Reporting Deaths in Custody

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A dead issue?

Reporting of Aboriginal and Torres Strait Islander issues has shown some signs of improvement. But mainstream media reporting of the failure of governments to implement recommendations of the Royal Commission Aboriginal Deaths in Custody has been virtually non-existent. Wendy Bacon and Bonita Mason report how the media have failed to analyse why the deaths are continuing.

The Royal Commission into Aboriginal Deaths in Custody is in danger of becoming a tragic farce. A fundamental objective of the Commission was that the number of Aboriginal people imprisoned be rapidly reduced. Instead, more Aboriginal
also released a press release drawing attention to the issue.

The story was widely reported around Australia on March 2 and 3 most of the major metropolitan newspapers and on ABC Radio. In some areas there was no coverage. As far as Reportage has been able to determine, there was also no coverage on any television station or on commercial radio.

The report’s release was picked up by a number of Aboriginal and Torres Strait Islander outlets around Australia but overall, the coverage was brief, even cursory, and often buried late in the paper. Reports were focussed on details; some taking on the quality of a well-written list.

The report contained devastating news for those concerned about the implementation of the Royal Commission’s recommendations. It said that 14 Aboriginal people died in custody during 1993-94 – this is the highest figure in the past four years and more than double the previous year’s figure of six. The report also said that deaths in police custody have gone down but that all deaths in prison custody are at their highest level since figures were first collected in 1980-81.

According to the AIC “The central reason appears to lie in the increasing rates of imprisonment of Australians in recent years. The more people are locked up, the more people die in custody.” The number of Aboriginal people imprisoned has increased by 50 per cent since 1988 and in some states it has more than doubled.

Adam Graycar, Director of the AIC, said in the report, “While the Aboriginal population is less than two per cent of the total population, it comprises 16 per cent of the prison population and Aboriginal people account for 18 per cent of deaths in prison custody. This unacceptable high incarceration rate of Aboriginal people, combined with the poor health status, presents a truly regrettable and preventable situation.”

The report concluded, “Key recommendations of the Royal Commission are either not being fully implemented or, when they are, are not operating effectively. In order to significantly reduce the number of deaths in custody, there is clearly a need for strong action by all governments to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody and to evaluate their effects on the frequency of Aboriginal and non-Aboriginal people alike who die in custody.”

The Federal Minister for Aboriginal Affairs, Robert Tickner, made a media statement on the same day as the AIC report. In the release he said he found the “gross over-representation” of Aboriginal people in custody disturbing and that “State and Territory governments need to ensure reforms were enacted in their area of direct responsibility for the criminal justice, police and prison systems”.

While nearly all major metropolitan papers covered the release of the AIC report, only four made a clear and direct link between the report of the deaths and the failure to effectively implement the Royal Commission recommendations. Six of the ten ignored Tickner’s media release. As far as Reportage is aware, no papers have followed up the story.

The Cairns Post, the major daily newspaper servicing people in north-eastern Australia, did not cover the story at all. For more on the Cairns Post’s coverage of Aboriginal affairs, see Reportage issues Summer 1993/94 and Winter ’94.

The AIC figures themselves were not fresh news. The 1993-94 figures had been

DEATHS IN CUSTODY
A TIMELINE

Eight years after the Royal Commission into Aboriginal Deaths in Custody was announced, and four years after it made its report, deaths in custody are rising. Governments around the nation are failing to implement key recommendations despite ongoing warnings and protests from Aboriginal organisations and their supporters.

1983
- The high number of Aboriginal deaths in police and prison custody is highlighted by the brutal death of 16 year old John Pat, killed by police in Western Australia. After five police are acquitted of manslaughter, the Committee to Defend Black Rights (CDBR) is established and a campaign to stop the Aboriginal deaths in custody commences.

1986
- The Aboriginal-led CDBR builds a national campaign through lobbying, protesting, and networking with Aboriginal and other organisations. As the campaign gathers strength, a national tour by families of Aboriginal people who have died in custody, calls on the Federal Government to hold a Royal Commission.
- Mainstream media attention is negligible with Aboriginal deaths in custody rarely reported by more than a one sentence item in
published in July last year in Jennifer Searcy's *Deaths in Custody Newsletter*. The newsletter comprehensively and accurately monitors events relating to deaths in custody and is widely distributed to news outlets who usually ignore its contents. On that occasion the Searcy newsletter was only picked up by the *Sydney Morning Herald*.

"While the Aboriginal population is less than two per cent of the total population, it comprises 16 per cent of the prison population and Aboriginal people account for 19 per cent of deaths in prison custody."

Some newspapers. There is however extensive reporting in alternative newspapers and community radio.

**1987**

- Reports on the continuing deaths in custody finally begin to attract attention of mainstream media outlets, like the *Sydney Morning Herald*, *The Age* and ABC’s *Four Corners*.
- Following the deaths of seven young Aboriginal men in custody in a period of six weeks, the Federal Minister for Aboriginal Affairs, Clyde Holding, announces a Parliamentary Inquiry into Aboriginal deaths in custody.
- A packed Sydney Town Hall meeting hears from relatives of Aborigines who have died in custody. Helen Corbett, chairperson of CDBR, says, “A Federal Inquiry ... will not work towards a solution on a national level, as deaths in police and prison custody are happening around Australia.” The meeting supports the establishment of a network of local Watch Committees to monitor the problem, and calls for a Royal Commission to inquire into causes and solutions.
- Aboriginal groups and their supporters draw up plans to use media attention to Bicentennial celebrations in 1988 as a platform for showing Australia’s human rights record to the world. With CDBR’s Helen Corbett in Geneva speaking on Aboriginal deaths in custody at a UN meeting on human rights, the Federal Government in October announces it would open a Royal Commission into Aboriginal deaths in custody.

**1988**

- The Royal Commission’s interim report is released in December.

**1991**

- The Royal Commission’s final report is released in April.
- The Royal Commission after examining 99 deaths of Aboriginal people between 1980 and 1989 makes 339 recommendations. A central objective of these recommendations was to reduce the rate of aboriginal imprisonment. The Commonwealth says it will spend $400 million over five years to implement the report.

**1992**

- Amnesty International releases a report criticising the State and Federal governments over lack of action in implementing the recommendations of the Royal Commission.
- Australian Institute of Criminology (AIC) reports that Aboriginal people are jailed at 18 times the rate of non-Aboriginal people, with NSW and the NT actually increasing their rate over the 12 months since the Royal
Apart from reporting the official press release, there seems to be little impetus within the media itself to independently follow up the numbers of people dying in custody. The figures provided in the AIC report cover the year to the end of June 1994—nearly twelve months ago. At the time of going to press, no media outlet has asked—what has happened since then? A quick phone call to the AIC establishes that deaths in custody are continuing at the same high rate this year.

Another step, which journalists might have taken, is to have included a response from an Indigenous spokesperson. The Royal Commission recommended more contact between media and Aboriginal organisations and certainly there is no shortage of organisations on the ground which could have been easily interviewed: state-based deaths in custody watch committees, the Aboriginal Legal Service, Aboriginal lands councils, or the Aboriginal and Torres Strait Islander Social Justice Commissioner at the Human Rights and Equal Opportunity Commission, Mick Dodson.

Dodson has recently taken up a number of public opportunities to criticise the failure of governments in this area. He sees one of his most important roles as independently scrutinising the implementation of the Royal Commission recommendations in the Commonwealth area.

In a speech to the Evatt Foundation in November last year, he said of the Commonwealth's annual progress report on implementation: "It is virtually unreadable, full of bureaucratic humbug, padding, self-justification and empire defending. It is simply an account of bureaucratic activity which tells us almost nothing about what impact, if any, bureaucratic activity is having on the ground. In this account, the main point of many of the recommendations is entirely missed. While not actually having the guts to say so, the Commonwealth has clearly rejected many of the recommendations or regards them as 'too hard.'" [our emphasis]

Dodson, doesn’t say the Royal Commission was a waste of time. "The broad bi-partisan support for pursuing the recommendations of the Royal Commission was a Commission. Helen Corbett, interviewed in alternative newspaper *Broadside*, says about the implementation of the Royal Commission recommendations, "The political will is not there. It's a question of state and federal governments showing to the international community it is taking steps to rectify the situation. Their interest is to promote themselves as doing something on the issue."

1993 March
- Amnesty International reports that imprisonment conditions for many Indigenous people are “crude and inhume”. The report condemns governments for failing to implement the Royal Commission recommendations.

April
- The office of Aboriginal and Torres Strait Islander Social Justice Commissioner is created within the Human Rights Commission partly as a response to the Royal Commission into Deaths in Custody. Mick Dodson is appointed Commissioner.

November
- Daniel Yock, an 18 year old Aboriginal man is arrested and carried by paddy wagon to the Brisbane watchhouse. He dies on the way. Demonstrations by Indigenous people bring deaths in custody back into the headlines for the first time since the Royal Commission.

December
- A number of leading Aboriginal spokespeople are dissatisfied with the implementation of recommendations of Royal Commission, reports the ACJ's multicultural newspaper, *Voices*. Particularly critical is the NSW Watch Committee's Ray Jackson who says: "The sum of $430 million has been spent and yet deaths in custody are still continuing. In fact, there have been 52 deaths since May 31, 1989 and nothing's changed".

1994 February
- Australian Institute of Criminology reports a 40 per cent increase in deaths in custody in 1992/93. Its report says that since the Royal Commission cut off date in May 1989, 43 Aborigines and 225 non-Aborigines have died in custody. "There is clearly a need for strong action by all governments to implement the recommendations of the royal commission," it says. A total of 72 people died in custody in 1992/93, compared with 57 and 58 in the two previous years.
- The Federal Minister for Aboriginal
watershed in Indigenous Affairs." But he also said: "There is a real danger of it all being lost."

Only four weeks after the AIC released their annual figures, Dodson’s annual report, devoting a whole chapter to the short comings of the Commonwealth’s annual report on the implementation of the Royal Commission, was released.

"It is essential that all the vision, passion, urgency and the statesmanship which he [Keating in his initial June 1992 response] should not degenerate into the bureaucratic mishmash which marks this report. ... One is irresistibly reminded of the sex life of elephants: much trumpeting, a lot of activity at a high level and no outcome in three years." His scathing and again newsworthy comments were highlighted in a press release but were not reported.

Dodson’s comments reflect the feeling on the ground. Ray Jackson of the New South Wales Aboriginal Deaths in Custody Watch Committee says, “That they [the Royal Commission’s recommendations] have been implemented comes down to semantics. What does implemented mean: the royal nod or day to day checking that it's being done. We're arguing that they have to be utilised by the frontline troops – the police on the street, and in their cars, and custody officers. They are not.

“They have produced all these wonderful reports that float around at the bureaucratic level but they're not getting down to the coal face – to the people who should be putting them in place. Racism and lax attitudes are still there – it’s the whole culture. There needs to be a sea change, as they say.”

At the time of going to press, as far as Reportage is aware, there has been no follow-up reporting of any of the many issues raised by the AIC report. One of these is remand rates. According to the AIC, remand prisoners die at three and a half times the rate that would be expected from their proportion of the prison population.

During 1993-94, one-third of custodial deaths were people on remand. Twelve per cent of the prison population was on remand as at June 30, 1992 (the latest available figures). These are people who have not been found guilty of any crime. The Royal Commission made many recommendations designed to bring down the number of people held on remand – to make arrest the “sanction of last resort”.

The media could also ask questions about the continuing rise in imprisonment rates and the over-representation of Indigenous people in custody: why deaths in police lock-ups have gone down while deaths in prison have gone up; why some state governments agreed with but refuse to act on Royal Commission recommendations to strike offences such as public drunkenness, offensive language and vagrancy off the books.

No media outlet has investigated why the number of Indigenous people dying through illness in custody seems to be increasing. Most of the 1993-94 Indigenous deaths in Queensland finds the six police officers who arrested Daniel Yock are not responsible for his death.

June
• Lawyer Chris Cunneen completes a report for the National Committee to Defend Black Rights on 55 Indigenous deaths between 1989 and 1994. The report concludes that many deaths would have been avoided if governments had acted on Royal Commission recommendations. It finds 169 breaches of recommendations – the most common is the recommendation that police services move immediately to examine the delivery of medical services to people in police custody.
• Australian Institute of Criminology reports that the number of deaths in custody has risen to its highest level since the 1991 Royal Commission report. The number of deaths in police, prison and juvenile custody rose from 64 in 1991 and 65 in 1992, to 74 in 1993.

Indigenous people who make up only one per cent of the population accounted for 11 per cent of the deaths. "This would appear to suggest that the recommendations of the Royal Commission are either not being fully implemented or, when they are, are not operating effectively," the report said. The report notes that none of the deaths were in a police lock-up.

• A new Deaths in Custody Watch Committee is formed in Western Australia. Committee member and chairperson of the Human Rights Commission Ronald Wilson says that in 1988 Aboriginal people were 45 times more likely to die in police custody than other people to be in police custody. By 1992 the level has jumped to 60 times. He says only 30 of the 339 recommendations have been implemented in WA. In reply, the WA Attorney General Cheryl Edwards says the state’s response has been "second to none." The committee attacks her claim as a “gross misrepresentation of the facts.”
custody were due to illness (10 out of 14) and half of the deaths were caused by heart disease.

Thirty-seven of the 99 deaths investigated by the Royal Commission were due to illness, just over one-third compared with over two-thirds in 1993-94.

Part of the explanation for the lack of media follow-up of Aboriginal deaths in custody must lie with management and editorial decisions which leave reporters inadequate resources, time and space to report on issues.

The Royal Commissioners found, "Generally, there appeared to be little appreciation of and less dedication to the duty of care owed by custodial officers to persons in custody. We found many system defects in relation to care, many failures to exercise proper care and in general a poor standard of care." Has anything changed?

A reading of Scarse's Death in Custody Newsletter, which is the only publication of its kind, suggests that poor medical care remains a crucial issue. In her July 1994 edition, Scarse reported on the death of Janet Beece, an Aboriginal woman student at Mulwa, New South Wales. Janet Beece, who died in June 1994, had cardiovascular disease and a serious drug problem.

According to Scarse, she arrived at the prison in an extremely poor condition and was initially placed in the prison clinic but unfortunately was then transferred to the Contol [main prison] wing. She continued to deteriorate and was taken back to the clinic where she died the next day.

Scarse said in the newsletter that "sharp questions" should be asked about why she was not taken to hospital immediately and treated for her serious illness. (An inquest into this death will be held later this year.)

She also told Reportage of the death of 37 year old Kim Nixon who died in a Western Australian police cell in September last year. According to Scarse he should not have been there. The court gave him a non-custodial sentence but he was put back in the cells. Nixon had high blood pressure. After seeing him in his cell, the Aboriginal Visitors Scheme appealed to the police to provide him with proper medical attention.

It is unfair to blame failures of the media to follow-up deaths in custody on individual journalists. Part of the explanation for the lack of follow-up must lie with management and editorial decisions which leave reporters inadequate resources, time and space to report on issues.

Following Royal Commission recommendations for improving media coverage, a conference on reporting Indigenous affairs was organised in Brisbane last year. The conference which was attended by editors and other senior members of media organisations developed guidelines for reporting.

But as Dodson says "the national summit" created a "warm inner glow which was then forgotten". He says he noticed a definite improvement in the coverage of Indigenous affairs during the Native Title debate. "I thought the media was pretty good but now they have slipped back."

Concern is shared by some journalists. Ian Mayman is an experienced Australian journalist who won a Gold Walkley award for his coverage of the John Pat case. (John Pat was a 16 year old Aboriginal who died in a police cell in Rockhampton, Western Australia.)

"As a journalist who worked hard to expose the issue of black cell deaths I am profoundly disappointed that the media has not campaigned harder for implementation of the Royal Commission's recommendations."

"I have covered many Royal Commissions and they seem to me to be simply a way of defusing public anger and concern and exhausting critics of the government by a process of legal attrition. Sometimes they even conceal the truth by creating an illusion of action, when the bureaucracies move along behind the scenes at their usual glacial pace."

More information

The Death in Custody Newsletter is produced six times a year by Jennifer Scarse. It is available from her at the Campaign for Prevention of Custodial Death, PO Box 847, Nedlands WA 6009, phone/fax (09) 386 4783. It is free but payment of $10 or $15 pa would help to offset printing and postage costs.

Justice Under Scrutiny, the report of the Inquiry into the implementation by governments of the recommendations of the Royal Commission into Aboriginal Deaths in Custody, is available from the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament House, Canberra, phone (06) 277 2321.

The Human Rights and Equal Opportunity Commission's Second Report, 1994, prepared by Michael Dodson, Aboriginal and Torres Strait Islander Social Justice Commissioner is available from HR&EOC, Level 8 Piccadilly Tower, 133 Castlereagh Street, Sydney 2000, phone (02) 284 9600 fax (02) 284 9715.

Note to journalists: The ACIJ is continuing its research on Aboriginal deaths in custody. Journalists or others needing advice or able to assist the Centre in its work should make contact.

September

• Four people die in custody in Western Australia in 11 days.

December

• The Parliamentary Standing Committee on Aboriginal and Torres Strait Islander affairs report Justice Under Scrutiny is critical of governments' failure to involve Aboriginal people more in the implementing Royal Commission recommendations and of government reports which have "glossed over deficiencies and not accurately portrayed the implementation process." It notes that there has been "no substantial change" for Indigenous people as a result of extra funds supplied by the Commonwealth.

It warns that annual reporting by government is in danger of becoming an "exercise in bureaucratic activity" and that "without reforms being implemented, further deaths are inevitable."

The Department of Prime Minister and Cabinet has three months to coordinate a government response to the Justice Under Scrutiny report.

• A few weeks later, and a year late, the Victorian Kennett government tables its 1993 Implementation Report. The State Aboriginal Affairs Minister, John, said the report was "an indication of the depth and breadth of action taken by the State Government and Aboriginal community" in dealing with the recommendations of the royal commission.

But the Victorian Aboriginal Justice Advisory Committee's Wanda Braybrook says the committee is very concerned by the increasing prison rate. "Aboriginal people continue to be disadvantaged by their contact with the criminal justice system, and ... to suffer at a greater rate than any other section of the Victorian community," she said.

1995

February

• The Australian Institute of Criminology issues its report for 1993/4 which shows deaths in custody are rising along with rates of imprisonment.

• The deadline passes for Federal government to respond to the Justice Under Scrutiny report. According to the Minister for Aboriginal and Torres Strait Islander affairs it requires a detailed response which will not be available until later in the year.

March

• Aboriginal and Torres Strait Islander Social Justice Commissioner, Mick Dodson releases his annual report. He describes the First Commonwealth Annual report coordinated by the unit as "a self serving account of bureaucratic activity designed to bury failure in a sea of words, reports and committee meetings rather than expose it to public scrutiny and discussion. The report is a monument to the worst tendencies of bureaucracy run wild."

WENDY BACON, BONITA MASON, PETER CRONAU