal Woman: Sacred and Profane* (George Routledge & Sons, 1939); Fay Gale, 'The Participation of Australian Aboriginal Women in a Changing Political Environment' (1990) 9 *Political Geography Quarterly* 381.
- 45 Phyllis Daylight and Mary Johnstone, *Women's Business: Report of the Aboriginal Women's Task Force* (Australian Government Publishing Service, 1986).
- 46 Ibid.
- 47 Ibid 41.
- 48 Ibid 2.
- 49 Ibid.
- 50 Ibid.
- 51 Marchetti, *Missing Subjects*, above n 8, 181.
- 52 Raymond Evans, *Fighting Words: Writing About Race* (University of Queensland Press, 1999) 176.
- 53 Ibid.
- 54 Marcia Langton, 'Feminism: What Do Aboriginal Women Gain?' (1989) *Broadside: National Foundation for Australian Women Newsletter* 8.
- 55 Ibid.
- 56 See, eg, Marlene McKay, *Engaging Feminism: A Pedagogy for Aboriginal Peoples* (MEd Thesis, University of Saskatchewan, 2005).
- 57 Jocelyne Scutt, 'Invisible Women? Projecting White Cultural Invisibility on Black Australian Women' (1990) 2 *Aboriginal Law Bulletin* 4.
- 58 *Finding Common Ground: First Indigenous Women's Conference, 7-18 July 1989, Adelaide, Australia: Conference Report* (1989) vii.
- 59 'Inteyerrkwe Statement', reproduced in (2008) 7 *Indigenous Law Bulletin* 2.
- 60 Ibid.
- 61 RCIADIC, above n 1, vol 2, 90.
- 62 Ibid. See also RCIADIC, above n 11, vol 1, 376.
- 63 E M Hunter, 'A Question of Power: Contemporary Self-Mutilation Among Aborigines in the Kimberley' (1990) 25 *Australian Journal of Social Issues* 261, 272.
- 64 Paul Memmott et al, *Violence in Indigenous Communities: Full Report*, Report to the Crime Prevention Branch of the Attorney-General's Department (2001) 29.
- 65 Ibid. See also Hunter, above n 46, 272.
- 66 Memmott et al, above n 47, 29.
- 67 Simon Kearney, 'Bar Humbug' *The Australian* (online), 10 August 2007 <<http://www.theaustralian.news.com.au/story/0,25197,22217832-28737,00.html>>.
- 68 Harry Blagg, *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008) 141. Anthropologist Nicolas Peterson has also studied the cultural activity of demand-sharing and the pressure for generosity, which he argues is characteristic of foraging communities: Nicolas Peterson, 'Demand Sharing: Reciprocity and the Pressure for Generosity Among Foragers' (1993) 95 *American Anthropologist* 860.
- 69 Northern Territory Board of Inquiry into the Protection of Aboriginal Children from Sexual Abuse, *Ampe Akelyernemane Meke Mekarle - 'Little Children Are Sacred': Report of the Northern Territory Board of Inquiry into the Protection of*

Aboriginal Children from Sexual Abuse (2007) 201 ('*Little Children Are Sacred*').

- 70 John Howard, cited in Kearney, above n 50.
- 71 Blagg, above n 68; *Little Children Are Sacred*, above n 69, 201.
- 72 Amartya Sen, *Identity and Violence: The Illusion of Destiny* (Allen Lane, 2006) 8.
- 73 Martha Nussbaum, *Sex and Social Justice* (Oxford University Press, 1999) 38.
- 74 Sen, above n 72, 5.