Abstract

Aboriginal Deaths In Custody & Incarceration:
Looking Back & Looking Forward

David McDonald
Australian Institute of Criminology

It has been more than five years since the report of the Royal Commission into Aboriginal Deaths in Custody was tabled in the Commonwealth Parliament. Over that period we have seen both improvements in some areas addressed by the Royal Commission and increasing Aboriginal disadvantage in others. Many indigenous organisations continue to be at the forefront of action to enhance Aboriginal and Torres Strait Islander well-being; the number of Aboriginal deaths in police lockups has fallen; the number of Aboriginal deaths in Australian prisons has risen; and the number of indigenous people in prison custody and their level of over-representation there (compared with non-Aboriginal people) is rising. The Royal Commission provided a blueprint for building on the strengths and working to overcome disadvantage with the principle of Aboriginal self-determination underpinning its recommendations. The lack of commitment and action by many sectors of government to implement the Royal Commission's recommendations, and the apparent limited understanding of the self-determination principles, augur poorly for the future.

Case studies and statistical data are presented in the areas of Aboriginal deaths in custody and incarceration.

(Revised 21 November 1996)

Part 1
Introduction [1]

In September 1993, I addressed a seminar sponsored by the Institute of Criminology on Aboriginal justice issues: I spoke on the topic of the monitoring of Australian deaths in custody. I concluded my presentation by expression the hope that the full implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody would lead to a marked reduction in the number of deaths in custody, nationally, of both Aboriginal and non-Aboriginal people. Three years later, it is sad to have to report that one of the themes of my presentation is the fact that the number of custodial deaths in Australia last year is approximately the same as the number seen in 1993 and substantially higher than that seen during the 1980s, the period investigated by the Royal Commission. A second conclusion of this presentation, linked to the first, is that the number of indigenous people in Australian prisons is continuing to rise since that time, as is the level of over-representation of indigenous people compared with non-indigenous people.

On the other hand, looking back over the three years and, indeed, the longer time period since the Royal Commission's report was tabled in the Commonwealth Parliament in 1991, a number of positives may be identified. For me, perhaps the most significant is the marked reduction in Aboriginal deaths in police lock-ups, on the one hand, and the magnificent work of many indigenous organisations, on the other. It is sad to have to observe, however, that many of the achievements of the Aboriginal and Torres Strait Islander organisations have occurred in the face of a continuing deplorable shortage of financial resources and, in far too many circumstances, an inadequate acceptance of their role, the part of Governments, key public servants, and people operating in the criminal justice system.

In the balance of this paper, I describe and comment on patterns of death in custody and patterns of incarceration of indigenous people (focusing on their over-representation), and conclude by looking forward, speculating on likely future trends in these two, linked, areas.

Part 2
Aboriginal Deaths In Custody

Last year, a young Aboriginal man died in one of Australia's prisons. All I know about him is what I have been able to glean from the transcript of the Coroner's inquest into his death and from a computer print-out of his adult criminal history, as recorded by the Corrections Department in the state in which he lived. Perhaps he had a criminal record as a juvenile; I do not know. The first offence recorded in these documents occurred when he was 17 years old (the nature of the offence is not revealed) and it appears that no penalty was awarded. When he was 21, he was convicted of another offence and received 40 hours of community work. The following year he was convicted of four other offences (also not detailed) and was

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[1] This paper is based on ongoing research conducted by the author at the Australian Institute of Criminology, and on a study of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody with regard to reducing the over-representation of indigenous people in custody, conducted jointly by Chris Cunneen of the Institute of Criminology, The University of Sydney, and the author. See Cunneen & McDonald in press.

ordered to undertake community work as the penalty. Not long after, when he was 24 years of age, he was convicted of four criminal offences and sentenced to prison. The offences were one each relating to driving, possession of illegal drugs, receiving stolen property, and unlicensed driving. It is easy to imagine what happened here: he was probably driving in such a manner as to attract the attention of the police, was pulled over, found to be unlicensed and found to have stolen goods and drugs on his property. It appears from his criminal record that he was sentenced to something like four months imprisonment on those offences. Early the following year, he was given a community service order for another traffic offence; three months later he was sentenced to 200 hours of home detention and, two years after that, appeared in Court for breaching his home detention order. Four months later, he was sentenced to six months imprisonment for wilful damage to property and stealing. Twelve months later (and it is now 1994) he was convicted of five offences and sentenced to prison on each: the offences were speeding, unlicensed driving, possession of an offensive weapon (two counts), and possession of utensils used for the consumption of drugs.

In February last year, he was convicted of six offences and sentenced to five months and seven days imprisonment: the offences were dangerous driving (four months), unlicensed driving (60 days), possession of drugs (21 days), possession of utensils for using drugs (? days), stealing - 1 count (15 days), and stealing - 1 count (1 day). Two months into his sentence he died from self-inflicted hanging.

What were the circumstances of his death?

The Coroner reports that, during the Easter period (which was a short time before he died) his defacto wife failed to visit him even though they had been in contact by telephone on a daily basis up to that point. He was worried that his wife had formed a relationship with another man and was planning to leave him. This feeling was reinforced when his wife's mother called and asked the prison administration to stop him from ringing his wife. The Coroner stated that, "I am satisfied that these matters occurring whilst he was in custody without any opportunity for input into these situations has deepened any depression that he had at that time. It has caused him to be so depressed that both prison officers and other prisoners were concerned for his well being". Because of this, the prison psychologist spoke to the young man and reached the conclusion that he was not at danger of suicide. Unfortunately, the prison psychologist was not aware that his prison medical file showed that he had been on medication for depression over the previous three years.

A couple of hours after the discussion with the psychologist, he wrote and despatched a letter to his wife which indicated (when it was subsequently located) that he intended to kill himself. Lock-down occurred at 10.30 pm and a routine patrol found the young man hanging from a bed sheet near his cell door about 12.40 am the following morning. One would expect that the prison officers would have entered the cell immediately and commenced resuscitation, but this was not possible. As the Coroner put it:

> Members of the patrol had to run to the office of the Operations Manager to get the key to the safe in B Block. They then had to go back to B Block and gain entry, open the safe, obtain the unit and cell keys from that safe, which finally allowed them access to the cell of the deceased. This caused delay of some minutes before they were able to get to the deceased.

The Coroner concluded, after a thorough investigation, that the hanging was self-inflicted. The young man had taken a sheet from his bed, stood on a chair near the cell door, tied one end of the sheet to the bars above the door and the other end around his neck. The Coroner concluded that he had then stepped off the chair or kicked it aside.

The Coroner is to be commended for making recommendations aimed at minimising the risk of future, similar, deaths occurring. He repeated a recommendation that he had made in 1988 or there-abouts concerning the urgent need to remove possible anchor points such as those used by the young man to tie the bed sheet to. He also recommended that prison security systems be modified so that staff can quickly gain access to cells when emergencies arise. He also repeated the recommendation that has been made so many times before that medical and other health care staff in prisons have access to, and pay full regard to, information available on a prisoner's physical and mental health status and background.

So here we have a story of the life and death of a young Aboriginal man as seen through the official criminal justice system records. He had a long criminal record dating back to his teens, with his offences all being minor except for the final offence (dangerous driving). During most of his court appearances he "had the book thrown at him" in the sense that he was charged over a number of linked offences rather than simply for the most serious offence involved in a particular incident. On most of these occasions his sentences were to be served cumulatively rather than concurrently. He was upset, depressed, but the depth of his depression and his prior history of clinical depression and suicide attempts did not come to the attention of the people in the prison system who tried to help him. Hanging is a particularly dangerous act and it is unlikely that, if the prison officers had got to him and attempted resuscitation more quickly, he would have lived. Nevertheless, that possibility exists. In recounting this story of his life and death, and noting the findings of the Coroner we see, once again, a number of the recommendations of the Royal Commission Into Aboriginal Deaths in Custody not being implemented.

Australian deaths in custody 1980 to 1996[2]

The Royal Commission recommended, and all Governments agreed, that the definition of a death in custody for the purposes of post-death death investigations and for the national monitoring of custodial deaths be as follows:

(i) the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;
(ii) the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained, or by lack of proper care whilst in such custody or detention;
(iii) the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and
(iv) the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or

[2] This section was prepared with the assistance of Ms Vicki Dalton of the Australian Institute of Criminology; her assistance is acknowledged with thanks. For further details, see Dalton 1996.

police custody or juvenile detention (Royal Commission into Aboriginal Deaths in Custody 1991, vol. 1, p. 190).

What is significant in this definition is its breadth. It covers both deaths which have traditionally been considered death in custody, such as those that occur in a police lock-up, prison or juvenile detention centre, and deaths that occur in a hospital or other medical facility when a person is taken there from a place of custody. Furthermore, it is important to note that it also covers deaths that occur while police or prison officers are attempting to detain a person. This last category is made up, in the main, of high speed police motor vehicle pursuits.

Across Australia during the twelve months to 30 June 1996, 75 deaths occurred in the full range of custodial circumstances detailed above. Nineteen or 25 per cent of these were Aboriginal people; 6 of the Aboriginal deaths occurred in police custody (1 in a police lock-up and 5 while police were attempting to detain the person) and thirteen occurred in prisons. None occurred in juvenile detention centres. As one would expect from the distribution of the Australian population, the largest number (24 or one-third of the total) occurred in NSW with smaller numbers in the other states. Turning to the 19 Aboriginal deaths, 6 occurred in NSW, 4 each in Queensland and Western Australia, 3 in South Australia, and 2 in the Northern Territory. Table 1 provides details.

TABLE 1
Australian Deaths in Custody 1 July 1995-30 June 1996
Jurisdiction, Aboriginality and Custodial Authority

	Police			Prison			Juvenile			Total		Grand
State	Ab'l	Other	Total	Ab'l	Other	Total	Ab'l	Other	Total	Ab'l	Other	**Total**
NSW	2	4	6	4	14	18	-	-	-	6	18	**24**
Vic.	-	7	7	-	5	5	-	1	1	-	13	**13**
Qld	1	4	5	3	5	8	-	1	1	4	10	**14**
WA	2	2	4	2	4	6	-	-	-	4	6	**10**
SA	-	-	-	3	2	5	-	-	-	3	2	**5**
Tas.	-	3	3	-	2	2	-	-	-	-	5	**5**
NT	1	-	1	1	-	1	-	-	-	2	-	**2**
ACT	-	1	1	-	1	1	-	-	-	-	2	**2**
Aust.	**6**	**21**	**27**	**13**	**33**	**46**	**-**	**2**	**2**	**19**	**56**	**75**

Source: Dalton 1996.

The Aboriginal people who died in custody during the twelve months period were all males. Their average age was 28 years and the median (the point above and below which half the cases fell) was 24 years. The average age of the Aboriginal people who died in police custody or while police were attempting to detain them was 22 years, whereas the average age of the Aboriginal people who died in prison was 31 years.

Table 2 provides details of the causes of death of the Aboriginal detainees. The causes were fairly evenly distributed between hanging, disease, and external trauma, predominantly deaths in motor vehicle crashes.

TABLE 2
Aboriginal Deaths in Custody, Australia, 1995-96

Cause and Manner of Death, Custodial Authority

Cause	Police	Prison	Total
Hanging	1	5	6
Natural causes	-	5	5
Gunshot	-	-	-
Other external trauma	5	3	8
Drugs/alcohol	-	-	-
Other	-	-	-
Not known	-	-	-
Total	**6**	**13**	**19**

Source: Dalton 1996

Turning now to data on trends, it is apparent that the number of Aboriginal deaths in custody during the year to 30 June 1996 was particularly high. Table 3 shows the 1980 to 1996 trends in the deaths of Aboriginal people in institutional settings, that is in prisons and police lock-ups or during transfer to or from them, or in medical facilities following transfer from prisons or police lock-ups. In other words, it excludes deaths that occur while police or prison officers were attempting to detain a person.[3] It is particularly to be noted that the 14 Aboriginal deaths in prisons and police lock-ups which occurred during the year is equal to the highest figure recorded since the 1988/89 year when there were 15 such deaths. Looking at it from another perspective, there have only been two years, over the last 16, in which there were more Aboriginal deaths in custody in Australia than occurred in the twelve months to June 1996. It is worth repeating the fact that 13 of the 14 deaths of Aboriginal people in institutional settings occurred in prison and that this number far outstrips that of any previous year. In fact, the average number of Aboriginal prison deaths over the previous 15 years was 5.3 per annum, less than half the 1995/96 number.

[3] Restricting the cases to deaths in institutional settings enables us to look at trends over the period since 1980, as deaths in non-institutional settings were not recorded, nationally, prior to 1990.

TABLE 3
Aboriginal Deaths in Custody 1980-81 to 1995-96
Year of Death, Custodial Authority, Institutional Settings Only*

Year	Police	Prison	Juvenile Detention	**Total**
1980-81	7	2	1	**10**
1981-82	2	3	-	**5**
1982-83	5	4	-	**9**
1983-84	3	2	-	**5**
1984-85	8	5	-	**13**
1985-86	5	4	-	**9**
1986-87	15	2	1	**18**
1987-88	6	4	1	**11**
1988-89	10	5	-	**15**
1989-90	5	9	-	**14**
1990-91	2	5	-	**7**
1991-92	5	4	-	**9**
1992-93	1	5	-	**6**
1993-94	2	12	-	**14**
1994-95	1	11	-	**12**
1995-96	1	13	-	**14**

* Deaths in prisons, police lock-ups or juvenile detention facilities, during transfer to or from them, or in medical facilities following transfer from detention facilities.

Source: Dalton 1996

For completeness, Table 4 shows the number of Aboriginal deaths in all custodial circumstances covering the period since 1990/91, the first year in which national data of this breadth has been available. The prison data in this table are the same as in the previous one: the data on deaths in police custody and whilst police were attempting to detain people shows that the number of these police custody-related deaths was particularly high during the year to 30 June 1996.

TABLE 4
Aboriginal deaths in custody 1990-91 to 1995-96, Custodial Authority
Deaths in all custodial circumstances

Year	Police	Prison	**Total**
1990-91	3	5	**8**
1991-92	7	4	**11**
1992-93	3	5	**8**
1993-94	4	12	**16**
1994-95	2	11	**13**
1995-96	6	13	**19**

Source: Dalton 1996.

These figures speak for themselves. The number of Aboriginal deaths in custody in Australia, particularly in Australian prisons, is not only unacceptably high but is markedly higher than in previous years, despite the work of the Royal Commission into Aboriginal Deaths in Custody, the commitments made by Governments to implement the Royal Commission's recommendations and the efforts of Government and Aboriginal organisations to work to reduce the number of deaths in custody. The substantial reduction, over the years, in deaths in *police* custody, which is

accompanied by a continuing increase in the number of *prison* deaths, reminds us that effective implementation of the recommendations of the Royal Commission can and will have the desired outcomes. What is missing is the genuine implementation of some of the key recommendations.[4]

Part 3

Detaining and locking-up Australia's Aboriginal people

Aboriginal people in this country are subject to an incredibly high level of incarceration both in absolute terms and relative to the levels experienced by the non-Aboriginal population. This pattern is seen at a number of different points in the criminal justice system:

- Aboriginal people are apprehended by the police and held in police cells across Australia at a rate 26 times that of non-Aboriginal people (McDonald 1993).

- Some 25 per cent of Aboriginal people between 15 and 44 years of age report that they have been arrested in the last five years, most frequently for disorderly conduct and/or drinking in public (Australian Bureau of Statistics 1994).

- The rate of detention of Aboriginal children aged 10-17 years is over 21 times that of non-Aboriginal children (Atkinson & Dagger 1996).

- The rate of Aboriginal imprisonment is over 18 times that of non-Aboriginal imprisonment (Australian Bureau of Statistics 1996).

- In Western Australia in 1993, 15.6 per cent of the State's all-ages Aboriginal population was arrested, compared with only 1.7 per cent of the State's non-Aboriginal population (Harding, Broadhurst, Ferrante & Loh 1995, p. 38).

This pattern of contact with the criminal justice system, so frequently leading to incarceration, commences at an early age and represents a failure of institutions of society to deal with Aboriginal disadvantage. Take the case of an Aboriginal boy in Central Australia.[5] AR was sentenced by a Magistrate in the Children's Court to 21 months detention at the age of 13 years. On appeal, the Chief Justice of the Northern Territory released the lad on an 18 months probation order after he had already served over 5 months in detention at a juvenile centre some 1,500 kilometres from his home and relatives.

Even at this early age he had a criminal record, having committed some 30 offences on 17 different occasions in the past, mostly relating to damage to property and dishonesty. He stated that he had committed these offences to get lollies and loose change because he was hungry and did not know how else to get food. On several occasions he had turned himself in to police when it was dark and he was unable to

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[4] An additional nine Aboriginal and Torres Strait Islander deaths in custody have been reported in the period 1 July to 5 November 1996, six in prison and three in police pursuits.

[5] Martin CJ *AR v Llewellyn and Pryce*, Supreme Court of the Northern Territory Justices Appeal, unreported, 8 May 1995, quoted in Cunneen and McDonald, in press.

get home. During his court hearings, he pleaded guilty to the offences for which he was charged.

The Magistrate sentenced him to 21 months detention and stated that he was "a wild animal on the streets of Alice Springs". He went on to state that:

> there is nothing that can be done for you. There is nothing put forward because in fact there isn't any kind of organisation, and bereft of parents and bereft of uncles ... the Government will have to do something about you. So I'm going to put you into detention.

This boy left school at about 10 or 11 years of age. His parents had separated when he was an infant but both parents had visited the court during the proceedings. When the matter was dealt with on appeal, the Chief Justice indicated that he had serious doubts that, because of the boy's lack of education and his young age, he would have understood the legalistic conditions of the bonds and bail undertakings to which he had been subjected and the consequences of failing to observe those conditions.

More importantly, the Chief Justice noted that "There was no consistency and care and supervision of the appellant during the many months from the time he first came under notice of the court, let alone the police" and it was these factors that lead the Magistrate to the conclusion that the boy "had to be locked up in the criminal justice system because there was no-one else to look after him". The Chief Justice went on to find that the case was "absolutely alarming" and that the boy should never have been in custody:

> Surely we have not reached the stage of sending children to prison - for that is what it amounts to - to be cared for, where it appears there is no-one else prepared to accept that responsibility. If that is the case there is a need for drastic re-ordering of resources ... Courts do not decide that a person is in need of care and then place him or her in penal confinement for that purpose.

Cunneen and McDonald (in press) concluded from this case that "Australian society is indicted when a judicial official assumes that the best way the society can deal with a troubled 13 year old is to imprison him".

Discrimination and over-policing

Nearly every Aboriginal person in Australia can recount her or his experiences or experiences of friends and relatives, demonstrating the continuing discriminatory operation of the criminal justice system in this country vis-a-vis the indigenous people. One that came to my attention recently concerned a young Aboriginal woman whom we will call "Anne". During the early hours of a Sunday morning in a country town in South Eastern Australia, she and her defacto husband were subjected to racist taunts by a non-Aboriginal woman. An altercation followed and her husband was arrested by the local police and taken to the lock-up. Anne followed wanting to see her husband to obtain their car keys from him. She described what happened in the following terms:

> I went to the front counter of the police station, no-one was there so I rang the buzzer, I heard a voice saying "I'll be there in a minute". After a short period the four officers who I had seen outside the pizza parlour [where the altercation occurred] arrived. I questioned the police about their behaviour with regard to [my husband] and in other respects and, after a short period, one of the police officers grabbed my hair from the rear and rushed me out of the

> police station door onto the street. He stood at the door laughing and returned to the police station. I yelled to him "I'll see you in fuckin' court, I'll have you". I then ran down the street crying back to the pizza parlour where my friends were.

That was not the end of the matter. The response of the police to this incident was to serve on Anne a Summons to Appear in Court on five charges. Namely:

1. Using indecent language in the main street outside the pizza parlour.
2. Using indecent language on the street in front of the police station. (Only the police heard the offensive words.)
3. Using indecent language in the foyer of the Police Station. (Again, only the Police heard the language.)
4. Hindering a member of the police force in the execution of his duty.
5. Trespassing on the police station.

Here we have yet another example of numerous breaches of the recommendations of the Royal Commission. It is clearly a case of severe over-policing and of the ongoing harassment of Aboriginal people by police that occurs far too frequently in both the urban and rural areas of this nation.

Levels & patterns of incarceration

As we have observed, the large numbers of indigenous people in custody, and their high rate of custody compared with the rate among non-Aboriginal Australians, is seen at the levels of police custody, custody in juvenile detention centres and custody in adult prisons.

Police custody

Table 5 provides details on indigenous people apprehended by police and held in police lock-ups anywhere in Australia during the month of August 1992. It will be immediately apparent that the rate of Aboriginal incarceration in police lock-ups was 2,801 per 100,000 population compared with a rate for non-Aboriginal people of 107 per 100,000, with the result that the Aboriginal rate is over 26 times that of the non-Aboriginal rate. Huge state-by-state differences occur with the Aboriginal rate in Western Australia being 52 times that of the non-Aboriginal rate in that State.

TABLE 5
Police Custody Rates per 100,000 Population*
National Police Custody Survey, August 1992

State	Ab'l/ TSI	Other	Over-representation**
NSW	1,246	79	16
Vic.	772	76	10
Qld	2,094	157	13
WA	7,007	135	52
SA	3,720	178	21
Tas.	242	82	3
NT	3,628	253	14
ACT	452	103	4
Australia	**2,801**	**107**	**26**

Notes: * Rates based on total population as at 30 June 1994.
** Ratio of Aboriginal rate to the rate for 'other', i.e. non-Aboriginal people.
Source: McDonald 1993.

Juvenile corrective centres[6]

Table 6 provides information about indigenous children and young people in juvenile detention centres throughout Australia. As at 30 June 1996, the total was 322 juveniles with some 39 per cent being in NSW detention facilities. The level of over-representation of indigenous juveniles in detention, compared with non-indigenous juveniles, was 21.3 time nationally, with a high of 41.1 times in Queensland and a low of 3.8 times in the Northern Territory. (The ACT over-representation level should be disregarded as it is based on only one Aboriginal case.) Of particular importance is the fact that the level of over-representation of indigenous juveniles in detention (21.3 times that of their non-indigenous counterparts) is even higher than the corresponding levels for people in adult prisons (approximately 18 times; details below).

Indigenous juveniles composed, at 30 June 1996, approximately 33 per cent of all juveniles in detention. The proportion was 69 per cent in the Northern Territory, 62 per cent in Queensland and 55 per cent in Western Australia, with lower proportions found in the other states and territories.

[6] These figures include a small number of young people aged 18 years or above (not strictly juveniles) held in juvenile corrective centres.

TABLE 6
Persons in Juvenile Corrective Institutions
Australia, 30 June 1996, Jurisdiction, Aboriginality and Level of Over-representation

State	Ab'l/ TSI	Other	Over-representation*
NSW	127	329	20.5
Vic.	7	117	9.8
Qld	89	55	41.1
WA	63	51	31.6
SA	20	70	13.7
Tas.	6	20	8.2
NT	9	4	3.8
ACT	1	15	19.0
Australia	**322**	**661**	**21.3**

Notes: * Ratio of Aboriginal/TSI rate to the rate for 'other', i.e. non-Aboriginal/TSI.
Source: Atkinson & Dagger 1996.

Adult prisons

Details relating to indigenous people in adult prisons including the trends since 1988 (the first year for which national data on Aboriginal prisoners have been available) are presented below.

TABLE 7
Aboriginal and TSI People in Australian Prisons, 1988-1996
Numbers and Levels of Over-representation

Year	Number	Per cent Aboriginal	Aboriginal imprisonment rate*	Level of over-representation**
30 June 1988	1,809	14.7	1232	14.2
30 June 1989	1,825	14.1	1207	13.4
30 June 1990	2,041	14.3	1312	13.5
30 June 1991	2,166	14.4	1354	13.5
30 June 1992	2,223	14.3	1359	13.2
30 June 1993	2,416	15.2	1438	14.1
July 1994	2,742	17.5	1598	16.5
July 1995	2,907	18.1	1692	17.4
March 1996	3,069	18.8	1786	18.3

* Rate per 100,000 adult indigenous population.
** Ratio of the Aboriginal rate to the non-Aboriginal rate.
Sources: 1988-1993: National Prison Censuses (Australian Institute of Criminology); 1994-1996 Australian Bureau of Statistics. The data covering the two time periods specified were collected in different ways and are therefore not directly comparable. They should not be treated as a continuous time series.

It will be noted that the number of Aboriginal prisoners has increased each year, with the number increasing by more than one-third between 1988 and 1993 (the same data collection method was used for each of those years) and increasing by 6 per cent in the single year from July 1994 to July 1995 (July 1996 data are not yet available).

It is also important to observe that the level of over-representation of Aboriginal people in the prison system, that is the Aboriginal imprisonment rate compared with the non-Aboriginal imprisonment rate, has remained at a markedly high level. In fact, although not shown in Table 7, the level of over-representation for the most recent period for which data are available, March 1996, is 18.3 compared with 17.4 in March 1995 (ABS 1996). This means that the Aboriginal imprisonment rate increase by more than 5 per cent during that twelve months period or, putting it another way, the Aboriginal imprisonment rate is increasing faster than the non-Aboriginal imprisonment rate. As of March 1996 (the latest figures available), 19 per cent of the people in Australian prisons were Aboriginal, although Aboriginal people make up less than 2 per cent of the national adult population (ABS 1996).

Reducing incarceration rates

The National Report of the Royal Commission Into Aboriginal Deaths in Custody focused on the appallingly high levels of incarceration of the Australian Aboriginal population and brought forward many recommendations on action required to reduce the number of indigenous people in custody and to reduce their level of incarceration compared to the level experienced by the non-Aboriginal population. These recommendations cover both the underlying issues that lead to Aboriginal people committing offences and ending up in custody (such as education, employment, alcohol use, and discrimination) and other sets of recommendations dealing specifically with the operations of the criminal justice system aiming at minimising or removing discriminatory practices and ensuring that imprisonment is used only as a sanction of last resort. Cunneen and McDonald (in press) have recently concluded a study evaluating the implementation of these recommendations of the Royal Commission and highlighting action needed to achieve that nation's goals as recommended by the Royal Commission and agreed to by all Australian Governments. A central conclusion of the study is that Australian Governments have failed to meet the undertakings they made to take effective action to reduce Aboriginal incarceration. Indeed, as noted above, the numbers in custody are continuing to increase.

The study report details specific areas in which action is required to implement, or more fully implement, the Royal Commission's recommendations. Running through this is the need for Governments to truly understand and implement Recommendation 188 of the Royal Commission which states:

> That organizations negotiate with appropriate Aboriginal organizations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people.

It has been demonstrated that, when this principle is fully understood and fully articulated in the way Government agencies and Aboriginal organisations interact, mutually beneficial outcomes are observed. On the other hand, when Government policies and programs are developed in isolation from the Aboriginal people who are meant to be the beneficiaries of those services, it is almost inevitable that problems will arise in the programs' implementation.

No doubt exists that the number of Aboriginal people in custody will fall if action is taken along the lines put forward by the Royal Commission. Cunneen and McDonald suggest that this action occur in seven different areas:

- Improving the information available about the use of custody.

- Improving the relationships between the police and Aboriginal people, particularly through police showing greater respect for Aboriginal people and the further enhancement of community based processes of social control, such as night patrols.

- Adequately responding to public drunkenness, dealing with it as a problem of health and social welfare, rather than a form of criminal behaviour - most importantly, the establishment of a sufficient number of adequately funded sobering up facilities, rather than having Aboriginal people apprehended for public drunkenness and held in the cells. The development of local protocols between the police and Aboriginal organisations and those who operate the sobering up facilities is important in this regard.

- Improvement of police practices and procedures: implementing the principle that arrest is used only when no other option for dealing with a social problem is available is a principle which should underlie policing generally. What we need, in this nation, is for police to focus more on the prevention and resolution of the problems which come to their attention, rather than enforcing the law and maintaining good order in a manner which ignores the alternative actions available.

- Similarly, imprisonment should be used by the courts only as a sanction of last resort. Many options exist for diverting people away from the prison system with resulting beneficial outcomes for the individuals, their families and the society generally.

- Further improvements can be made in the operation of the courts, in some areas of legislation, and in Aboriginal legal representation before the courts. Among these are fuller and more effective cross-cultural training of judicial officials, better use of interpreters, the reversal of current trends towards harsher penalties including (in some jurisdictions) proposals for mandatory minimum sentences for quite minor offences. Aboriginal legal services should be receiving more funds than in the past if Aboriginal people are to receive justice before the courts.

- Young Aboriginal people do not fair well in the juvenile justice system; a need existing for a wider range of community based alternatives to incarceration, particularly alternatives that are designed cooperatively between Aboriginal organisations and official agencies.

Part 4
Looking forward

Clearly a link exists between the historically high levels of Aboriginal deaths in custody that Australia is experiencing and the historically high levels of incarceration. It is not trite, but an important point to make, that if Aboriginal people were not in custody, they would not be dying in custody. This does not mean, as some have suggested, that I am advocating processes through which sick and injured people are diverted from custody and simply left on the streets, exposed to risk of death there rather than in custody. Rather, in advocating policies and programs to markedly reduce the levels of Aboriginal incarceration, I am emphasising the need to implement the Royal Commission's recommendations in their entirety so that the reduction in Aboriginal disadvantage in *all* domains is the goal. Research evidence indicates that people in custody tend to be those who come from deprived backgrounds, who have low levels of education and/or poor employment records. Addressing Aboriginal disadvantage in these interrelated areas will result, in turn, in a reduction in over-representation in custody and over-representation in deaths in custody.

Particularly frustrating for many observers is the fact that desired outcomes have been achieved in some areas but not in others, depending on the commitment to implement Royal Commission recommendations. A good example is deaths in police custody as discussed above. It is now a rare event for an Aboriginal person to die in a police lock-up whereas, during the 1980s, some two-thirds of the total number of Aboriginal custodial deaths occurred in such settings. The police services around the nation took to heart the Royal Commission's recommendations about more effective screening of at-risk detainees, the diversion from custody of such people and adequately caring for the people who are in the cells. A second example is the use of imprisonment for fine default. We have the situation in this nation where hundreds of people are in prison for failing to pay their fines - a process that can be characterised as imprisoning people for poverty. We have seen, at certain stages, Governments introducing policies of not imprisoning people for fine default, with an immediate reduction in the prison population. The implementation of these policies nationally is a matter of urgency.

A central theme of the Royal Commission into Aboriginal Deaths in Custody's recommendations is that of Aboriginal self-determination. It pointed out that self-determination is seen in action when Aboriginal people and organisations are at the centre of the process of identifying the problems that they face, setting priorities for action, and implementing programs of activity working towards redressing disadvantage and enhancing positive well-being. The process of self-determination is seen in action when people in non-Aboriginal organisations listen to Aboriginal people and work with them in a mutually respectful way, towards achieving shared goals. Across the nation we have Aboriginal organisations staffed by Aboriginal people who have the motivation and expertise to work in this manner. Too often, though, they are thwarted by the inappropriate attitudes of the leaders and staff of the Government agencies with whom they interact and by the miserly funding which so many organisations receive.

The 1996 report of the Commonwealth Government's National Commission of Audit demonstrates the failure of people in influential positions in shaping Government

policy, including funding decisions, to understand the pathways towards Aboriginal self-determination. In advocating (in the name of "reducing duplication") the mainstreaming of legal aid for Aboriginal people by removing from Aboriginal Legal Services the task of representing their people before the courts, the Commission demonstrated its lack of understanding of the needs of Aboriginal people, the capacity of Aboriginal organisations, the processes for reducing Aboriginal disadvantage and, over-arching all of this, it displays an ignorance of the concept of and pathways to self-determination.

Looking forward, then, with regard to Aboriginal deaths in custody and levels of Aboriginal incarceration, I am not optimistic. Despite commitments having been made by the Premiers and Chief Ministers and their senior public servants, we are seeing the continuous implementation of policies that directly and inevitably result in the number of Aboriginal people in Australia's prisons continuing to increase and the level of over-representation in custody not falling. We are continuing to see prisons that are over-crowded and under-resourced, placing often intolerable pressures on both prisoners and prison staff. We are continuing to see inadequate understanding of the Royal Commission's recommendations about the nature of care for prisoners and the services that they need, and/or a lack of implementation of those recommendations where their import has been grasped. The result is the historically high level of Aboriginal deaths in Australian prisons.

Also important is the international community's perceptions of Australia. As a nation, we have little authority to speak about human rights in other nations when Australia's indigenous people are experiencing the appalling disadvantage outlined in this paper. The international community will not look favourably on a nation where a Member of Federal Parliament stated, in her maiden speech in the House of Representatives on 10 September 1996, "Today...I talk about...the privileges Aboriginals enjoy over other Australians. I have done research on benefits available only to Aboriginals and challenge anyone to tell me how Aboriginals are disadvantaged when they can obtain three and five per cent housing loans denied to non-Aboriginals". The ignorance of Aboriginal disadvantage and of how to reduce it, revealed by such a statement, is a matter of deep concern.

Given the facts on trends in Aboriginal deaths in custody and incarceration sketched in this paper, along with the lack of commitment and action of many of Australia's Governments in implementing the recommendations of the Royal Commission, one cannot assume that the next five years will produce any better outcomes in these areas than we have seen over the past five years.

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