

Lorena Allam, Calla Wahlquist and Nick Evershed

The 147 dead: terrible toll of Indigenous deaths in custody spurs calls for reform

Exclusive: Guardian investigation of a decade of Indigenous deaths prompts calls for independent detention monitor

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Aboriginal leaders have called for an immediate review of the “absolutely unacceptable” numbers of Indigenous deaths in custody and are demanding Australia develop an independent system for monitoring them as a priority.

The social justice commissioner, June Oscar, said exclusive figures published by Guardian Australia’s Deaths Inside project on Tuesday were “devastating” and required immediate attention.

Our investigation into 10 years of deaths in custody cases found serious systemic failings, just as the royal commission did almost 30 years ago:

- ∨ 147 Indigenous people have died over the decade and 407 have died since the end of the royal commission into deaths in custody in 1991
- ∨ Indigenous people are dying in custody from treatable medical conditions, and are much less likely than non-Indigenous people to receive the care they need
- ∨ Agencies such as police watch-houses, prisons and hospitals failed to follow all of their own procedures in 34% of cases where Indigenous people died, compared with 21% of cases for non-Indigenous people
- ∨ Mental health or cognitive impairment was a factor in 41% of all deaths in custody. But Indigenous people with a diagnosed mental health condition or cognitive impairment, such as a brain injury or foetal alcohol syndrome disorder, received the care they needed in just 53% of cases
- ∨ Families are waiting up to three years for coronial inquest findings in some states, with the longest average periods in South Australia and Western Australia
- ∨ Of those 147 deaths investigated, 43 were of people who were born after 1991, when the findings of the royal commission into Aboriginal deaths in custody were released.

“Our people are dying in custody under circumstances that often appear to be entirely preventable,” Oscar said. “I am deeply concerned about the reported lack of access to medical care, and about deaths in custody of people suffering mental health and cognitive impairments.

“These are not just statistics, they are the human stories of what happens as a result of government inaction.”

Late last year Australia ratified an international treaty which requires an independent monitor to conduct regular inspections of all places of detention.

Oscar said that needed to happen urgently, as “this is a stark reminder about the failure of governments to implement the recommendations from the royal commission into Aboriginal deaths in custody”.

Pat Dodson, who was a commissioner on the 1987-91 inquiry and is now a Labor senator, also called for independent monitoring.

Thirty years down the track, Dodson said, “we seem to have slipped back into bad practices”.

Dodson told Guardian Australia he was deeply saddened to know that Indigenous people were dying from a lack of access to medical treatment, “which is a terrible thing when you’re incarcerated because you’ve got no option, you’re at the mercy of custodial officers”.

“So that has to be seriously looked at, it has to be reviewed,” he said. “Indigenous people needed to be able to “trust in those that have got your freedom in their hands.”

“Locking people up and putting them into prisons is not the answer. We’ve got too many examples of where they haven’t been cared for, where they haven’t had the access and they’ve died.”

Systemic failure

Guardian Australia examined the circumstances of every Indigenous death in custody over the past 10 years, and compared Indigenous and non-Indigenous deaths over a five-year period. The results show stark differences in the treatment Indigenous people receive.

But the numbers tell only part of the story. In reading 463 coronial reports, Guardian Australia found a record of systemic failure.

An Aboriginal woman with a chronic injury and a tooth abscess was denied pain medication for six weeks after being transferred to Townsville women’s prison in 2010. Her medical records had not arrived with her and, apart from issuing Panadol, authorities did not believe she was in need of pain relief. Six weeks after transfer, she took her own life. The coroner said the pain was “a contributing factor in her despair” during her final weeks.

An Aboriginal man in the grip of cardiac arrest was made to walk to a guard station to use a portable oxygen unit before an ambulance was called.

Another Aboriginal man died of heart disease lying on a concrete bench in a Darwin police watch-house cell. The coroner said “a sick middle-aged Aboriginal man was treated like a criminal and incarcerated like a criminal; he died in a police cell which was built to house criminals ... In my view, he was entitled to die as a free man.”

Ms Dhu, a Yamatji woman, died of undiagnosed septicaemia after being taken into police custody for unpaid fines in Port Hedland. Kwementyaye Briscoe’s medical care in the Alice Springs watch-house was declared by the coroner to be “completely inadequate”. Other cases describe Indigenous people being dragged unconscious into jail cells or paddy wagons, only for the coroner to find they should have been rushed to hospital.

Prisoners known to be at risk of self-harm were held in cells with hanging points, or placed in cells alone. The royal commission recommended, and in most states and territories it is supposed to be general procedure, that at-risk Indigenous inmates are placed “two-out” – with another Indigenous person – so they can be safely monitored.

Families of those who die also experienced poor treatment. Coroners have criticised unnecessary delays in notifying next of kin. In one case, a father found out his son had died when another prisoner called him several hours after the death, long before police notified him officially.

At least 407 Aboriginal and Torres Strait Islander people have died in custody since the royal commission handed down its 339 recommendations in 1991.

Social justice commissioner June Oscar says Guardian data on deaths in custody is ‘devastating’.
Photograph: Lucy Hughes Jones/AAP

According to the Australian Institute of Criminology’s national deaths in custody monitoring program, the number of Indigenous deaths in prison custody in 2014-15 was the highest it has been in 35 years.

Apart from the AIC, there is a lack of public monitoring.

“Nobody’s keeping a watching brief,” University of Queensland law professor and criminal lawyer Tamara Walsh told Guardian Australia.

For the past three years, Walsh has led a team of researchers to build a searchable database of deaths in custody.

Walsh said the lack of reliable public data had serious implications for transparency and accountability in the criminal justice system.

“If it’s so hard to get the data in the first place, the task becomes accessing the data and not doing the analysis,” Walsh said. “It means we’re less able to expose these very important trends.

The institute told Guardian Australia it had recently committed to release reports annually.

Walsh’s team found Indigenous people were coming into custody with multiple complex medical and mental health problems and were not receiving sufficient medical care.

“As long as that’s happening, there are going to be deaths in custody, there are going to be people who are treated inappropriately in prisons, because it’s not where they should be,” she said.

“We’ve got a lot to be embarrassed about in this country. Because other countries have built on all the research that’s been done on restorative justice and diversion in ways that we just haven’t.

“So it’s not as if it can’t be done. We’ve watched it happen in other jurisdictions, but for some reason there just doesn’t seem to be the appetite for change in this country.”