JUSTICE REINVESTMENT:
THE COST BENEFITS OF TRUSTING AND SUPPORTING INDIGENOUS PEOPLE TO MEDIATE THEIR TROUBLES

by Mary Spiers Williams

In June 2015, economists Anne Daly and Greg Barrett and mediator Rhian Williams presented the findings of their cost-benefit analysis of the Yuendumu Mediation and Justice Committee ('YM&JC') operating in Yuendumu in central Australia. Their presentation to the Australian Institute of Aboriginal and Torres Strait Islander Studies ('AIATSIS') was subtitled 'The Economic Case for Local Dispute Management Services'.[1] The findings were impressive: if the YM&JC is properly funded, then for every $1 spent, there will be a benefit of $4.30 over 10 years. Greg Barrett explained the significance of these findings by making this comparison: if the World Bank receives an analysis of a cost benefit of $1.10 this is considered good; a benefit of more than four dollars is exceptional. Over 10 years if the total costs of the YM&JC are $4 359 000, then the total benefits on present value will be $18 522 000. That is a net benefit of $14 163 000 on present value.

WHAT DOES THE YM&JC DO?

The YM&JC is a grassroots initiative that draws upon traditional Warlpiri dispute-resolution and relationship-sustaining practices. Warlpiri people have well-developed mediation practices that are embedded within cultural practices and law. The members of the YM&JC are law men and women who engage in their dispute-management processes, using local knowledge to maintain peace. For example, from 2010 until 2012, Yuendumu was riven by family fighting.[2] This is reported to have been settled by 2013 and the YM&JC was instrumental in restoring peace and continuing to maintain it when disputes arose.[3]

The modern roots of the YM&JC are the Kurduju Committee.[4] The Kurduju Committee started in the mid-1990s and was groundbreaking. It was arguably the first time government had attempted to engage wholly in participatory planning, implementing solutions *yapa* way.[5] The Kurduju Committee served as the hub for collaboration between government services and communities, and facilitated the engagement of government agencies and non-government organisations. The Kurduju Committee brought together law and justice committees networked across Warlpiri settlements in central Australia. Other types of law and justice committees emerged across Australia in the wake of the Royal Commission into Aboriginal Deaths in Custody, and were part of the push for self-determination.[6]

Since 2007, the YM&JC has been funded and administered through the Central Desert Shire through short-term grants. At the time the cost-benefit analysis was done, the YM&JC had a *kardiya* administrator and a *yapa* liaison officer.[7] Their roles can be understood as that of 'cultural brokers' — the former is able to translate and engage with bureaucratic ways and the latter is able to translate *yapa* ways. The law men and women of the committee are employed on a casual basis.

Cost-benefit analysis was able to show that mediation was central to achieving peace in this community, especially following the fighting of 2010–12. This had measurable benefits: productivity, health, education, housing, and criminal justice.[8] The YM&JC example suggests that for mediation to be effective, mediation solutions need to be local, specific and ongoing. As Rhian Williams said,[9] conflict will occur where humans live together, peace is something we need to constantly work at and mediation assistance is as necessary to a healthy functioning community as a hospital; these are constants whether your community is in the desert or in the city. In Yuendumu, local and specific knowledge means knowledge that *yapa* have about their own cultural practices including the complex interrelationships of people and families, and their specific values in relation to country, kin, language, ceremony and law.[10] The report shows that *yapa*—like every other group of citizens in this country—need to be supported in their endeavours to provide solutions to the problems in their communities. The findings and implications of this research are consistent with other research that has found that local and grounded responses are more effective and more desirable as a matter of principle.[11]

Daly and Barrett's findings and analysis showed the largest single cost benefit was gained by the community because fewer *yapa*

went to prison. The researchers extrapolated future savings by examining the actual cost of imprisoning those who were charged with offences arising from the 2010–12 dispute (that is, those who were either refused bail or sentenced to imprisonment). The benefit was expressed as $4.1 million over 10 years (on present value, and discounted by 2 per cent).[12] The combined benefits of fewer *yapa* attending court and going to prison and the reduced need for police call-outs represented 37 per cent of the measureable benefits (or $6.87 million). This is consistent with the findings of other researchers in other contexts about the cost of criminalisation.

This analysis contributes to our understanding of the potential for justice reinvestment, even though the YM&JC is a Warlpiri initiative, done without regard to the justice reinvestment movement. The YM&JC nevertheless has put into effect what justice reinvestment proponents advocate; that is, the YM&JC were able to implement a local, grounded, community initiative. Unlike many other similar initiatives, this was then costed and showed how the failure to address disputes over time can lead to greater economic costs through its social impact, including to victims and through imprisonment. This research is distinct from other research in that it has costed a mediation practice that applies Aboriginal law and relies upon Indigenous cultural practice. This suggests that through supporting and endorsing Aboriginal law and cultural practices, positive outcomes can be achieved, including a reduction in incarceration.[13]

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If we know this then why do we not turn more to local responses, especially given that the number of Indigenous people incarcerated is increasing? To answer this, rather than examine Indigenous incarceration by counting and measuring those who are incarcerated,[14] this article instead considers the incarcerator, and asks what obstacles there may be to supporting and using initiatives like the YM&JC. To explain this, it is helpful to start with Blagg's account of prison in Australia as 'waste management'.[15] Blagg argues that prison is a technology that enables Indigenous people to be treated like 'waste'. This is despite public expressions of and a national aspiration towards social justice and anti-racism. This article then reflects upon how criminal justice actors decide to divert a person away from the criminal justice system into the options available for community support and reintegration, and suggests that the potential of Indigenous initiatives cannot be achieved unless criminal justice actors and their communities are prepared to trust Indigenous people and Indigenous cultural practices, such as the YM&JC.

AUSTRALIA IS A 'MASS INCARCERATOR' OF ITS INDIGENOUS PEOPLE

In 2007, Harry Blagg summarised the models used internationally to make sense of a global trend of increasing incarceration rates, and argued Australia is part of that global trend.[16] In the 1980s and 1990s, North American scholars observed increasingly punitive responses to offending behaviour,[17] attributing this to the failures of experiments in rehabilitation that occurred during the 1970s, together with the economic marginalisation of those people whose labour was no longer needed, for example on industrial production lines. Economically marginalised, these people became socially marginalised and soon their behaviour was capable of being captured within the criminal justice system. Rather than taking responsibility for people who could not access employment and its promises in a market economy, it was simpler to hold the individual wholly responsible and then simply determine how to dispense with him/her. In this way, imprisoning is reduced to 'waste management'.[18] In time, what had previously been an indice of mercy (for example, exposure to violence as a child), now became an indice of risk.[19] This is a misuse of risk analysis tools, which were not developed to make predictions about individuals. One can use a risk analysis to determine what services a population needs based on generalisations about deficits in that population, but it does not mean that the tool can predict particulars about an individual within that population.[20] The misuse of risk analysis tools had a real impact: by the turn of this century, the volume of people that North Americans were incarcerating required new terminology: mass incarceration.[21]

Blagg reviewed this theory in light of the Australian experience. He argued that the technology of the prison once used in the context of colonial strategies to eradicate Indigenous people was later used to warehouse a 'doomed race'. While settler-colonisers have desisted with the idea that Indigenous peoples will die out, prison use with respect to Indigenous people has continued uninterrupted and prison is still used to 'dispose' of Indigenous people who are redundant in modern Australian society. In this way, Australia is part of a global phenomenon that uses prisons as human waste warehousing instead of practising more enlightened or humane responses to criminal behaviour arising from difficult social and economic phenomenon. In Australia, the proportion of our total population that is imprisoned is not as high as that of the United States, but when one analyses the statistics in terms of race, Blagg demonstrates that we are mass incarcerating Indigenous people within Australia.

The relatively small numbers of incarcerated Indigenous people may make it easy to overlook the high proportion of Indigenous people imprisoned, and thus not disturb the widespread complacency in the Australian community about the violence and degradation experienced in a prison. That overimprisonment has become chronic does not mean that Indigenous people have become accustomed to it. The effects of imprisonment are felt not only by each person imprisoned but also by those people connected to the imprisoned, touching every Indigenous person, their *walaltya*.[22] To Indigenous people, it can seem that the rest of Australia is inured to this suffering. This failure to empathise is perhaps symptomatic of the radical social division that persists between Indigenous Australia and settler-coloniser Australia. Those working within the criminal justice system can experience a sense of futility; many are concerned about the increasing numbers and the criminogenic effects of incarceration, but feel that as individuals they have little power to effect change in individual cases or the system. They may become perplexed and distressed about their role in a process that legitimises incarceration, knowing that once people are imprisoned, there are few who are able to be resist becoming more broken and more violent, and more likely to reoffend.

State and territory governments maintain and continue to introduce new legislative mechanisms that are more likely to be used against Indigenous people and which facilitate detention in custody. For example, Northern Territory police retain and exercise the power to detain in a police cell a person they believe is intoxicated.[23] The Northern Territory Government has introduced new law reforms that, while intended to promote efficiency or rehabilitation, create more avenues for detaining Indigenous people in custody, a recent example being the 'paperless arrest' laws, which give police the power to arrest and detain people without charge,[24] or the compulsory alcohol rehabilitation treatment scheme, where two of the treatment facilities are located in the Alice Springs and Darwin prisons.[25]

As the number of Indigenous people in prison increases, so does the gap. At the time of the Royal Commission into Aboriginal Deaths in Custody, as a proportion of the population the number of Aboriginal people in custody was eight times that of non-Aboriginal people. Now Indigenous people are 13 times more likely to be imprisoned than non-Indigenous people. The rates of imprisonment of Indigenous women and juveniles are escalating exponentially.[26] Amnesty International has reported that 95 per cent of children in detention in the Northern Territory are Indigenous, and that the Northern Territory is the third highest incarcerator in the world after China and the United States.[27]

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DIVERSION IS AVAILABLE—BUT NOT FOR INDIGENOUS PEOPLE?

Australia as a nation aspires to uniform social justice, multiculturalism and to human rights including anti-racism. As John Pratt did with respect to New Zealand, so too can we juxtapose national characteristics of friendliness and the 'fair go', with a 'less well known history of intolerance and excessive punitiveness in its reaction to criminal behaviour'.[28] Australian governments, for example, responded to the findings of the Royal Commission into Aboriginal Deaths in Custody and reported implementing most of the recommendations to redress Aboriginal over-incarceration.[29] Consistent with our national character and reflecting social democratic values, Australian jurisdictions have created mechanisms to divert individuals from the criminal justice system. But, as Blagg observes, despite their existence, these diversions are not made available to Indigenous people. Blagg attributes this to a 'contrapuntal dynamic … where our "settler societies" are capable of maintaining a number of radically diverse practices bifurcated according to indigenous and non-indigenous status'.[30]

Many of these diversions remain unsuitable for Indigenous people. Diversions tends to be targeted at individuals. Mass incarceration affects a cohort of people; if we wish to develop solutions then we need to respond to the cohort—that is, respond with whole-of-community solutions. The YM&JC engage in *yapa* mediation practices, identifying all those who according to *yapa* way are required to resolve an issue, then supporting those people to fulfil their roles and conduct the negotiations. This requires particular knowledge about kinship and roles determined by Aboriginal law. The objective is to achieve *yaru-manijaku,*[31] that is, to restore balance and bring peace to community relationships. The YM&JC works because it is a local response grounded in local knowledge.

DISCRETION AND DISTRUST

Many who work outside the criminal justice system do not realise the significant role that discretion of individuals plays at the numerous points in the processing of person from suspect to sentenced offender. Police, for example, are not mandated to arrest and charge everyone they suspect of committing an offence, but police in Australia across the country have been shown to arrest Indigenous people more often than non-Indigenous people.

Nationally, police are 17 times more likely to arrest an Indigenous person than a non-Indigenous person.[32] In some places the arrest rate has been as high as 68 times more likely.[33] Being selected by police is the first step of many in the processing of an individual who is ultimately bail-refused or sentenced to imprisonment. The segmented process of decision-making allows individual actors to escape the full weight of moral responsibility for their part in the process of imprisoning a person. This observation may help to explain the accretion of small actions that results in more Indigenous people being imprisoned. There are, however, many criminal justice actors who do not want to evade their responsibility and want the over-incarceration of Indigenous people to desist, yet still find themselves participating in imprisoning Indigenous people. Much research has been done on the systemic forces that are in place which individuals cannot resist, and on those who unhappily find themselves legitimising processes of incarceration. I now want to consider more closely the role that individuals (the criminal justice system actors) have in this process, and ask whether it may in fact be possible to resist systemic trends.

What informs the decision-making of criminal justice system actors who 'control the gates' into and out of the criminal justice system? A necessary prerequisite for diversion is that the actor with the discretionary power trusts that if the offender is diverted then he or she is unlikely to reoffend and can be trusted to reintegrate into society again. Implicit in this is that one trusts the community into whose care the person is diverted. If we accept this, then it suggests that when an offender is not diverted from the criminal justice system it is because he or she cannot be trusted to reintegrate 'properly'. This occurs because either the system prevents the decision-maker from exercising discretion or demonstrating that he or she trusts the offender and their community (systemic distrust) or the actor does not trust the offender (personal distrust).

'Systemic distrust' occurs where the government removes discretion to choose diversion, for example, through mandating penalties. Systemic distrust also occurs where the state fails to create or support effective diversionary options. For example, in the absence of credible diversionary options, judicial officers report feeling they have no choice other than to imprison a domestic violence offender just to alleviate a crisis situation. The only solution that the state offers for serious family violence is the short-term relief of incapacitation through imprisonment—and the long-term prospect of dysfunction arising from that imprisonment. In such situations, the powerlessness of criminal justice actors is manifest and we have to look to government to provide credible alternatives to gaol. There are situations, however, where community options that will produce better outcomes for the offender, the victim and the community are available, but criminal justice actors are choosing not to take such diversionary options. It is worth surveying the dispute that the YM&JC was ultimately able to mediate as part of considering opportunities for diversion and alternative processes of resolution.[34]

The Yuendumu riot and the criminal cases that appended them are a complex series of events with a long history and complicated context that involved numerous actors and competing versions of events; this account is necessarily truncated. After media reports of fighting and property destruction on 15 September 2010, police adopted a 'zero tolerance' approach, conducting searches for weapons and arresting numerous people who were engaging in conduct that amounted to possession of an offensive weapon, disorderly conduct or riot. Community meetings held during this time failed, and shortly thereafter a member of parliament sponsored the evacuation to Adelaide of those not aligned with the aggrieved family. The members of the YM&JC had previously participated in community court, but their coordinator was told that the community court would not be operating because of the fighting. There was some consternation in the community that *kardiya* mediators brought in were not working with the community. When the more organised fight took place in Yuendumu on 20 November 2010, police videotaped the fighting and issued directions to disperse, which enabled them later to charge those who had ignored the direction with an aggravated riot offence that attracted a maximum penalty of 14 years.[35] Coordination of the YM&JC became uncertain due to staff attrition and funding uncertainty. Courts began finalising the Yuendumu riot cases in November 2010, and continued into mid-2011. On 1 December 2010, each member of the immediate family of the young man who had been killed was sentenced to terms of imprisonment for their part in the riot; all had negligible criminal histories and were otherwise of good character. With these people imprisoned, it can be said that any restoration of balance that had been achieved in the fight was nullified. By the end of 2011 and into 2012, according to senior law men and women, Yuendumu became 'lawless'. It was not until the end of 2012 that the YM&JC was reconvened, and two facilitators were appointed and given more support to engage in dispute resolution. By mid-2013, that dispute is said to have been resolved.

What emerged from some community members was a view that the government response was to go outside the community for solutions, and that the criminal justice system brought with it not solutions to problems but exacerbation of them. The criminal justice actors (police, lawyers, judicial officers, corrections) delivered a well-resourced, crisis-driven, zero-tolerance response; that is, it appears that no individual was explicitly diverted at any stage (that is, at the stages of arrest, bail, alternative dispute resolution

processes or imprisonment). When conducting research regarding the desistance of community courts at Yuendumu,[36] research participants said that they believed that the magistrates and police believed that holding community court would inflame tensions in the community. Other research participants believed that magistrates feared that community court would 'send the wrong message' as Aboriginal law was no longer to be tolerated, and was perceived as a cause of the unrest. The reason for this was a belief that *yapa* dispute resolution inevitably involved physical violence. It may be that this distrust extended to the mediation practices of the Yuendumu Justice Mediation Group (as the YM&JC was then called).

In this context, the YM&JC was destabilised and struggled to establish authority. What we know now is that the YM&JC had the capacity to facilitate peace, yet was unable to operate until two years after the original incidents. It is not certain that the YM&JC could have negotiated peace earlier, particularly given the chaos and multiple influences affecting the dispute. Given the ultimate success of the YM&JC, it raises questions about an alternative response if the YM&JC had adequate support founded on 'systemic trust' of the YM&JC. Lack of 'personal trust' of the YM&JC may be a reason that systemic trust was not established.

TRUST AND JUSTICE REINVESTMENT

Justice reinvestment is premised on the *divestment* of the hundreds of thousands of dollars that we spend on prisons and using this money to fund community programs over the long term. These programs must be developed with the communities that are most negatively impacted by the current imprisonment practices.[37] For community participatory planning to work, a community needs the information and resources to make well-informed choices and develop ideas that will work in their community. The Just Reinvest campaign that is currently being undertaken in Bourke, New South Wales, is an exemplar of this.[38] Prison divestment and reinvestment into the community would be a step by government towards trusting communities and committing to that, thereby supporting the development of local programs and also limiting the availability of the prison option.

Critical to the success of programs developed through justice reinvestment is the reform of systems that contribute to incarcerating offenders. The programs will not have any effect unless they are used. Thus, for such programs to have an effect, criminal justice actors would have to trust those programs and the communities who initiated them. In some instances, this may mean correcting attitudes that conflate difference with deviance, and instead recognise the value in cultural difference and, specifically, Indigenous ways of being. The YM&JC is an example of the benefits that this can bring.

Scholarship around imprisonment tends to focus on the offender's circumstances and the systems that are in place. These are important, and so are the actors who participate in the incarceration of Indigenous people. The role played by police, prosecutors or judicial officers are clear; defence lawyers also participate, particularly in their client's decision to plead guilty. We need to consider the context of these criminal justice actors, and the communities from which they come. The multiple slights and acts of marginalisation against Indigenous people in Australian society contribute to the incarceration of too many. Courts have a role to play reiterating community values; part of that role should be to unveil racism and iterate respect for cultural difference and the value of Indigenous knowledges. Vigilance is required to ensure that racism is not masked as common sense, and to ensure that in court rooms and police stations cultural difference is not used to explain criminal deviance nor cultural assimilation perceived as a solution to criminal offending. Justice reinvestment, and the diversion that must attend it, is a rational response. It is important criminal justice actors especially scrutinise resistances to it that may be irrational.

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INDIGENOUS PEOPLE CAN BE TRUSTED TO HELP RESTORE PEACE, REHABILITATE AND REINTEGRATE

The cost-benefit analysis of the YM&JC shows that criminal justice system insiders can trust the practices and processes of Aboriginal people and can recognise and respect their cultural competence to perform these processes. Reflections about the cost-benefit analysis of the YM&JC may help criminal justice insiders to recognise that Aboriginal law and cultural practice is more than simplistic 'payback' vengeance, and to recognise that the violence on which the criminal justice system relies (through threat, arrest and imprisonment) has a negative impact on Indigenous people as well as on the rest of Australian society. Seeing these benefits in simple economic terms may help to bring this realisation about.

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The footnote to this story is a not unusual story of lack of ongoing support. A few months after the analysis was completed, the administrator left the YM&JC and was not replaced, his responsibilities falling to the *yapa* liaison officer. A short time

later he left too.[39] It may be that the knowledge he brought was undervalued and that the *yapa* liaison officer was expected to fulfil the role of a 'bureaucratic broker'. When avoidance or obligation relationships inevitably arise and given that there is only one person administering the YM&JC, workarounds would be very challenging. The local government authority filled the position of liaison officer/ adminsitrator with a *kardiya*.

A commitment to justice reinvestment, long-term planning and funding of community solutions may have resulted in better support for the *yapa* liaison officer. Indigenous people need to be supported to engage with bureaucratic process, such as the criminal justice system, and to be helped to bring their knowledge and experience to their roles.

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1 Anne Daly and Greg Barrett, 'Independent Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee' (NT Government, 2015) <http://www.centraldesert.nt.gov.au/yuendumu-justice-and-mediation-committee-independent-cost-benefit-analysis>. Their presentation was to AIATSIS on 4 June 2015.

2 Mary Spiers Williams, 'Making Sense of "Riot": The Fragile Legitimacy of Police Powers and Public Order Offences in an Intervention' in Isabelle Bartkowiak-Théron & Max Travers (eds), *The 6th Annual Australian and New Zealand Critical Criminology Conference Proceedings 2012* (University of Tasmania, 2012), 74–89, 75ff.

3 For example, Anthony Stewart, 'Mediation credited with restoring Yuendumu peace', *ABC News* (online), 16 August 2013 <http://www.abc.net.au/news/2013–08–16/mediation-credited-with-restoring-yuendumu-peace/4892558>; Central Desert Regional Council, 'Peace prevails in Yuendumu', *Central Desert Regional Council* (online), 4 September 2013 <http://centraldesert.nt.gov.au/news/peace-prevails-yuendumu>.

4 Mary Spiers Williams, 'The Impossibility of Community Justice Whilst There is Intervention' (5th Annual Australian and New Zealand Critical Criminology Conference, James Cook University, 2011).

5 *Yapa* is Warlpiri for 'person'; Warlpiri (and other language groups) refer to non-Aboriginal people as *kardiya*.

6 For more about law and justice committees, see Fiona Allison and Chris Cunneen, 'The role of Indigenous justice agreements in improving legal and social outcomes for Indigenous people' (2010) 32(4) *Sydney Law Review* 645.

7 See n 5, above.

8 See the summary of findings prepared for the Yuendumu community: <http://www.centraldesert.nt.gov.au/yuendumu-justice-and-mediation-committee-independent-cost-benefit-analysis>.

9 Anne Daly, Greg Barrett and Rhian Williams, 'A Cost Benefit Analysis of the Yuendumu Mediation and Justice Committee: the economic case for local dispute management services', 9 June 2015, Occasional seminar AIATSIS, Canberra <http://aiatsis.gov.au/news-and-events/news/cost-benefit-analysis-ymjc>.

10 WJ Pawu-Kurlpurlurnu et al, 'Ngurra-kurlu: a way of working with Warlpiri people', *Report No 41*, Knowledge Cooperative Research Centre, 2008.

11 See, for example, research produced by the Centre for Aboriginal Economic and Political Research, Australian National University, some of which can be accessed at <http://caepr.anu.edu.au/publications.php>.

12 Above n 1, 20.

13 Ibid.

14 For an excellent overview of the state of imprisonment in Australia, see Eileen Baldry et al, 'Imprisoning rationalities' (2011) *Australian & New Zealand Journal of Criminology* 44(1) 24.

15 Harry Blagg, 'Criminal justice as waste management', *Crime, Aboriginality and the Decolonisation of Justice* (Hawkins Press, 2008).

16 Ibid.

17 On the 'new penology' see, for example, David Garland, *Punishment and Modern Society* (Clarendon Press, 1990); Malcolm M Feeley and Jonathan Simon, 'The new penology', *Criminological Perspectives: Essential Readings* (2003) vol 2, 434–46.

18 Malcolm Feeley and Jonathan Simon, 'The New Penology: Notes on the Emerging Strategy of Corrections and Its Implications' (1992) *30 Criminology 449* 470.

19 Pat O'Malley, *Crime and the risk society* (Ashgate Aldershot, England, 1998).

20 For example, we know that in areas where there are no youth activities then this results in higher levels of contact with the criminal justice system; it does not mean that we can predict *which individual* will have contact with the criminal justice system. Another example: one might be able to identify a population who are likely to develop schizophrenia, and make estimates about a proportion of that population that are more likely to develop schizophrenia if they abuse cannabis; but one cannot predict whether a particular individual will in fact develop schizophrenia if he or she abuses cannabis, and similarly we cannot determine whether an individual who has abused cannabis and has developed schizophrenia has developed schizophrenia because of the cannabis abuse.

21 Jonathan Simon et al, 'Mass incarceration on trial' (2011) 13(3) *Punishment and Society* 251. Recent literature from the United States talks about the hyper-incarceration of black and Latino Americans.

22 'Walaltya' (Warlpiri; see also 'waltya' Pitjantjatjara, etc.): literally 'family', describes the relationship and connection through a network of kin ties. If explored fully, anyone in country can be walaltya.

23 *Police Administration Act* (NT) s 128; see also *Inquest into the death of [Kwementyaye] Briscoe* [2012] NTMC 032. The RCIADIC recommended police find alternatives to custody in police cells for intoxicated persons: see recommendations 80, 81, 85a in Elliott Johnston, *National report: overview and recommendations of the Royal Commission into Aboriginal Deaths in Custody Australia* (Australian Govt. Pub. Service, 1991).

24 *Police Administration Act* (NT) Div 4AA, Pt VII; *Inquest into the death of [Kumanjayi] Langdon* [2015] NTMC 016; *North Australian Aboriginal Justice Agency Limited v Northern Territory* [2015] HCA 41.

25 Northern Territory Government, *Alcohol Mandatory Treatment Act Review* (Report, 2014), <http://health.nt.gov.au/library/scripts/objectifyMedia.aspx?file=pdf/90/48.pdf&siteID=1&str_title=AMT%20Act%20Review%20Final%20Report.pdf>.

26 See, for example, Amnesty International, *A brighter tomorrow: Keeping Indigenous kids in the community and out of detention in Australia*, (2015) <http://www.amnesty.org.au/images/uploads/aus/A_brighter_future_National_report.pdf>.

27 Human Rights Law Centre, 'Northern Territory's youth justice system in crisis' (12 November 2015) <http://hrlc.org.au/northern-territorys-youth-justice-system-in-crisis/>.

28 Similarly, see J Pratt, 'The Dark Side of Paradise: Explaining New Zealand's History of High Imprisonment', *British Journal of Criminology* (2006) 46(4): 541–60.

29 Whether it is implemented is often contentious: Amnesty International, *Review of the Implementation of RCIADIC—May 2015*, (2015) <https://changetherecord.org.au/review-of-the-implementation-of-rciadic-may-2015>.

30 Harry Blagg, above n 16. See also, Chris Cunneen and Eileen Baldry, 'Contemporary Penality in the Shadow of Colonial Patriarchy', *Proceedings of the 5th Annual Australian and New Zealand Critical Criminology Conference* (2011).

31 *Yaru* means peace and *mani-kujaku* to save or rescue from something, so the process is designed to 'save' the community from 'lawlessness' and to achieve peace: Jerry Jangala Patrick, personal communication, Lajamanu doctoral fieldwork research, 2011, 2012, 2014.

32 Australian Human Rights Commission, *Indigenous Deaths in Custody: Arrest, Imprisonment and Most Serious Offence* <https://www.humanrights.gov.au/publications/indigenous-deaths-custody-arrest-imprisonment-and-most-serious-offence>.

33 In Western Australia in 1992: ibid.

34 The following is synthesised from Mary Spiers Williams, 'Making Sense of "Riot": The Fragile Legitimacy of Police Powers and Public Order Offences in an Intervention' in Isabelle Bartkowiak-Théron & Max Travers (eds), *The 6th Annual Australian and New Zealand Critical Criminology Conference Proceedings* 2012 (University of Tasmania, 2012) 74–89.

35 *Criminal Code Act 1983* s 66(1): the maximum penalty is 14 years; *cf* unlawful assembly s 64: one year; or (simple) riot s 65: three years.

36 Field research conducted in Alice Springs, Yuendumu and Ali Curung, September–October 2010.

37 David Brown et al, *Justice Reinvestment: Winding Back Imprisonment* (Palgrave Macmillan, 2015).

38 See <http://www.justreinvest.org.au/justice-reinvestment-bourke/>.

39 Rhian Williams, personal communication, 28 July 2015.

White night 2, 2016
Josh Muir
Digital print on aluminium, 1500mm x 750 mm