



Parliamentary Joint Committee on Law Enforcement

Summary report of the 24 June 2020 public hearing
on the Australian Institute of Criminology's
National Deaths in Custody Program

October 2020

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Chapter 1

Introduction and background

1.1 In this report, the Parliamentary Joint Committee on Law Enforcement presents a summary of its public hearing on 24 June 2020 on the Australian Institute of Criminology's (AIC) National Deaths in Custody Program (NDICP), and provides some background on the NDICP and the context of the hearing.

1.2 The public hearing was held consistent with subsection 7(1) of the *Parliamentary Joint Committee on Law Enforcement Act 2010*, which sets out the committee's functions.

1.3 This report contains two chapters. This chapter of the report:

- outlines the immediate context of the hearing;
- provides some background on the 1987 Royal Commission into Aboriginal Deaths in Custody ('the Royal Commission') and its relationship to the NDICP;
- presents a summary of findings from the most recent annual report of the NDICP; and
- provides some points of comparison between the methodology and findings of the NDICP and the Guardian's *Deaths Inside* project.

1.4 The second chapter of this report summarises the discussion at the public hearing, sets out the committee's views, and makes a number of recommendations.

Immediate context of the hearing

1.5 The issue of Indigenous deaths in custody has been a long-standing concern in Australia. In the 1980s, a number of deaths in custody, considered suspicious by the families of the deceased, led to the 1987 Royal Commission into Aboriginal Deaths in Custody ('the Royal Commission'). The Royal Commission presented its final report in 1991.¹ In the years since, the issue has remained one of significant concern to the broader movement to address Indigenous disadvantage and pursue the reconciliation process.²

1 National Archives of Australia, *Royal Commission into Aboriginal Deaths in Custody*, <https://www.naa.gov.au/explore-collection/first-australians/royal-commission-aboriginal-deaths-custody> (accessed 29 July 2020).

2 Indicative of the importance of the issue in this regard, the formal process of reconciliation in Australia in fact commenced in 1991 as part of the government's response to the Royal Commission's report. Deloitte Access Economics, *Review of the implementation of the recommendations of the Royal Commission into Aboriginal deaths in custody: Department of Prime Minister and Cabinet*, August 2018, pp. 697–98.

1.6 The issue has assumed renewed prominence in public discourse in recent months, with the Black Lives Matter movement in the United States drawing attention to the experience of Aboriginal and Torres Strait Islanders in their interactions with police and the broader justice system in Australia. While the Black Lives Matter movement in Australia has encompassed a broad range of concerns regarding racism and Indigenous disadvantage, the issue of Indigenous deaths in custody has been the central and most immediate issue raised by the movement, including in the vigils and protests held around the country in June 2020.

1.7 In light of the recent public conversation on the issue, the committee determined that it would be valuable to hold a public hearing to hear from the AIC in relation to the NDICP. The NDICP, which began in 1991 in response to one of the recommendations of the Royal Commission, and is coordinated by the AIC and monitors the extent and nature of deaths occurring in prison, police custody and youth detention in Australia.

1.8 The AIC has produced 63 reports on deaths in custody since 1992, as it set out in a full list of those reports provided to the committee. In addition to the regular reports on deaths in custody in a particular year, these reports include reports on a range of specific issues, such as the April 2018 report, *Indigenous deaths in custody: 25 years since the Royal Commission into Aboriginal Deaths in Custody*.³

Royal Commission into Aboriginal Deaths in Custody (1987–1991)

1.9 The Royal Commission into Aboriginal Deaths in Custody (1987–1991, also known as 'the Muirhead Commission'), was appointed in October 1987 to study and report on the underlying social, cultural and legal issues behind deaths in custody of Aboriginal and Torres Strait Islander people, in the light of the apparent high level of such deaths.

1.10 The Royal Commission ultimately investigated 99 Aboriginal deaths in custody that occurred between 1 January 1980 and 31 May 1989. The 99 individuals whose deaths were investigated included 63 people who had died in police custody, 33 in prison, and three in juvenile detention. The individuals ranged in age from 14 to 62 years, and half were members of what are now known as the Stolen Generations (the Royal Commission pre-dated widespread use of that term, and of course the AHRC's 1997 *Bringing them Home* report).

1.11 The Royal Commission's Interim Report was issued on 21 December 1988, and the Final Report in April 1991. Of the deaths investigated, the Commission reported:

Their deaths were premature. The circumstances of their deaths were extremely varied. One cannot point to a common thread of abuse, neglect or racism that is common to these deaths. However, an examination of the lives of the ninety-nine shows the facts associated in every case with the

3 Australian Institute of Criminology, [list of all the AIC publications from the AIC's National Deaths in Custody Program](#), tabled 24 June 2020.

Aboriginality played a significant and in most cases dominant role in their being in custody and dying in custody.⁴

1.12 Consistent with the findings of AIC reports produced since, the Royal Commission found that while Aboriginal prisoners died at about the same rate as non-Aboriginal prisoners, their rate of incarceration was much higher (and, in fact, 'grossly disproportionate').⁵ At the time of the Royal Commission's report, Indigenous persons constituted approximately 14 per cent of the prison population,⁶ this has since increased to 28 per cent of the prison population⁷

1.13 The Royal Commission 'did not find that the deaths were the product of deliberate violence or brutality by police or prison officers'. However, the Commission did find that:

...generally, there appeared to be little appreciation of and less dedication to the duty of care owed by custodial authorities and their 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. In some cases the defects and failures were causally related to the deaths, in some cases they were not and in others it was open to debate. [...] But it can certainly be said that in many cases death was contributed to by system failures or absence of due care.⁸

1.14 The Royal Commission made 339 recommendations. These included that imprisonment only be a last resort. The report also included recommendations related to the calling of medical assistance if the condition of a detainee deteriorates; greater collaboration with Indigenous communities; improved access to records; and more broadly, the initiation of a process of reconciliation between Indigenous and non-Indigenous Australians.⁹

1.15 One of the outcomes of the Royal Commission was the establishment of the NDICP at the AIC, in response to Recommendation 41 of the final report. Because

4 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 1, 1.1 The Royal Commission*, 1991 (accessed 29 July 2020).

5 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 1, 9.4 Summary of Part B*, 1991
<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/national/vol1/148.html> (accessed 29 July 2020).

6 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 1, 9.4 Summary of Part B*, 1991 (accessed 29 July 2020).

7 Australian Bureau of Statistics, Aboriginal and Torres Strait Islander prisoner characteristics, <https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2019~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics%20~13> (accessed 29 July 2020).

8 Royal Commission into Aboriginal Deaths in Custody, *National Report Volume 1, 1.2 The Overall Findings* (accessed 29 July 2020).

9 Royal Commission into Aboriginal Deaths in Custody, *Recommendations*, 1991 (accessed 29 July 2020).

some observers have raised the question of how well the NDICP faithfully reflects what the Royal Commission recommended, and indeed because the question was touched on at the committee's public hearing, it is worth quoting here in full:

Recommendation 41

That statistics and other information on Aboriginal and non-Aboriginal deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies co-operate with the Institute to enable it to carry out the responsibility.

The responsibility should include at least the following functions:

- a. Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);
- b. Report annually to the Commonwealth Parliament; and
- c. Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:
 - 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 police custody or juvenile detention.¹⁰

AIC's Deaths in Custody 2017–18 report: an overview

1.16 As part of the NDICP, the AIC releases reports comparing figures over a 12 month period (using a financial year) to longer term trends. The most recent report, *Deaths in custody in Australia 2017–18*, was released in February 2020. This part of the report briefly summarises key findings of the 2017–18 report, which was considered in more detail at the public hearing. The public hearing, as discussed in the next chapter, also provided the AIC with an opportunity to discuss broader trends over time, in addition to the findings of its most recent report.

10 Royal Commission into Aboriginal Deaths in Custody, [*Recommendations*](#), 1991 (accessed 29 July 2020).

Definition of 'death in custody'

1.17 The term 'deaths in custody' refers to both deaths in prison custody and deaths in police custody, and for the purposes of the NDICP includes:

- a death, wherever occurring, of a person who is in prison custody, police custody or youth detention;
- a death, wherever occurring, of a person whose death is caused or contributed to by traumatic injuries sustained, or by lack of proper care, while in such custody or detention;
- a 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; or
- a death, wherever occurring, of a person attempting to escape from prison, police custody or youth detention.¹¹

Summary: Deaths in prison custody, 2017–18

1.18 This sub-section of the report summarises the AIC's findings in relation to deaths in prison custody in 2017–18.

1.19 There were 72 deaths in prison custody in 2017–18 (70 males and two females). There were 16 Indigenous deaths in prison custody in that period, accounting for 22 per cent of all deaths. Indigenous prisoners make up 28 per cent of the Australian prison population. The death rate of Australian prisoners was 0.14 per 100 prisoners, lower than the death rate for non-Indigenous prisoners of 0.18 per 100 prisoners. Death rates for Indigenous prisoners have been consistently lower than death rates of non-Indigenous prisoners since 2003–04.¹²

1.20 As at 30 June 2018, 68 per cent of prisoners in Australia were serving a sentence. In 2017–18, a proportionate number of deaths in prison custody (67 per cent) were of sentenced prisoners. The death rate of unsentenced Indigenous prisoners was higher than the rate of sentenced Indigenous prisoners (0.18 vs 0.11 per 100), whereas it was similar for non-Indigenous prisoners (0.17 vs 0.18 per 100).¹³

1.21 The AIC reports on both the *cause* of death, and the *manner* of death. The cause of death relates to the direct cause, whereas the manner of death refers to the accountability or responsibility of death.

1.22 Natural causes were the leading cause of death for prisoners in 2017–18 (63 per cent); this was the case for both Indigenous prisoners (79 per cent) and non-Indigenous prisoners (65 per cent). The second leading cause of deaths was hanging deaths (17 per cent). Two thirds of hanging deaths were of unsentenced prisoners. Hanging deaths rates among Indigenous and non-Indigenous prisoners were

11 On definitions, see 'Box 1: Definitions of deaths in custody', AIC, *Deaths in custody in Australia 2017–18*, p. 2.

12 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, pp. 3–4.

13 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 4.

comparable (0.02 vs 0.03 per 100 respectively), and the rate of Indigenous hanging deaths has been lower or the same as the rate of non-Indigenous hanging deaths in all but two years since 2001–02.¹⁴

1.23 With regard to the manner of prisoner death, 45 deaths were recorded as natural deaths and 16 as self-inflicted (with Indigenous death rates slightly lower in both categories). Unlawful homicides accounted for two deaths (both of which were prisoner-to-prisoner homicides, and were of non-Indigenous persons) and accidents for three deaths (all of non-Indigenous persons).¹⁵

1.24 The most common location for a death was a cell (38 per cent), followed by a public hospital (33 per cent). Four Indigenous and 23 non-Indigenous prisoners died in a cell, and seven Indigenous and 17 non-Indigenous prisoners died in a public hospital. Other locations at the time of death were prison hospitals and custodial settings other than a cell.¹⁶

1.25 The median age of all prisoners in Australia at 30 June 2018 was 35 years. The median age at time of death for prisoners in 2017–18 was 51 years. Indigenous prisoners had a lower median age at time of death than non-Indigenous prisoners (42 and 53 years respectively).¹⁷

Summary: Deaths in police custody and custody-related operations, 2017–18

1.26 This sub-section of the report summarises the AIC's findings in relation to deaths in police custody and custody-related operations in 2017–18.

1.27 There were 21 deaths in police custody and custody-related operations (hereafter simply 'police custody') in 2017–18. Three of the deaths were Indigenous deaths, 14 were non-Indigenous deaths, and no Indigenous status was recorded in the remaining four cases.¹⁸

1.28 Deaths in police custody are categorised as 'category 1' deaths, which are deaths occurring during close police contact, including in police stations, and most police shootings and raids; and 'category 2' deaths, occurring during non-close police contact, such as in motor vehicle pursuits. Seventeen of the 21 deaths in police custody in 2017–18 were categorised as category 1 deaths, and four as category 2 deaths.¹⁹

1.29 In regard to the cause of death, overall a cause of death was recorded for 15 of the 21 cases. The leading cause overall was gunshot wounds (8 deaths), followed by external trauma (4 deaths). Of the three Indigenous deaths in 2017–18, one person

14 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 5.

15 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 23.

16 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 6.

17 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 4.

18 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 11.

19 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 11.

died of external trauma, one from natural causes, and the cause of death for one person was not available.²⁰

1.30 Because the numbers of deaths in police custody are small in absolute terms, there is significant fluctuation from year to year in the figures reported. Despite annual fluctuations, the numbers of accidental deaths and self-inflicted deaths have generally decreased in the last decade. Deaths resulting from unlawful homicides have also remained low, with only one occurring in 2017–18 (a non-Indigenous death).²¹

1.31 Of the persons who died in police custody in 2017–18, non-Indigenous persons were typically younger (median age 32 years) and more likely to be suspected of a violent offence than Indigenous persons, who are typically older (median age 47 years) and more likely to be suspected of good order or other non-violent offences.²² In all but six years since 1993–94, deaths of persons who were suspected of committing a violent offence have been more frequent than those suspected of committing other types of offences.²³ It might be noted that the AIC has not broken this longer-term figure down by Indigenous status, and therefore it is not clear that the situation in 2017–18—where Indigenous persons who died in police custody were more likely than non-Indigenous persons to be suspected of public order offences, rather than violent offences—reflects a longer-term trend or not.

1.32 In 2017–18, the most common location at time of death was a public hospital or a public place (6 each), followed by private property (4), a cell (3), a psychiatric hospital (1) or a location recorded as 'other' (1). Of the three Indigenous deaths, one occurred in a public hospital, one in a cell and one in a location recorded as 'other'. Since 1989–90, the greatest numbers of deaths in police custody occurred in a public place (349). One in ten deaths occurred in a police cell (78).²⁴

1.33 In 2017–18, 17 of the 21 deaths in police custody occurred while police were in the process of detaining or attempting to detain the individual. These deaths involved one Indigenous person, 12 non-Indigenous persons, and four persons whose Indigenous status was unknown. The remaining four deaths occurred in institutional settings, including a police watchhouse cell and a psychiatric hospital. Two of these were Indigenous deaths and two were non-Indigenous deaths. In each year since 1992–93, deaths occurring while police were in the process of detaining an individual have been more frequent than deaths in any other type of custody.²⁵

Deaths Inside: Guardian research project

1.34 It appears that some recent public commentary on Indigenous deaths in custody, including data cited by some Black Lives Matter protestors (including the reference to 432 Indigenous deaths in custody since the Royal Commission delivered

20 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 12.

21 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 12.

22 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 12.

23 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 13.

24 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 13.

25 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 13.

its final report),²⁶ relies less on the AIC reporting and more on an ongoing project on the issue undertaken by the Guardian Australia, known as '*Deaths Inside*'.

1.35 In light of the widespread usage of the *Deaths Inside* project findings, including as an alternative source of information on the issue to the NDICP, this part of the report summarises the background, methodology and findings of the project, particularly where there is a notable difference in approach or findings to the NDICP.

Background to *Deaths Inside* project

1.36 The *Deaths Inside* project commenced in 2017, and the authors have suggested concerns regarding the scope and function of the NDICP. In summary, they contend that while the 1991 Royal Commission recommended improved data collection, there are no publicly available, searchable databases regarding deaths in custody. The authors also suggest that it is hard to find information about deaths not subject to an inquest, and many deaths went unreported as prisons often only provided confirmation of a death in custody if requested. The *Deaths Inside* team is also critical of the amount of time it takes to release AIC reports, noting they can be delayed by up to four years. The project is presented as filling a gap, in this respect.

1.37 As explained in the 'methodology' section below, some of the information tracked by *Deaths Inside* (such as whether all appropriate medical care was provided prior to a death) is not tracked as part of the NDICP.

Methodology

1.38 The *Deaths Inside* project draws upon published coronial findings when they are available. It also draws information from media reports, press statements from police and justice departments, and occasionally interviews from families. The project authors note that:

In some cases coronial reports are not available, or do not contain the detail necessary. For this reason, comparisons over time and with AIC data are difficult.²⁷

1.39 The *Deaths Inside* project includes all deaths that are said to have occurred in the presence of police officers, including deaths from self-inflicted injuries. These include deaths that occurred during a welfare check by police, or attempts by police to prevent someone from committing self-harm. For this reason the project numbers are slightly higher than the numbers recorded by the AIC.²⁸

26 The number has been revised upwards since the first protests in early June. Lorena Allam, Calla Wahlquist and Nick Evershed, '[Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437](#)', *The Guardian*, 9 June 2020 (accessed 27 July 2020).

27 Deaths Inside, '*About us*', <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody> (accessed 22 June 2020).

28 Deaths Inside, '*About us*', <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody> (accessed 29 July 2020).

1.40 While the AIC records the type of offence (and specifically, the most serious offence) for why a person is in custody, *Deaths Inside* does not record the reason a person was in custody. The authors explain that, where relevant, the project does note:

...the case descriptions where a person was believed to be violent or dangerous and that belief influenced the actions of police or prison officers. However in most cases the reason a person is in custody is not relevant to the treatment they received while in custody, and in almost all cases it is irrelevant to their manner of death.²⁹

1.41 The Deaths Inside project tracks a number of issues raised in coronial reports, most of which are not tracked in the AIC's reporting for the NDICP:

- Whether a person received medical care prior to their death;
- Whether they were not given or denied care that the coroner found they ought to have received. It is important to note we have recorded any instance of this occurring, even if the coroner did not identify the lapse of care as contributing to the death;
- If there was a documented history of mental illness or cognitive impairment;
- Whether the person had alcohol or non-prescribed drugs in their system;
- Whether the responsible agency followed all the appropriate procedures. We have recorded any instance of this occurring, even if the coroner did not identify the breakdown in procedure as contributing to the death;
- Whether the responsible agency issued any reprimands in connection to the case;
- Whether anyone from the responsible agency was charged with a crime in connection to the death in custody.³⁰

1.42 The NDICP's methodology, and the scope of the datasets it tracks, are discussed in chapter two.

Key findings of *Deaths Inside*

1.43 While the AIC has found that non-Indigenous prisoners die in custody in greater numbers and at a greater rate than Indigenous prisoners, *Deaths Inside* counters that this was 'always the case and never the point':

The key finding of the royal commission was that Aboriginal people are more likely to die in custody because they are arrested and jailed at disproportionate rates. That remains as true in 2020 as it was in 1991.³¹

29 Deaths Inside, 'About us', <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody> (accessed 22 June 2020).

30 Deaths Inside, 'About us', <https://www.theguardian.com/australia-news/ng-interactive/2018/aug/28/deaths-inside-indigenous-australian-deaths-in-custody> (accessed 22 June 2020).

1.44 While the most common cause of death for both Indigenous and non-Indigenous people in custody was medical issues (that is, natural causes), according to *Deaths Inside*, Indigenous people in custody were less likely to have been given all of the medical care they needed prior to their death. Thirty four per cent of Indigenous people, according to the project's analysis, were denied all appropriate medical care before their death, compared with 25 per cent of non-Indigenous people.³²

1.45 It might be noted here that some of the recent public commentary on the issue misrepresents, wilfully or otherwise, data contained in *Deaths Inside*. In particular, some references to the project's figure of 432 Indigenous deaths in custody since 1991 suggests that constitutes the number of people 'killed', or the number of victims of police violence—for example, a recent *GetUp!* press release titled 'The lives of 432 Aboriginal people killed in custody matter'.³³

Next chapter

1.46 The next chapter summarises the evidence received at the committee's public hearing on 24 June 2020, and considers whether there is scope to improve the value of the NDICP and public awareness and understanding of the data it presents.

31 Lorena Allam, Calla Wahlquist and Nick Evershed, '[Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437](#)', *The Guardian*, 9 June 2020 (accessed 27 July 2020).

32 Lorena Allam, Calla Wahlquist and Nick Evershed, '[Aboriginal deaths in custody: Black Lives Matter protests referred to our count of 432 deaths. It's now 437](#)', *The Guardian*, 9 June 2020 (accessed 27 July 2020).

33 GetUp!, '[The lives of the 432 Aboriginal people killed in custody matter](#)', 6 June 2020 (accessed 29 July 2020).

Chapter 2

Summary of public hearing

2.1 As noted in the previous chapter, the committee held a public hearing on the National Deaths in Custody Program (NDICP) on 24 June 2020. Two representatives of the Australian Institute of Criminology (AIC) appeared before the committee: Dr Rick Brown, Deputy Director; and Dr Samantha Bricknell, Research Manager. The committee thanks both witnesses for their time.

2.2 This chapter summarises the issues discussed at the public hearing, and provides the committee's views and recommendations.

Key findings of the NDICP

2.3 The key findings of the AIC's *Deaths in Custody in Australia 2017–18* report were summarised in the previous chapter. At the public hearing the AIC expanded on some of these findings, and discussed some of the broader trends over time in relation to deaths in custody in Australia.

2.4 The AIC confirmed that in the years since the Royal Commission, Indigenous persons have made up between 14 and 27 per cent of the adult prison population, and the number has been 'going up'. The AIC noted that Indigenous persons 'obviously make up a much smaller proportion of the total proportion' of the Australian adult population.¹ According to the Australian Bureau of Statistics (ABS), the estimated resident Aboriginal and Torres Strait Islander population in 2016 was 3.3 per cent of the total Australian population; this number would be higher than the Indigenous proportion of the adult population, as the Aboriginal and Torres Strait Islander population has a younger age profile than the non-Indigenous population.²

2.5 The AIC noted that in 2017–18, the rate of Indigenous deaths in prison custody was 0.14 per 100 prisoners, compared to a rate for non-Indigenous prisoner deaths of 0.18 per 100 prisoners (a finding noted in the previous chapter). The AIC further explained that these figures confirm a long-term trend of a decrease in the rate of prison deaths in the period covered by the NDICP:

So, for both Indigenous and non-Indigenous prisoners, the rate of prison custody deaths has decreased. We have the rates from 1981-82 to 2017-18. There has been a 50 per cent decrease in the rate of Indigenous and non-Indigenous deaths in prison custody.³

1 Dr Samantha Bricknell, Research Manager, Australian Institute of Criminology (AIC), *Proof Committee Hansard*, 24 June 2020, p. 5.

2 Australian Bureau of Statistics (ABS), *Estimates of Aboriginal and Torres Strait Islander Australians*, June 2016, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3238.0.55.001>.

3 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 5.

2.6 In response to the question of why the rate of prison deaths had decreased, the AIC pointed to likely improvements in healthcare in prisons since the early 1980s, and noted that the Australian Institute of Health and Welfare conducts a prisoner health survey each year to understand health needs and services for prisoners:

While 'natural causes' is the leading cause of death for both Indigenous and non-Indigenous prisoners, the healthcare arrangements in prisons would certainly have improved over the years since the early eighties. The Institute of Health and Welfare does a prisoner health survey each year, which gives us an indication of the care needs and services that are provided to both Indigenous and non-Indigenous prisoners. That work came out of the need to understand how corrections systems understand what health needs prisoners have, how they identify those health needs when they come into prison, and the changes that need to be made to respond to those health needs.⁴

2.7 The AIC also highlighted a significant decrease in hanging deaths in prisons, both for Indigenous and non-Indigenous persons:

The next most common cause of death [after the leading cause, which is natural causes] is hanging—around 30 per cent of Indigenous prisoners and 34 per cent of non-Indigenous prisoners. However, deaths from hanging, for both Indigenous and non-Indigenous prisoners, have decreased significantly. That's largely due to changes that have been made by the corrections systems to reduce the opportunities for individuals to hang themselves, and that's around hanging points and access to materials that would allow them to hang themselves. We continue to have hanging deaths in prison but the number has dropped substantially. So, to some extent, that would have driven the decrease in death in custody.⁵

2.8 The AIC explained that it does not present rates for police custody deaths, because estimates of police custody populations are not available. Instead, for police custody deaths, it reports the number of deaths, rather than rates of deaths.⁶ It might be noted that the 2017–18 report shows that the total number of deaths in police custody (that is, both Indigenous and non-Indigenous deaths) in 2017–18 was 50 per cent lower than the peak number recorded in 2003–04. The AIC is careful to point out, however, that because the numbers of deaths in police custody are small,

4 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, pp. 5–6.

5 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 5.

6 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 5.

they tend to fluctuate on an annual basis.⁷ As noted in the previous chapter, in 2017–18, there were three Indigenous deaths in police custody and police custody-related operations in 2017–18; this compares a peak of 11 Indigenous deaths in police custody and custody-related operations in both 2002–03 and 2004–05.⁸

2.9 In relation to police custody deaths, the AIC confirmed that the long-term data shows that:

...the leading cause of death for Indigenous persons in police custody is external trauma, and most of those are effectively fatal injuries from motor vehicle pursuits. The next most common cause of death among Indigenous people, at around 21 per cent, is natural causes.

If we look at non-Indigenous deaths in police custody, the primary cause of death is again external trauma, at around 40 per cent, which is largely based on motor vehicle pursuits and similar. And 36 per cent are from gunshot wounds. They're deaths in police custody. They're either self-inflicted or police have shot the person.⁹

2.10 The long-term findings of the NDICP were confirmed and summarised in the following exchange at the public hearing between the committee Chair and Dr Brown:

CHAIR: To conclude, I will ask you to agree or disagree with a couple of points. The bad news is that the percentage of Indigenous prisoners in the prison population is increasing over the years.

Dr Brown: Yes.

CHAIR: The good news is that the rate of deaths in custody has been decreasing and has decreased significantly since the royal commission.

Dr Brown: That's correct.

CHAIR: The majority of deaths in custody are due to natural causes.

Dr Bricknell: In prison custody?

CHAIR: Yes.

Dr Bricknell: Yes.

CHAIR: The rate of deaths in custody is lower for the Indigenous population than for the non-Indigenous population.

7 AIC, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 11. The total number of annual deaths in police custody in the years from 1989–1990 to 2017–18 has ranged from a high of 42 (in 2003–04) to a low of 13 (in 2013–14). The numbers have trended in the lower end of the range years since 2012–13. See Table C19, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 49. The number of annual Indigenous deaths in police custody range between 1 (in 2013–14) and 11 (in both 2002–03 and 2004–05). Because absolute numbers are small, it is difficult to discern a clear trend, although the number has been 8 or lower since 2005–06. See Table C20, *Deaths in custody in Australia 2017–18*, 20 February 2020, p. 50.

8 AIC, *Deaths in custody in Australia 2017–18*, Table C20, 20 February 2020, p. 50.

9 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 11.

Dr Brown: That's correct too, yes.¹⁰

Process and timing of NDICP reports

2.11 The AIC explained that there are two sources for the NDICP's data:

The primary source is a notification from the institution where the death occurred, whether it be a corrections organisation or police. That is a pro forma that provides the details of the death. Then we cross-reference that in time with the National Coronial Information System database, which provides information on all deaths that are handled by the coronial service. Then we have a process of basically matching the two. The coronial report essentially becomes the final record of the death in custody that we use.¹¹

2.12 The AIC advised that, prior to publishing its NDICP statistical reports, it also will go back to jurisdictions to confirm the numbers remain correct. The AIC will also do some historical checking of information already published, 'as some of the jurisdictions or the agencies within those jurisdictions have come back to us and corrected some of the data that they've provided to us in the past'.¹² Such corrections have been very small to date (for example, an agency in South Australia had said there were 10 deaths in 2010–11, and this was later revised to 11).¹³

2.13 As noted in the previous chapter, there has been some criticism of the time it takes the AIC to release annual NDICP data. The most recent report on annual data, for the 2017–18 year, was released approximately 20 months after the end of the reporting period, and the AIC expects to present its report for the 2018–19 year in December 2020, which would be just short of 18 months from the end of the reporting period.¹⁴ The AIC explained to the committee why it took the time it did to release NDICP data, and suggested that it was unlikely to be able to expedite the release of the data without potentially compromising its integrity:

That really comes down to the need to match the figures that we receive from corrections and police agencies with the coronial reports. You'd appreciate that, often, it takes some time before the coronial reports become available. So we allow around 12 months for the coronial reports to be completed, and then we have a period of analysis and report writing. The last report was about 20 months after the end of the period. So that's 12 months allowing for coronial reports to be updated, and then a period for us

10 Parliamentary Joint Committee on Law Enforcement, *Proof Committee Hansard*, 24 June 2020, p. 13.

11 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 2.

12 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 2.

13 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 3.

14 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 3.

to analyse reports and publish the findings. I think probably this is as up-to-date as it's possible to get, actually.¹⁵

2.14 Another factor that adds to the time it takes to produce accurate reports, the AIC told the committee, is uncertainty over whether a death falls within the definition of a 'death in custody':

[W]e do receive each year, from states and territories, a number of deaths which they refer to us for us to determine whether it is a death in custody. So they have assumed it is a death in custody. We obviously have definitions around what constitutes death in custody, as outlined by the royal commission. Each year, some of those are effectively referred to as borderline cases; it's not clear whether a case does fall within the definition of a death in custody as outlined by the royal commission and those that were stipulated in the program. So we wait to hear from the coroner whether he or she has ruled that that is a death in custody. Again, we need the 12 months just to make sure that those coroner's findings are in. If they're not, then we will actually take that death out of the dataset for the time being; we won't report on that number. But, if the coroner rules later on that that is a death in custody, that number will be added to the report. So there are a number of factors in play as to why we need that lag time of 12 months at least, to make sure, again, particularly around cause of death and, if it is a death in custody, that those numbers are accurate.¹⁶

Scope of the NDICP

2.15 The AIC confirmed at the hearing that the data it collects for the NDICP is quantitative in nature. Asked if there was scope for a more qualitative examination of that data, the AIC indicated this might be possible, and that it had sought to expand its analysis in other programs, such as the National Homicide Monitoring Program. At the same time, the AIC noted that it would need to be careful not to breach privacy in providing any qualitative assessment:

Potentially we could produce more of a qualitative picture based on the additional information that's available. I guess the issue we have is that we do try to maintain anonymity in the results we produce, so we would probably never be in a position where we could do kind of narratives of individuals. It would be more about a qualitative assessment of a population or a group that we would examine rather than drawing out individual stories.¹⁷

2.16 The AIC agreed that the value of the NDICP lies largely in its longitudinal nature—that is, in providing clear, comparable quantitative data on deaths in custody over a long period of time—rather than in providing a causal analysis of such deaths:

15 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 3.

16 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 3.

17 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 6.

I think over time we've been pretty clear that our lane, if you like, is to collect information on deaths in custody and to provide that longitudinal picture. Essentially we have the only longitudinal picture going back to 1979 of deaths in custody. That means that we're able to provide that picture of the fact that, over time, deaths in prison custody, for example, have fallen by 50 per cent, and we can attribute that to reductions in hanging, for example. That kind of attribution we can make. Obviously the wider issues around causation are something that we steer clear of, because that isn't the nature of the data.¹⁸

2.17 At the same time, the AIC emphasised that the NDICP, and in particular the NDICP reports on annual deaths in custody, by no means represent the totality of its work in relation to Indigenous persons and the criminal justice system.¹⁹

Over the years, we've certainly explored a range of issues around the reasons behind the Aboriginal and Torres Strait Islander population being overrepresented in the justice system. That continues to be part of our research program, absolutely. It very much depends on what the question is as to how we'd go about exploring that as an issue. It wouldn't necessarily fall within a monitoring program. It would be more of a specific inquiry; we would look into a particular issue, which may involve different methods of data collection in that case. It may be more about interviewing stakeholders and interviewing members of the relevant population et cetera than just administrative data. The way in which we go about collecting the data depends very much on what the question is.²⁰

2.18 Further, the AIC advised that it would be within its mandate to consider the context of deaths in custody, either through qualitative case studies or some other means. It advised that this work might be done outside of the NDICP. The AIC also noted that such work would be somewhat contingent on the scope and availability of the source material, although it suggested it had done similar work in other projects:

Dr Brown: It would certainly be within our mandate to do that. It is of course possible to extend the scope to answer different questions. We would need to explore whether that would be a one-off exercise or an ongoing collection that we would add to the existing collection, all of which obviously have resource implications as to how we manage that.

Dr Bricknell: It's also a little dependent on the material that's available. For example, in a couple of pieces that we did—around deaths in police custody and also around the 25 years since the royal commission—we looked at materials primarily in coronial findings to get a bit of a sense of what was occurring to provide that qualitative aspect. The coronial findings are a bit of a mixed bag in terms of how much detail they provide, but we do need to be aware of that when we move down that pathway. We have done

18 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 6.

19 Parliamentary Joint Committee on Law Enforcement, *Proof Committee Hansard*, 24 June 2020, p. 7.

20 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 8.

something similar, as Rick [Dr Brown] mentioned—the National Homicide Monitoring Program. We have looked at additional sources of information—in this case, sentencing remarks and also coronial findings. We are doing some work around intimate partner homicide. We have done some work around intimate partner homicide to bring out some of that broader understanding of that particular death or that complement of death and to provide some context around those numbers.²¹

2.19 It was noted during the hearing that the Guardian's *Deaths Inside* project considers whether Indigenous people who died in custody were less likely than non-Indigenous people to have received appropriate medical care. If this was the case, it was suggested to the AIC, then this might be relevant to understanding the NDICP's category of deaths by natural causes. Asked what work the AIC might have done in this space, either through the NDICP or otherwise, Dr Brown advised:

There are issues around death, cause of death and medical care. Typically, as an institute that focuses around criminology and crime and justice issues, we wouldn't necessarily get into detail around health issues; we would rely on our colleagues at the Australian Institute of Health and Welfare to do more of that kind of work. The nature of those kinds of issues really falls outside of our remit.²²

2.20 At the hearing, the AIC was asked about Recommendation 41 from the Royal Commission (see chapter 1) which suggested that the standard statistical input and definition of a death in custody should include, inter alia, '41(c)(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*' (emphasis added).²³ The AIC took on notice why it did not collect this data as part of the NDICP, noting that the scope of the datasets included in the NDICP would have been determined early in the program. Nonetheless, the AIC told the committee that it had, in the past, looked at circumstances regarding deaths occurring in police custody, and in doing so examined coronial findings to suggest ways to improve practice.²⁴ On notice, the AIC further advised that while such information fell outside the scope of the NDICP's quantitative database processes, similar qualitative assessments are sometimes conducted as part of discrete studies within the NDICP:

The primary responsibility of the NDICP is to maintain a database that provides accessible statistical information on the scope and nature of deaths in custody. This purpose informed the development of data items included in the database — measurable, quantitative information about the deceased (e.g. age, gender, Indigenous status, legal status) and the cause, manner,

21 Parliamentary Joint Committee on Law Enforcement, *Proof Committee Hansard*, 24 June 2020, p. 7.

22 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 8.

23 Royal Commission into Aboriginal Deaths in Custody, *Recommendations*, 1991, (accessed 29 July 2020).

24 Dr Samantha Bricknell, Research Manager, AIC, *Proof Committee Hansard*, 24 June 2020, p. 7.

location and circumstances of the death that can be consistently derived from the two primary data sources cited above. These data are the basis for the reports published in the Deaths in custody in Australia series.

Information on lack of proper of care and similar indicators of conduct and lack/absence of procedural compliance is qualitatively derived from published coronial findings and outside the scope of NDICP database processes. Further it is a broad measure that is best captured and understood by qualitatively examining the range of scenarios and factors that contributed to the death. This function of the program relies on qualitative analysis of relevant coronial findings and recommendations and served through discrete studies on specific issues of custodial death (e.g. shooting deaths in police custody, motor vehicle pursuits). These examinations are listed in the AIC Deaths in custody publications document tabled by the Deputy Director Dr Rick Brown at the commencement of the hearing.²⁵

2.21 In a further response to a question on notice, the AIC expanded on how it might include some analysis of coronial findings in its reporting, when such findings suggest that a procedure in terms of checking prisoners, or providing appropriate medical assistance, was not followed:

The NDICP produces an annual Statistical Report and one to two Statistical Bulletins each year. It has been proposed that the latter, which focus on a specific death in custody issue, incorporate additional contextual analyses of coronial findings. Qualitative analysis depends on the availability of coronial records on the NCIS. The AIC currently has access to closed cases in Western Australia and open and closed cases in the remaining jurisdictions.²⁶

Providing points of comparison and contextualisation for NDICP data

2.22 At the hearing, several suggestions were put to the AIC about ways in which the NDICP data could be presented that might help better contextualise that data or demonstrate the meaning and relevance of the NDICP's findings. For example, it was suggested that it might be helpful if the reports of deaths in custody in an annual year included a table tracking changes in Indigenous incarceration rates year-to-year as a proportion of the total prison population. The AIC advised that in preparation for the hearing it had, in fact, been considering its current data tables and 'how we increase the number of breakdowns of Indigenous versus non-Indigenous people. Certainly, it's something that we'll be looking to include.'²⁷

2.23 The committee has sought to understand the different death rates of Indigenous and non-Indigenous adults in general society compared to death rates of those in prison or police custody, and whether such information might usefully be

25 AIC, *updated answers to questions on notice*, July 2020, p. 6 (received 9 July 2020). The tabled document referred to is the same as that referenced in the first chapter: [list of all the AIC publications from the AIC's National Deaths in Custody Program](#), tabled 24 June 2020.

26 AIC, *updated answers to questions on notice*, July 2020, p. 7 (received 9 July 2020).

27 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 9.

included in the NDICP reports on annual deaths. In response to a question on notice, the AIC advised that a direct comparison is problematic due to different age-standardising methodologies used in creating the datasets of the general versus prison populace, and that the two groups have very different average status in terms of health and other factors. Further, the death rates do not always include figures from all states and territories. However, these problems may be less relevant to comparisons between the general and police custody populaces.²⁸

2.24 There was some discussion at the hearing regarding international comparisons to Australia's rates of deaths in prison custody and numbers of deaths in police custody.²⁹ On notice, the AIC provided some data deaths in prison custody and deaths in police custody in other English speaking countries. While the data available shows the prison death rate in Australia is lower compared with New Zealand, England and Wales, and the United States, it is higher than Canada. However, the AIC emphasised that the various death rates are not directly comparable, largely due to the prison institutions included in the death counts. Similarly, limited data is available on deaths in police custody—aside from Australia, the only other dataset is from England and Wales, and again, it is not directly comparable to the Australian data due to different definitions and counting rules.³⁰ Such comparisons should therefore be treated be caution.

Public awareness and understanding of NDICP

2.25 The AIC was asked if it had any concerns that the term 'deaths in custody' is taken by some in the media and public to infer the deaths were the result of some wrongdoing or misconduct by the police or prison officials, when in fact the major cause of such deaths is natural causes. The AIC responded:

Dr Brown: In these cases, we kind of see our role as presenting the information as we have it, and we tend not to engage in correcting the media or to engage in those discussions; we see our role as very much about informing debate with the most accurate and reliable figures that we can obtain.

CHAIR: So you just sort of work as a purely statistical agency, not making any sort of commentary on the issues but just putting the data out there for others to do that?

Dr Brown: Yes. We see our role very much as being to inform policy and to inform debate, but it's very much about taking an empirical lens to that and providing the data as we see it.³¹

28 AIC, *updated answers to questions on notice*, July 2020, pp. 3–5 (received 9 July 2020).

29 Parliamentary Joint Committee on Law Enforcement, *Proof Committee Hansard*, 24 June 2020, pp. 4–5.

30 AIC, *updated answers to questions on notice*, July 2020, p. 2 (received 9 July 2020).

31 Parliamentary Joint Committee on Law Enforcement, *Proof Committee Hansard*, 24 June 2020, p. 12.

2.26 At the same time, the AIC acknowledged that more could be done to promote public awareness of the NDICP and the data it presents.³²

Committee view

2.27 In relation to the time it takes to release NDICP statistical reports, the committee is satisfied that this work is already being done in a timely manner. The committee accepts the AIC's explanation that it takes time to reconcile the figures it receives from corrections and police agencies with coronial reports, and to then properly prepare and cross-check the data presented. It is imperative that the NDICP presents reliable, accurate data, and the committee commends the AIC for the quality of its work in this regard. Moreover, the committee does not consider that the delay between the end of a reporting period and the publication of a report in any way detracts from the value and utility of the reports, particularly given so much of the value of the NDICP is the longitudinal datasets it collects and presents.

2.28 The committee acknowledges that the main focus of the NDICP is the collection and presentation of measurable, quantitative data on deaths in custody, and that that data needs to be consistently derived and presented so that it is replicable, comparable and robust over time. Equally, the committee notes that the AIC does undertake qualitative analysis as part of the NDICP (for example, in stand-alone reports on shooting deaths in custody and motor vehicle pursuits), including through the examination and analysis of coronial findings.

2.29 The committee is concerned that much of the media and public commentary surrounding 'deaths in custody' does not consider the data published by the NDICP as complementary to other statistics and reports. The committee concludes that the purpose of the NDICP would be better served, and its value increased, if there was a better public understanding of the program and its findings.

2.30 One simple way to achieve better awareness of the NDICP and its findings would be for copies of NDICP annual reports to be forwarded to the major media outlets upon release, accompanied by press release. The committee would encourage the AIC further consider ways in which public awareness of the NDICP might be improved.

2.31 Finally, the committee notes that the data presented in NDICP reports on annual deaths in custody would be better understood if certain points of comparison, and data on trends, were to be included in the reports. In particular, the committee concludes that there would be value in including in such reports comparisons between, on the one hand, death rates in the broader community (by age and gender) for both Indigenous and non-Indigenous persons, and death rates in prison custody. Given the small numbers involved, data comparing death rates in custody to death rates in the broader community could be published on a moving five-year average. The committee acknowledges that the AIC has advised that there are difficulties inherent in providing comparisons of death rates due to the underlying status differences across custodial versus non-custodial populations, but nonetheless recommends the AIC considers ways

32 Dr Rick Brown, Deputy Director, AIC, *Proof Committee Hansard*, 24 June 2020, p. 14.

in which this information might be collected and included in NDICP reports, given its potential value in improving understanding of the issue.

Recommendation 1

2.32 The committee recommends that, for future National Deaths in Custody Program (NDICP) reports, the Australian Institute of Criminology forward copies of the report to major media outlets, accompanied by press release with a link to the report. Such media releases should include a statement of the limitations of the NDICP research, in particular that it is quantitative in nature.

Recommendation 2

2.33 The committee recommends that future National Deaths in Custody Program reports on deaths in an annual period include comparisons of deaths rates per 100 in the broader community, by age group and gender, for both Indigenous and non-Indigenous persons, with death rates in custody, noting that this number would be most usefully presented on a moving five-year average or similar, given the small numbers involved.

Mr Craig Kelly

Chair

Appendix 1

Public hearing and witnesses

Wednesday 24 June 2020—Canberra

Dr Samantha Bricknell, Research Manager, Australian Institute of Criminology

Dr Rick Brown, Deputy Director, Australian Institute of Criminology

Appendix 2

Tabled document and answers to questions on notice

Tabled Document

Wednesday 24 June 2020—Canberra

1. Australian Institute of Criminology, List of AIC publications from the AIC's National Deaths in Custody Program, tabled during the public hearing in Canberra, ACT on 24 June 2020.

Answers to Questions on Notice

1. Australian Institute of Criminology, answers to questions on notice, received 7 July 2020.
2. Australian Institute of Criminology, updated answers to questions on notice, received 9 July 2020.
3. Australian Institute of Criminology, answers to written questions on notice, received 10 July 2020.

