

Last weekend, Yorta Yorta grandmother Tanya Day would have turned 57. As the inquest into her death in police custody continues, her family is pushing for justice and holding the Andrews government to its promises for change. By *Madeline Hayman-Reber*.

Waiting for justice



On a chilly Saturday evening in the midst of the six-week inquest into the death in custody of Aunty Tanya Day, I made the last-minute decision to drive out to the Djab Wurrung Heritage Protection Embassy with a friend. The trip would take two hours from Melbourne and I hoped it would clear my mind. The first few weeks of testimony had been bruising.

Tanya Day was a 55-year-old Yorta Yorta woman who died after being taken into custody by Victoria Police on December 5, 2017. I didn't know her, but on this night at the embassy I sat around a fire with her daughter Apryl Watson, holding one of Tanya's granddaughters in my arms while watching the other toast marshmallows and play with a rescued shingleback lizard.

These are moments a grandmother should get to experience. Tanya should have been there, should have been in my place. And she would have, had it not been for her senseless death, which family lawyers are now arguing was a result of systemic racism and unconscious bias.

It's a horrible truth in the Aboriginal community that some of the most horrific events bond you the tightest. Through Tanya's death, I have made a very special friend in Apryl. I have observed her through the inquest as being one of the strongest Blak women I have ever met – her strength matched by that of her siblings Warren, Belinda and Kimberley.

Tanya brought up her children to be strong, resilient and staunch, just as she was. She couldn't have known she was preparing them for this moment.

On December 5, 2017, Tanya Day made the decision to visit her youngest daughter, Kimberley, in Melbourne. Kimberley was very pregnant, about to be a first-time mother. Tanya wanted to be there for the prenatal appointments of her unborn grandson, whom she never got the chance to meet.

About midday, Tanya took a bus from her home town of Echuca to Bendigo; she then boarded a V/Line train bound for Melbourne's Southern Cross Station. But she never made it to the city.

She fell asleep on the train, after allegedly consuming alcohol, and was awakened by train conductor Shaun Irvine asking for her ticket. Upon not receiving what he interpreted to be a valid response, Irvine proceeded to request the driver of the train to call the police

Tanya Day's daughter Apryl Watson speaks to the media outside the Coroners Court of Victoria last Friday.

to the next stop, Castlemaine Station.

As the train pulled into Castlemaine, police officers arrived and spoke to Tanya on the train, before asking her to get off and sitting her down on the platform. They then made the fatal decision to take her back to the station and place her in a cell to sober up, or until someone was able to pick her up.

While Kimberley frantically tried contacting other family members, her mother was inside a cell, staggering around, hitting her head five times. What has been said to be the fatal injury happened at 4.51pm – about 45 minutes after she was locked up.

CCTV of this final blow left even the coroner, Caitlin English, in tears. Others in the Melbourne courtroom gasped collectively in horror. The footage shows Tanya Day standing up from the concrete bed, walking around unsteadily in a semi-circle, before falling back onto the bed and slamming her head into the wall.

She then sits up, holding her head in her hands, before lying back down. She tries to lift her right arm and her leg. She must have known something was wrong but couldn't do anything. She later rolls off the bed onto the floor, unable to move, except to throw her blanket over herself to keep warm and to keep the harsh cell lights out of her eyes.

Through the inquest we have discovered Tanya Day's cause of death was a bleed in the left temporal and frontal lobes of her brain, which caused pressure on the right side of her brain. This resulted in hemiparesis or paralysis of the right side of her body.

Seeing half of her body lifeless in the CCTV footage, one can only imagine the thoughts of terror and confusion that would have consumed Tanya during the final moments of her conscious life. Despite Leading Senior Constable Danny Wolters doing routine "physical checks" on Tanya, he didn't call paramedics until 8.05pm.

According to Victoria Police protocol, a physical check means an officer physically attends the cell every 30 minutes to "rouse" a victim and seek a verbal response. On this day, Wolters and custody supervisor Sergeant Edwina Neale agreed on 20-minute checks because as an Aboriginal person Tanya was vulnerable in custody, according to Sergeant Neale.



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Dr Angela Sungaila of the Victorian Institute of Forensic Medicine said in her evidence that Tanya Day shouldn't have been in a police cell if checks needed to occur more frequently than the 30 minutes stipulated in Victoria Police's guidelines. She should have been in a hospital bed, Dr Sungaila said.

She said both a physical and verbal response should have been sought, and also deemed the "rousing" by police insufficient. Inconsistencies in the statements and evidence given by Victoria Police officers have left the family and supporters frustrated.

In court this week, Ambulance Victoria made an emotional apology to the family and to the Aboriginal community, which was accepted by the family.

"Tanya's death isn't a death in isolation. There's an entire Aboriginal community grieving, there's an entire Aboriginal community that are marginalised, and they want Tanya's death to mean something," Ambulance Victoria clinical operations director Michael Stephenson told me outside the court. "I do hope it means something, and I do hope it creates a greater sense of equity for the Aboriginal community."

It's a cruel irony of this case that when Tanya Day was 19 years old, her uncle, Harrison Day, was arrested and died in police custody at Echuca police station. He was arrested over an unpaid fine for public drunkenness. The fine was just \$10. Harrison's brother, Tommy, and niece, Keicha, have been supporting their family in court during the inquest.

"When my Uncle Harrison had passed away in custody, the policeman had come to the door and left a message for one of the children to pass on to [their] grandfather that his brother had died, and left. He didn't even demonstrate to my family the right to dignity," said Keicha Day.

"This inquest has been traumatic to watch because of the similarities, and they're there because of the systemic racism, there's no question about it. Now that it keeps happening in our family, it's become a generational epidemic."

Harrison Day's case was included in the Royal Commission into Aboriginal Deaths in Custody, which recommended that in jurisdictions where drunkenness has not been decriminalised, governments should legislate to abolish the offence

of public drunkenness. This is yet to be done in the state of Victoria.

In the wake of her uncle's death, Tanya became a staunch advocate for ending Aboriginal deaths in custody. In fact, at the time of her death, she was supporting the family of Tane Chatfield, who died in Tamworth Correctional Centre in September 2017. He was 22 years old.

Tanya has passed this fight on to her children. They want to ensure what happened to their mum never happens to another family, and that the Victorian government honours their commitment to abolishing the archaic law. Coroner Caitlin English indicated before the commencement of the inquest that she would be making this a recommendation.

In a meeting with the family a week before the inquest began, Victoria's minister for Aboriginal affairs, Gavin Jennings, pledged the Andrews Labor government would repeal the laws around public drunkenness in Victoria. He accepted the family's proposal of reopening sobering-up centres, in lieu of putting intoxicated people into a cell.

It was a win for the family but, until the changes have been put into action, there remains an air of scepticism in the Aboriginal community. No date has been set for such a repeal, so for now it remains a promise – one during a period of high tension between the Aboriginal community and the state's Indigenous Affairs Ministry over the destruction of sacred Djab Wurrung sites.

The inquest into Tanya Day's death is broad in scope but the most interesting facet is that the coroner made the decision to look at whether systemic racism played a part in her death. This is the first time such a factor has been considered in a coronial inquest.

Nothing can reverse the series of events that have led the Day family to this courtroom. But they say justice for Tanya Day will be served with the abolition of public drunkenness and a ruling of systemic racism by the coroner.

Last weekend, Tanya's children had to mourn their mother's birthday – she would have been 57. On Friday, they got the opportunity to speak about her in court. "We wanted the last day of the inquest to be just about Mum and who she was as a person," said Apryl. "The court has been so much about procedure and duties, and we just wanted it to end on Mum." ●