

KELLEHERS AUSTRALIA

Of Course Black Lives Matter!

Australia continues to fail its Indigenous citizens. This failure extends across all aspects of Australian life. From the destruction of sacred sites, denial of fundamental legal rights, such as *habeas corpus* (innocent until proved guilty) and “justice is blind and impartial”. We are collectively failing to stand up for, speak up with, and listen to Indigenous Australia. Action is needed, now.

In light of the current focus on Indigenous issues connected with the *Black Lives Matter* movement, we reflect in a small way on some of our experience as a way to voice our support for change.

Kellehers Australia has strong links with Aboriginal People throughout Australia. For nearly two decades, we have undertaken *pro bono* legal work for Aboriginal Peoples and Aboriginal individuals from all over this nation. We deeply respect the voice and opinions of Aboriginal People. Kellehers remains committed to supporting Australia’s Indigenous communities, both professionally and personally. We listen to the voice of Indigenous people – and advise as instructed. We continuously educate ourselves, our employees and our professional partners regarding Indigenous issues and injustice. We support Indigenous entrepreneurship.

Reconciliation will not work if it puts a higher value on symbolic gestures rather than the practical needs of Aboriginal and Torres Strait Islands in areas like health, housing, education and employment.’

– Warren Mundine AO, Australian Aboriginal leader and former president of the Australian Labour Party

Destruction of Aboriginal Heritage

Jukkan Gorge cave in Western Australia, part of the traditional lands and waters of the Puuti Kunti Kurrama and Pinikura people, was destroyed on 24 May 2020 following ministerial consent under *s 18 Aboriginal Heritage Act 1972 (WA) (AHA)*. Sacred to the Puuti Kunti Kurrama and Pinikura people, the cave was likely the only inland Australian site showing signs of continual human occupation through the last Ice Age.¹ Mining giant Rio Tinto erased it in a matter of seconds, despite regular meetings with the Puutu Kunti Kurrama and Pinikura Aboriginal Corporation, representing the traditional owners.

Unbelievably, just days later, news outlets reported that Western Australia’s Aboriginal Affairs Minister Ben Wyatt MLA, under the same problematic legislation, granted mining heavyweight BHP ministerial approval to enlarge works at its South Flank iron ore project on the land and waters of the Banjima people, the site of 86 significant Indigenous sites. Reportedly the Banjima native title holders told the WA government they did not want any of the 86 archaeological sites within the project area to be damaged, but are unable to raise concerns publicly about the expansion, having signed comprehensive agreements with BHP as part of a native title settlement.²

Kellehers witnessed firsthand the disgraceful disregard afforded to such Indigenous cultural sites. In August 2016, Indigenous sites were unlawfully destroyed and damaged, in the name of tourism, when illegal operators entered the area with road making equipment to rip and excavate, destroy and deface. These folk sat in the pub and hatched a plan to extend South Australia’s infamous Marree Man as a so-called tourist attraction – ignoring the real Indigenous treasure lying at their backdoor. No prosecutions were ever brought – and, in the end, there was attempt to blame some of the Arabunna themselves.

Traditional owners and Elders were in tears.

¹ <https://www.sbs.com.au/news/rio-tinto-s-claim-rejected-as-outrageous-after-aboriginal-sacred-site-destroyed>

² Ibid.

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A legal action brought archaeologists on Country for a couple of days. After their minimal archaeological survey, the process went snugly into the secrecy of the bureaucracy. After several years, we were informed that the case was closed. There would be no complete archaeological survey and no restoration of the site in any way at all. Subsequent archaeological reports recorded the 'large scale' damage. The archaeological report noted 'at the time of recording, no information relating to these sites was held on the central archive', but this information was well-known to traditional custodians within the Indigenous community. As such, the historical integrity of this sacred site is now permanently diminished.

Multiple nominations of the highly significant Finnis Springs Mission and Pastoral Station repeatedly failed to secure inclusion of any part of Country on the National Heritage List. It is no coincidence that this Country lies close to the Olympic Dam uranium mine on which the State of South Australia depends economically.

Arabunna Country is blessed with an arc of precious, highly sacred mound springs. The uranium mine has been granted rights to pipe water across Country and to draw up vast amounts of water daily from the Great Artesian Basin. The volume of water is so great that the springs now barely bubble and the mighty water spurts of such cultural heritage significance are depleted. The sacred springs and underground caves hold songlines that stretch from this heart of the continent across our entire land. The brazen disregard of such massive non-renewal water resources is tragic to Australia – yet it is barely known and fully approved by governments at all levels.

Australia is the only country in the world with a continuous living history that can recognise and interpret this antiquity. Without more – tightening of legislation and government mandates for rigorous implementation and enforcement – a repetition of Jukkan Gorge devastation is inevitable. All Australia must step up. This is globally significant heritage.

Many heritage laws are entirely inadequate for the importance of what we hold here. Layers of old colonial assumptions and straight racism – along with slatherings of self-interest and the Crown's enrichment from mining since earliest white settlement – create lassitude and languishing ignorance. Were they Anzac heritage elements, the country would stop until it was fixed.

Kellehers is angry – but we continue to represent and give voice to Aboriginals as they continue to advocate attention to our nation's heritage.

Deaths in custody

432 Indigenous people died in police custody since 1991. By the end of last weekend, the number rose to 437.³ That is one or two human beings every month.⁴ In that 29 years, not one criminal conviction arose for any death.⁵ Aboriginal people are more likely to die in custody because they are arrested and jailed at disproportionate rates.⁶ 4.7% of all Indigenous men are in jail compared with just 0.3% of all non-Indigenous men.⁷ And, don't forget the deaths of the innocent – Yorta Yorta woman Tanya Day, Wiradjuri woman Rebecca Maher, Broome

³ <https://www.theguardian.com/australia-news/2020/jun/09/black-lives-matter-protesters-referred-to-our-count-of-432-aboriginal-deaths-in-custody-its-now-437>

⁴ <https://theconversation.com/despite-432-Indigenous-deaths-in-custody-since-1991-no-one-has-ever-been-convicted-racist-silence-and-complicity-are-to-blame-139873>

⁵ r3.

⁶ <https://humanrights.gov.au/our-work/Indigenous-deaths-custody-report-summary>

⁷ r3.

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woman Maureen Mandijarra and a 51-year-old man from Kalgoorlie, whose name is withheld for cultural reasons. They all died in police cells after being put there 'for their own safety'.

By the campfire up at Lake Eyre, we've heard the stories. The man peaceably going about his business, who was taken into custody before Easter, no reason given, family searching for him for days, denied cigarettes – and then released with no charge. The young teenage boy taken into solitary confinement in the Port Augusta prison 'for his own safety' – his father unable to stop this. And the Elder, returning from the University law school workshop in Melbourne. He'd talked with Justice Michael Kirby for over an hour as, as they parted, Kirby spoke to them as 'blood brothers'. On the road up to Marree, passing Leigh Creek, a police car passed in the opposite direction. The Elder dipped his lights from high beam. He knew the Police car would turn – and it did. The copper stopped him, demanded to know why he was flicking his lights at the police car. Fresh from the Kirby workshop on statutory interpretation, the Elder said:

'Now what do you mean by flicking? I've just sat with the Justice Michael Kirby. It's about understanding of what the word is. Dipping my lights is not flicking. 'Where's your licence?' grumbled the copper before letting him proceed home.

On another occasion, young Indigenous women were forced by South Australian legislation to plead guilty to avoid prosecution and legal costs, but now live with the legacy of of a criminal conviction.

We talk by the campfire of a delegation of lawyers and Arabunna to visit senior police in the State. We suggest we work together. Our Aboriginal friends fall about laughing.

*Leonie, you don't know. Nothing will change. That would only make it worse.*⁸

Kellehers Australia remains committed to supporting Australia's Indigenous communities, both professionally and personally. We strive to help where *Aboriginals* see fit for ask us. An approach led by Aboriginal people, for Aboriginal people is one best likely to achieve deep and genuine outcomes. All over the world, the socially distanced have burst free, to protest police brutality against black people. Outrage and fury spreads across the globe. Australia must also take urgent action. As mothers, brothers, friends, neighbours and co-workers, we must not turn a blind eye. As members of humanity we must make the change we wish to see in the world. Tomorrow is too late. We must act today.

'No one is born hating another person because of the color of his skin ... if they can learn to hate, they can be taught to love, for love comes more naturally to the human heart than its opposite.'

– Nelson Mandela, Long Walk to Freedom

Kellehers Australia
16 June 2020

⁸ Permission to reproduce and discuss these stories was granted by the Elder with whom we have an ongoing relationship.

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