

AUSTRALIAN DEATHS IN CUSTODY

No. 9 Australian Deaths in Custody and Custody-related Police Operations 1994

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This issue in the Deaths in Custody, Australia series covers the deaths which occurred while people were in the care of Australia's police, prisons and juvenile justice authorities. Its central findings can be summarised as follows.

Total numbers

- During the twelve months to 31 December 1994, 80 deaths in custody were reported to have occurred throughout Australia. Fifty-three of these deaths (66 per cent) occurred in prison custody while 26 deaths (33 per cent) occurred in police custody or in custody-related police operations. One death was reported to have occurred in the custody of the juvenile justice authorities during 1994. Nine women were among the 80 deaths.

Aboriginal over-representation

- The death rates of Aboriginal and non-Aboriginal people were similar when the number of custodial deaths were compared with the number of people in custody. However, as in previous years, Aboriginal people were over-represented in the number of custodial deaths compared with the number of Aboriginal people in the community. Thirteen Aboriginal people died in custody in 1994; this represents 16 per cent of the deaths, although Aboriginal people make up less than two per cent of the Australian population. This over-representation in the number of deaths reflects the over-representation of Aboriginal people in custody.

Age and manner of death

- The ages of those who died ranged from 18 to 69 years, averaging 34 years. Thirty (or 38 per cent) of the deaths for which this information was available were reported to have been self-inflicted. The most frequent manner of death for non-Aboriginal people was hanging, followed in frequency by deaths by gunshot and from illness, with smaller numbers accounted for by other causes. By contrast, illness was the dominant cause of death among Aboriginal people in custody, accounting for 6 of the 13 Aboriginal deaths, followed by hanging (four deaths).

Offences and custodial status

- With regard to the offences which resulted in the deceased detainees being in custody, the five most serious offences (namely homicide, assault, sex offences, robbery and other offences against the person) accounted for fifty (or 63 per cent) of the cases. Thirty-five (44 per cent) of the people who died were serving a sentence of imprisonment at the time of death and 24 (30 per cent) were being held on remand. All but two of the 21 remaining cases (26 per cent) had also not been convicted of any offence but died while police were attempting to detain them.

Trends

- Applying a consistent definition of deaths in custody (i.e. deaths in institutional settings), the number of deaths during the 1994 calendar year was higher than the number reported in any of the previous four calendar years. The increase over the previous years' deaths has occurred entirely among Aboriginal people in prison custody: ten Aboriginal people died in prison custody (compared with six the previous year).
- No Aboriginal people were reported to have died in police lockups during the year, although three died in other forms of police custody. The 1994 year continued the recent trend of having relatively low numbers of deaths in police lockups throughout Australia.

The paper concludes that '... the total number of people who died in prison custody during 1994 is equal to the highest figure recorded in Australia since data were first collected in 1980. The number of Aboriginal prison deaths in 1994 is substantially higher than that observed at any time over the last fifteen years.' This is disturbing considering the attention given to the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody and the criticisms, from official and community sources alike, about the pace and quality of action.

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INTRODUCTION

This paper presents information on the deaths which occurred in police, prison and juvenile justice custody throughout Australia during the twelve months to 31 December 1994, as well as summary data on the whole period since 1980. The purpose of this paper is to provide policy makers, the managers of custodial facilities and the public with information which will enable them to remain aware of trends in custodial deaths, both nationally and at the State and Territory level. In doing so, the Australian Institute of Criminology (the AIC) is implementing Recommendation 41 of the Royal Commission into Aboriginal Deaths in Custody which addressed the need for the monitoring, on an ongoing basis, of Australian deaths in custody.

Details on the methodology used in this project were included in the first paper in this series and will not be repeated here. In brief, however, each of Australia's eight police services, corrections authorities and juvenile justice or juvenile welfare authorities was asked to provide information, in a standard format, on all deaths in custody which occurred within their area of responsibility during the year to 31 December 1994. Information on deaths was also obtained from other sources, including media reports and community organisations; these were checked against the custodial authorities' lists. In addition, each State Coroner or equivalent was asked to review custodial authorities' lists and check them for completeness. At the time of writing, the results of coronial inquests had been received on seven of the 80 cases for the year to 31 December 1994; the findings of those inquests have been used to confirm and supplement information received from the custodial authorities. The information on trends presented towards the end of this paper updates that provided in earlier issues in this series. It incorporates new information on custodial deaths.

Although the present report covers the 1994 calendar year, the Australian Institute of Criminology will continue to publish reports covering both the calendar and the financial years. The usefulness of having reports covering both periods is illustrated by the AIC's contribution to the report, *Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody: Second Annual Report 1993-94*. That report, prepared by the Commonwealth Government for tabling in the Commonwealth and the State/Territory Parliaments, incorporates a summary of relevant information published in this series.

WHAT IS A DEATH IN CUSTODY?

Consistency in definitions and counting rules is especially important in this type of project which aims to provide information on trends. The AIC's deaths in custody monitoring program has adopted the definition of a 'death in custody' which was recommended for this purpose by the Royal Commission into Aboriginal Deaths in Custody and which has been agreed to by all governments. In Recommendations 6 and 41 the Royal Commission expressed the view that the definition of a death in custody:

... 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 (Royal Commission into Aboriginal Deaths in Custody 1991, p. 190).*

The fourth paper in this series (McDonald & Howlett 1993) discussed the complexities involved in defining a custodial death for the purposes of this monitoring program and post-death investigations. In summary, it was pointed out that the definition quoted above is broader than that used in the past by some custodial authorities. Prior to 1990, some custodial authorities (particularly the police services) took the view that a 'death in custody' was limited to a death which occurred in a lockup, prison, juvenile detention centre, etc., or in a hospital after an inmate was transferred there direct from such a facility. Deaths which occurred in other forms of police custody (for example in a community setting), and deaths occurring while police or prison authorities were attempting to detain a person (for example in a pursuit), were often not categorised and dealt with as custodial deaths.

The definitional issues have been discussed with the police services. On the basis that all Australian governments have accepted the definition of a 'death in custody' as recommended by the Royal Commission, all police services have been reporting the deaths which meet this definition, except for the Queensland Police Service, which until recently has apparently been applying a narrower definition. On the initiative of the Queensland Minister for Police and Emergency Services, the Australasian Police Ministers' Council (APMC) directed that the Queensland and the New South Wales Police Services, representative Aboriginal organisations and the AIC meet to discuss the application of the Royal Commission's definition of a 'Death in Custody' for the purposes of national monitoring. Subsequently, APMC discussed this matter and an agreement was reached that all police services would continue to use the Royal Commission's definition of a 'death in custody'. It was also agreed that, in the future, the Australian Institute of Criminology would present data in its six-monthly monitoring reports in a manner which more clearly identifies the range of circumstances in which deaths occur in police custody and in other police operations. Details are provided below.

Previous reports in this series have indicated that the information on deaths in police custody and related police operations are incomplete. As an outcome of the APMC discussions, however, the Queensland Police Service is now applying the same definition of a 'death in custody' as are the other police services, namely that recommended by the Royal Commission into Aboriginal Deaths in Custody. We believe, therefore, that all 1994 cases are reported upon here. Missing Queensland cases from the 1990-1993 period will be added to the trends data (which are found towards the end of this report) as they become available.

In contrast to the previous six-monthly monitoring reports in this series, this paper (and future issues) has a structure which makes explicit the variety of custodial settings and police operations within which deaths occur. Following these introductory comments, it covers the incidence of 1994 deaths in all settings combined. It then discusses deaths in police custody and related police operations, followed by prison deaths and the one 1994 death in juvenile detention. The report concludes with a discussion of trends in custodial deaths.

THE INCIDENCE OF DEATHS IN CUSTODY

Eighty people are reported to have died in all forms of custody in Australia between 1 January 1994 and 31 December 1994: 26 (33 per cent) died in police custody; 53 (66 per cent) were in prison custody; and one individual died while in the custody of juvenile justice authorities. As in previous years, Aboriginal people are over-represented in the number of custodial deaths. Thirteen Aboriginal people died in custody during 1994. This represents 16 per cent of all custodial deaths during this time period whereas Aboriginal people comprise less than two per cent of the Australian population. The distribution of Aboriginal and non-Aboriginal deaths, respectively, was similar between police and prison custody: three of the 13 Aboriginal deaths occurred in police custody and 10 in prison custody, compared with 23 of the 67 non-Aboriginal deaths having occurred in police custody and 43 in prison. Table 1 provides details on the number of custodial deaths by State/Territory and Aboriginality for the 1994 calendar year.

TABLE 1
Australian Deaths in Custody, 1994

Jurisdiction, Aboriginality and Custodial Authority

<i>Juris- diction</i>	<i>Police</i>			<i>Prison</i>			<i>Juvenile</i>			<i>Total</i>		Grand Total
	<i>Ab'l</i>	<i>Non- Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non- Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non- Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	
NSW	-	6	6	3	24	27	-	-	-	3	30	33
Vic.	1	10	11	-	3	3	-	-	-	1	13	14
Qld	-	4	4	4	7	11	-	-	-	4	11	15
WA	1	2	3	2	4	6	-	-	-	3	6	9
SA	1	-	1	-	3	3	-	1	1	1	4	5
Tas.	-	-	-	-	2	2	-	-	-	-	2	2
NT	-	-	-	1	-	1	-	-	-	1	-	1
ACT	-	-	-	-	-	-	-	-	-	-	-	-
C'wealth *	-	1	1	-	-	-	-	-	-	-	1	1
Aust.	3	23	26	10	43	53	-	1	1	13	67	80

* Australian Federal Police (national, not ACT).

It will be observed from Table 1 that New South Wales, Australia's most populous State, experienced the largest portion of the 1994 deaths in custody, 33 (41 per cent) out of the total of 80, including three Aboriginal deaths, all in prison custody. Twenty-seven of the deaths in this State occurred in prison custody with the remaining six occurring in police custody.

Queensland had the next highest number of deaths in custody with 15 deaths, eleven of which occurred in prison custody. Four of the deaths in Queensland were of Aboriginal people and all died in prison custody.

Victoria, the second most populous State, recorded fourteen out of the total of 80 deaths in custody in 1994. One of the Victorian deaths was of an Aboriginal person who died in police operations.

Of the nine deaths which occurred in Western Australia, six were in prison custody and three in police custody. Of the prison custody deaths, two were Aboriginal detainees and one Aboriginal person died in police custody.

In South Australia, five people were reported to have died, three in prison custody and one each in police and juvenile justice custody. The police operations-related death in South Australia was of an Aboriginal person. Two non-Aboriginal people died in prison custody in Tasmania. In the Northern Territory, one death was recorded: an Aboriginal person in prison custody. There were no custodial deaths during 1994 in the Australian Capital Territory and a non-Aboriginal person died in Western Australia in the custody of the Australia Federal Police.

Deaths not yet Reported to the AIC

While the majority of the police and prison authorities report deaths in custody to the Australian Institute of Criminology very quickly, there is sometimes a delay in the time between the death occurring and the Institute receiving the information. Pleasingly, in 1994, there are no additional deaths which have come to the attention of the Institute that might fall within the definition of a 'death in custody' as described above, and for which information has not been received from the appropriate authorities. There is, however, just one case in New South Wales where the Institute is awaiting the results of a coronial inquest before deciding whether or not to include the case in the 1994 data set. If the coroner's findings indicate that the death falls within the scope of this monitoring program, it will be included in future publications in this series.

THE CIRCUMSTANCES OF DEATHS IN CUSTODY

As already noted, the definition of a 'death in custody' as established by the Royal Commission into Aboriginal Deaths in Custody is quite broad. The 80 deaths which occurred during 1994 are summarised in Table 2 using the following two categories:

- n deaths in **institutions** (prisons, police lockups and juvenile detention centres), or during transfer to or from an institution (for example in a police vehicle), or in hospital following transfer from an institution; and
- n deaths which occurred while police or prison officers were in the process of **detaining** or attempting to detain the person.

Sixty-one of the 80 deaths (76 per cent) occurred in an institutional place of custody as defined above. (It is of special significance that only seven out of the 26 deaths occurring in police custody took place in an institutional setting, the balance occurring in community settings.) A further 19 of the 80 deaths (24 per cent) took place while police were in the process of detaining, or attempting to detain, the individuals concerned.

TABLE 2
Australian Deaths in Custody, 1994

Circumstances of Death, Aboriginality and Custodial Authority

<i>Circumstances*</i>	<i>Police</i>			<i>Prison</i>			<i>Juvenile</i>			<i>Total</i>		Grand Total
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	
Institution	1	6	7	10	43	53	-	1	1	11	50	61
Detaining	2	17	19	-	-	-	-	-	-	2	17	19
Total	3	23	26	10	43	53	-	1	1	13	67	80

* See text for definitions

Of the 19 deaths that took place while police officers were in the process of detaining, or attempting to detain, the people concerned, 12 were shot by the police and one died from asphyxiation in association with drug toxicity while police were attempting to detain him. Five of the deaths were self-inflicted (all five individuals shot themselves). One person died as a result of a motor vehicle crash during a police pursuit. This breakdown of police custody deaths should be borne in mind in interpreting the information set out in this paper.

Nine women are reported to have died in custody or in police custody-related operations during 1994. This included five prison deaths (one of whom was Aboriginal) and four police custody deaths (one of whom was Aboriginal).

Of the thirteen Aboriginal deaths, ten occurred in prison, five from natural causes, four from hanging and one from drug toxicity. A further two Aboriginal people (one man and one woman) were shot by police while they were attempting to detain them. One person died in hospital after being taken there from a lockup. He died from heart and alcoholic liver disease.

Death Rates

The rates of custodial deaths may be expressed in terms of the ratio of the number of deaths to the number of people in the community or as the ratio of the number of deaths to the number of people in custody.¹ Commencing with the first of these approaches, it is observed that the 1994 crude death rate for police, prison and juvenile justice custody combined was 0.45 per 100,000 of the total Australian population. When we consider only the population aged 15 years and above, to enhance comparability with the age structure of the custodial population, the death rate was 0.57 per 100,000.

Population data estimated by the Australian Bureau of Statistics enable comparisons to be made between the rates of custodial deaths of Aboriginal and non-Aboriginal people. Details are presented in Table 3. Although only 16 per cent of the deaths were among Aboriginal people, the fact that they comprise only 1.3 per cent of the adult population means that their adult (15 years and above) crude death rate was more than 14 times that of non-Aboriginal people.

TABLE 3
Police and Prison Custody and Juvenile Detention Death Rates, 1994
Denominator: Aboriginal, Non-Aboriginal and Total 15 yrs+ Populations Respectively

<i>Aboriginality</i>	<i>Population 1994^(a)</i>	<i>Persons 15 yrs⁺(a)</i>	<i>Deaths in custody 1994</i>	<i>Deaths per 100,000 population 15 years⁺</i>
Aboriginal ^(b)	303,260	184,639	13	7.04
Non-Aboriginal ^(c)	17,538,050	13,812,456	67	0.49
Total	17,841,301	13,997,095	80	0.57

(a) Source: Population estimates provided by the Australian Bureau of Statistics.

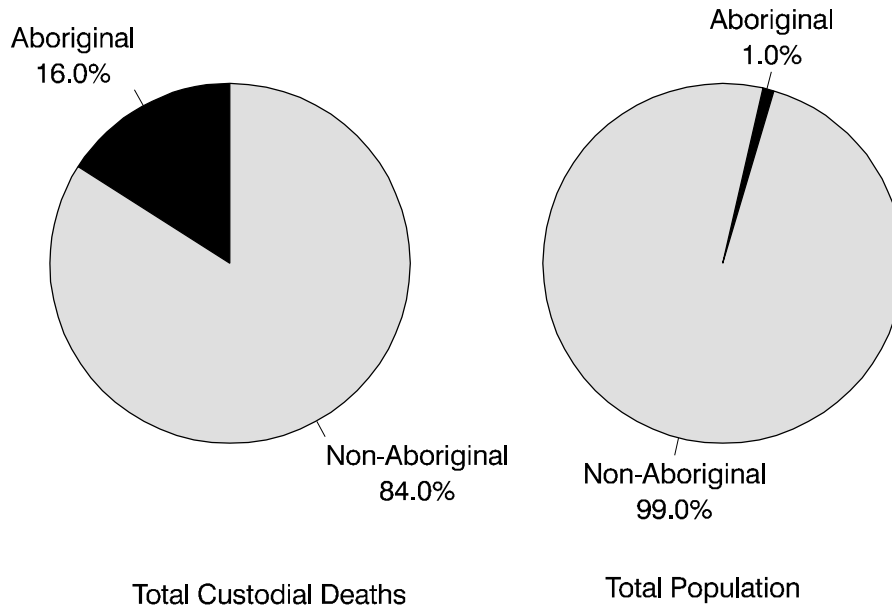
(b) Includes Torres Strait Islanders.

(c) Includes 'not stated'.

¹ See the Technical Note in a previous issue in this series (Australian Deaths in Custody 1993) for details on the calculation of death rates.

FIGURE 1

**Comparison of Aboriginal Deaths in all Custodial Settings, 1994, with
Number of Aboriginal People in the Australian Population as estimated by the Australian Bureau of Statistics**



In relation to the different forms of custody, for the 1994 period the adult (15 years and above) crude death rate for *prison custody* was 0.38 per 100,000 of the Australian population.² The adult crude death rate for Aboriginal people in prison was 5.42 per 100,000 of the Australian population, whereas the adult death rate for non-Aboriginal people in prison was 0.31 per 100,000 of the Australian population. Therefore, during the period covered by this Deaths in Custody Report, the relative risk of prison custody death for Aboriginal prisoners (compared with non-Aboriginal prisoners) was 17.48 (that is 5.42 divided by 0.31). In other words, the risk of death occurring in prison experienced by all Aboriginal and Torres Strait Islander people during this time was more than 17 times that experienced by non-Aboriginal prisoners.

TABLE 4

Prison Custody Death Rates 1994

Denominator: Aboriginal, Non-Aboriginal and Total 15 yrs+ Populations Respectively

<i>Aboriginality</i>	<i>Population 1994(a)</i>	<i>Persons 15 yrs+(a)</i>	<i>Deaths in custody 1994</i>	<i>Deaths per 100,000 population 15 years+</i>
Aboriginal ^(b)	303,260	184,639	10	5.42
Non-Aboriginal ^(c)	17,538,050	13,812,456	43	0.31
Total	17,841,301	13,997,095	53	0.38

- (a) Source: Population estimates provided by the Australian Bureau of Statistics.
- (b) Includes Torres Strait Islanders.
- (c) Includes 'not stated'.

² Both crude rates and age standardised rates show similar patterns. Because this applies throughout this section, only crude rates are presented here.

Turning now to *police custody* death rates, a similar pattern is observed. The adult crude death rate for all types of police custody (including police operations in community settings) for 1994 was 0.19 per 100,000 of the Australian population. The adult crude death rate for Aboriginal people in all circumstances of police custody was 1.62 per 100,000 of the adult national Aboriginal population, whereas the corresponding death rate for non-Aboriginal people was 0.17 per 100,000 of the Australian population. This means that the relative risk that an adult Aboriginal person (compared with a non-Aboriginal person) experienced death in police custody during the year was 9.53 (that is 1.62 divided by 0.17). In other words, the risk of death in all forms of police custody for adult Aboriginal people during this time was over nine times that experienced by non-Aboriginal people.

TABLE 5

Police Custody Death Rates 1994

Denominator: Aboriginal, Non-Aboriginal and Total 15 yrs+ Populations Respectively

<i>Aboriginality</i>	<i>Population 1991 census^(a)</i>	<i>Persons 15 yrs⁺(a)</i>	<i>Deaths in custody 1994</i>	<i>Deaths per 100,000 population 15 years⁺</i>
Aboriginal ^(b)	303,260	184,639	3	1.62
Non-Aboriginal ^(c)	17,538,050	13,812,456	23	0.17
Total	17,841,301	13,997,095	26	0.19

(a) Source: Population estimates provided by the Australian Bureau of Statistics.

(b) Includes Torres Strait Islanders.

(c) Includes 'not stated'.

It is also desirable to calculate death rates using the relevant custodial populations as the denominators. Using this approach, for the 1994 calendar year the crude death rate for *prison custody* was 3.34 per 1,000 of the prison population³. In terms of Aboriginality, the crude death rate for Aboriginal prisoners was 3.66 per 1,000 prisoners, compared with a rate of 3.28 per 1,000 for non-Aboriginal prisoners. It follows that Aboriginal and non-Aboriginal prisoners experienced similar death rates during 1994.

Unfortunately, it is not possible to calculate accurately the risk of death experienced by people in *police lockups* as information on the number of people in lockups in 1994 is not available. However, applying to the 1994 deaths data the number of people in police lockups as estimated in the August 1992 National Police Custody Survey, we find that the death rate of non-Aboriginal detainees was approximately three times that of Aboriginal detainees. (This observation is based on one Aboriginal death and six non-Aboriginal deaths either in police lockups or in hospital following transfer from a lockup.)

POLICE CUSTODY AND CUSTODY-RELATED DEATHS

State, Aboriginality, Gender & Age

It will be observed from Table 6 that a total of 26 people died in police custody or in custody-related police operations during the calendar year 1994. Twenty three of these deaths were of non-Aboriginal people and three were Aboriginal people. The largest portion (11) of the deaths occurred in Victoria. Six people died in New South Wales; four in Queensland; three in Western Australia and one each in South Australia and in the custody of the Australian Federal Police. Four of these 26 individuals were female and three (one woman and two men) were Aboriginal.

³ The prison populations used as the denominators of these rates are for 1 June 1994, as published in *Australian Prison Trends*.

The people who died in police custody during 1994 were young. Their ages ranged from 18 to 62 years with a mean age of 33 years and a median (the point above and below which half of the cases fell) of 33 years. There were no significant age differences between the Aboriginal people who died in police custody and the non-Aboriginal people, although the former had a mean age of 37 years compared to the mean age of 32 years for the latter.⁴ The ages of the three Aboriginal people who died in police custody were 34, 37 and 41 years, respectively.

TABLE 6
Australian Deaths in Police Custody and in Custody-related Police Operations, 1994

Jurisdiction and Aboriginality

<i>Jurisdiction</i>	<i>Category 1 - Institutional or Close Contact Custody</i>			<i>Category 2 - Other Custody-related Police Operations</i>			<i>Total</i>		Grand Total
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	
NSW	-	3	3	-	3	3	-	6	6
Vic.	1	10	11	-	-	-	1	10	11
Qld	-	2	2	-	2	2	-	4	4
WA	1	2	3	-	-	-	1	2	3
SA	1	-	1	-	-	-	1	-	1
Tas.	-	-	-	-	-	-	-	-	-
NT	-	-	-	-	-	-	-	-	-
ACT	-	-	-	-	-	-	-	-	-
Other	-	1	1	-	-	-	-	1	1
Aust.	3	18	21	-	5	5	3	23	26

Cause and Manner of Death

Gunshot was the most frequent manner of death. In fact, 17 of the 26 people who died in police custody or in custody-related operations died as a result of gunshot. Five of the 17 deaths were self-inflicted and the remaining 12 deaths were a result of gunshot wounds inflicted by police officers. Another four deaths were a result of drug overdoses and two were from natural causes, two were from injuries and one death was a result of hanging.

Offence, Legal Status & Bail

This section provides data on the offences that led to the final period of custody of these people, their legal status at the time of death and the reasons for people being held in police custody rather than being released on bail.

Information is available on the most serious *offence* associated with people being in custody. It should be noted that the legal status of these people varied. In many cases they had not been convicted of the offences (for example, where held on remand awaiting a court hearing), and in some instances people died before being charged or without even being liable to be charged (for example, where held in protective custody for public drunkenness in jurisdictions where such behaviour is not an offence).

⁴ There are differing age distributions of these two groups in the community but not in the custodial populations. Thus, the mean ages at death of Aboriginal and non-Aboriginal people, as we might expect, reflected the age distributions of their respective custodial populations but not their total populations in the community.

The highest number of deaths (9 of the 26) occurred among people who were in police custody or whom police were attempting to detain for the offence of assault. After assault, the most common offence type was homicide, with five deaths; two for robbery offences; two for break and enter offences; two for fraud offences; one each for sex offences, deprivation of liberty, traffic offences and public drunkenness. In two cases, individuals concerned died although they had not committed any crime. One of these died while in protective custody for public drunkenness in New South Wales where such behaviour is no longer an offence, and one person who had absconded from a psychiatric institution died while police were attempting to detain him.

Overall, the five most serious categories of offences, namely homicide, assault, sex offences, robbery and other offences against the person, accounted for 18 of the 26 police cases. All but three of the individuals were non-Aboriginal.

Turning to the *legal status* of the deceased, four people were on remand in police custody at the time of their death and one person was in custody for drunkenness where this is not an offence. In one case, the person was a sentenced prisoner who, after appearing in court, died in a police lockup awaiting transfer back to prison. The other 20 people who died were in a variety of situations, primarily dying while police were attempting to detain them.

During 1994, there was only one case where it would have been possible for police officers to have considered releasing the person on *bail*. Here bail was not provided owing to her level of intoxication. (This death occurred in Queensland where public drunkenness remains an offence.) In most cases, bail was not applicable because at the time of death the people had been remanded in custody by a court or were not in custody as the police were attempting to detain them.

Setting of Death

As can be seen from Table 6, 21 of the 26 people died in either an institutional setting or in close contact custody. The remaining five people died during other custody-related police operations. A breakdown of these deaths follows, including the basis for such classification.

As agreed by the Australasian Police Ministers' Council, the following definitions are used to determine into which of the two categories a death in police custody will be included:

Category 1: (a) deaths in institutional settings (e.g. police stations/lockups, police vehicles, etc.; or during transfer to or from such an institution; or in hospitals, etc. following transfer from an institution); and (b) other deaths in police operations where officers were in close contact with the deceased. This would include most raids and shootings by police. It would not include most sieges where a perimeter was established around a premises but officers did not have such close contact with the person as to be able to significantly influence or control the person's behaviour.

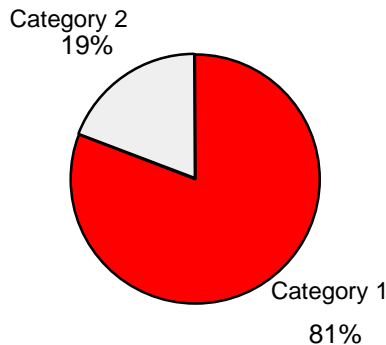
Category 2: Other deaths during custody-related police operations. This would cover situations where officers did not have such close contact with the person as to be able to significantly influence or control the person's behaviour. It would include most sieges as described above and most cases where officers were attempting to detain a person, e.g. pursuits.

The full APMC *Consensus Statement* from which these definitions are drawn can be found in an Appendix to this report.

FIGURE 2

Australian Deaths in Police Custody and in Custody-related Police Operations, 1994

Type of Custody



Category 1: Deaths in institutions and other forms of close custody

Seven of the 21 police custody-related deaths that fall into this category occurred in an institutional setting and 14 in community settings. Of the *institution-related deaths*, four occurred in police lockups, two in a hospital shortly after the people were transferred there from a police lockup, and one death, which occurred in Western Australia in the rear of an Australian Federal Police vehicle, was from self-inflicted poisoning .

There were two deaths in lockups in Victoria (one self-inflicted drug overdose and one hanging). In New South Wales, one person died in hospital from natural causes shortly after being transferred from a police lockup and one died in a lockup from a drug overdose. In Queensland, one person died from a drug overdose in a lockup and in Western Australia, one Aboriginal detainee died in hospital from heart and liver disease following transfer from a police lockup.

It should be noted that four of the seven deaths that occurred in an institutional setting were as a result of self-inflicted drug or poison overdoses and that three of these occurred in police lockups.

The remaining 14 deaths that occurred in the first category, i.e. situations where police were able to exert a substantial degree of influence over the behaviour of the person who died, were *deaths in non-institutional settings*, rather than in lockups, police vehicles or hospitals. Nine of the deaths occurred in Victoria, two in Western Australia and one each in New South Wales, Queensland and South Australia. Two of the 14 people who died in these circumstances were females and two were Aboriginal people.

The fact that 13 of the 14 deaths were caused by gunshot needs to be highlighted. All of the nine deaths within this category that took place in Victoria were a result of gunshot wounds inflicted by police while they were in the process of detaining, or attempting to detain, the individuals who died. One person also died from gunshot wounds inflicted by police in each of the states of Queensland, Western Australia and South Australia. In addition, in New South Wales one person died as a result of a self-inflicted gunshot wound when surrounded by police with their firearms trained on him. The single death that was not a result of shooting by police or self-inflicted shooting was that of a person who died in Western Australia as a result of restraint asphyxiation in association with amphetamine use while police were in the process of attempting to detain him.

Category 2: Deaths in Other custody-related Police Operations

As can be seen from Table 6, there were five cases which fall into the second category of deaths in custody-related police operations. As agreed by APMC, this category covers cases where police were involved but had little capacity to significantly influence or control the person's behaviour. Three of the five deaths occurred in New South Wales and two in Queensland. Significantly, four of the deaths were from self-inflicted gunshot wounds; the fifth death to fall within this category involved a motor vehicle crash in the course of a police pursuit. A brief description of these deaths are provided below.

- In New South Wales, a man died after shooting himself in a siege situation with police. Police were attempting to detain the man, who had absconded from a psychiatric facility. Correctly believing the man to be armed, police formed a perimeter at the scene and attempted negotiations, without response. Upon forcing entry, the person was found with a gunshot wound to the head, with signed notes indicating suicide.
- In New South Wales, a motorcyclist died after an collision with an oncoming vehicle while he and his passenger were being pursued by police. The motorcyclist was being pursued for exceeding the speed limit in a built up area when his vehicle went onto the incorrect side of the roadway and collided head on with an oncoming vehicle.
- In New South Wales, a man died after shooting himself at his home in a siege situation with police. Police had attended the scene in relation to a family violence report which led to the deceased allegedly murdering his wife. Police, observing the man loading a rifle, retreated. Upon subsequently entering the premises, the man was found with a fatal gunshot wound alongside his deceased wife.
- In Queensland, a man died after shooting himself in a public street while being pursued on foot by police. The incident followed a motor vehicle pursuit involving the deceased and a male passenger; the vehicle had failed to stop at a red light. A volley of shots was fired at several police vehicles pursuing the pair, before the deceased's vehicle crashed and both men fled on foot. Upon being cornered, both men ignored pleas to surrender, and both shot themselves. One died.
- In Queensland, a man died after shooting himself in the course of a high speed motor vehicle pursuit. After shooting himself, the man's vehicle collided with a semi-trailer. It appears, however, that the gunshot wound, rather than the crash, caused his death. Police were pursuing the deceased in relation to shots the driver had fired into a house earlier that evening.

PRISON CUSTODY DEATHS

State, Aboriginality & Gender

During the calendar year 1994, a total of 53 deaths occurred in prison custody. Forty-three of these deaths were of non-Aboriginal people and ten were Aboriginal. Table 7 shows that New South Wales experienced the largest number of deaths in prison custody (27), accounting for 51 per cent of prison deaths. Of the 10 Aboriginal deaths, four occurred in Queensland, three in NSW, two in Western Australia and one in the Northern Territory.

Most of the people who died in prison custody during 1994 were male (48 or 91 per cent) and nine of the males were Aboriginal. There were five female deaths: four of non-Aboriginal women and one Aboriginal.

Table 7
Deaths in Prison Custody, 1994
Jurisdiction and Aboriginality

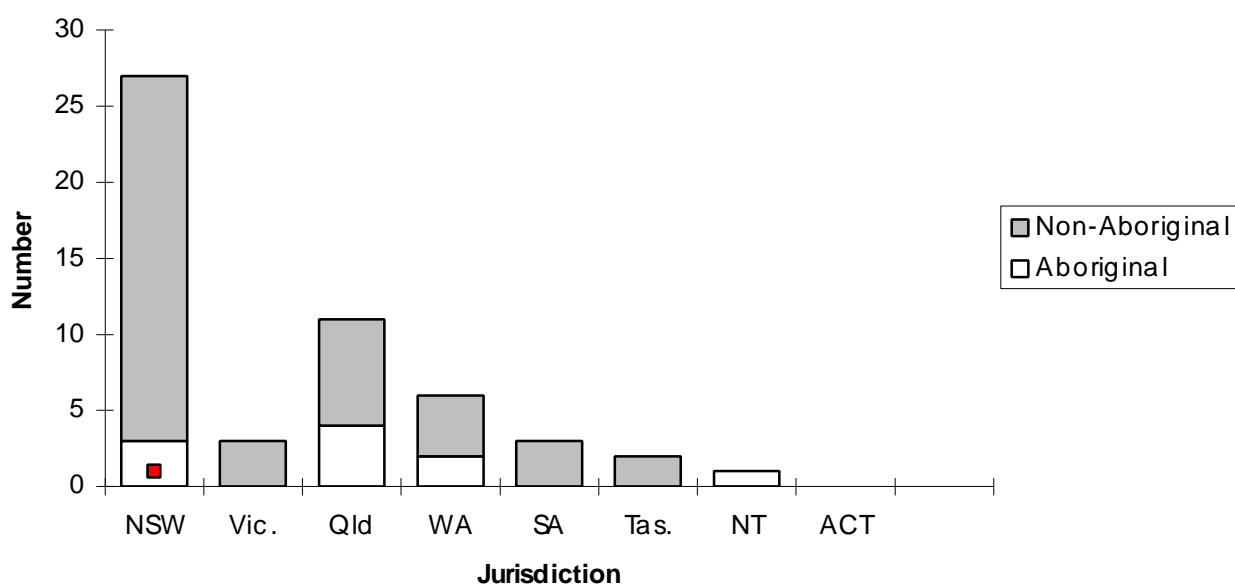
<i>Jurisdiction</i>	<i>Aboriginal</i>	<i>Non-Aboriginal</i>	<i>Total</i>
NSW	3	24	27
Vic.	-	3	3
Qld	4	7	11
WA	2	4	6
SA	-	3	3
Tas.	-	2	2
NT	1	-	1
ACT	-	-	-
Aust.	10	43	53

Age

The people who died in prison custody during 1994 had ages at death ranging from 18 to 69 years. Their mean age at death was not significantly different from the mean age at death of those who died in police custody (35.5 years compared with 33.0 years respectively). Aboriginal people who died in prison custody were, on average, younger than the non-Aboriginal people (a mean of 30 years for Aboriginal prisoners compared with 37 years for non-Aboriginal prisoners), although the difference is not statistically significant.

Five of the deaths in prison custody that occurred during 1994 were of people aged 19 years or younger. Three of the four males were 19 and died as a result of hanging. One-18-year old male and one 18 year female also died as a result of hanging.

FIGURE 3
Australian Deaths in Prison Custody, 1994
Jurisdiction and Aboriginality



Manner of Death

Here we discuss the manner of death in Australian prisons during 1994. At the time of writing, the manner of death had not been determined in three deaths, all of which were of non-Aboriginal people. Overall, hanging was the most frequent manner of prison death, accounting for 22 (or 44 per cent) of the 50 deaths for which information on the manner of death is currently available. Four of these deaths were of Aboriginal people. Natural causes was the second most frequent category after hanging, with 17 deaths, 12 of which were non-Aboriginal and 5 of Aboriginal people.⁵ These categories were followed in frequency by deaths resulting from injuries (6), and drugs (5). One of the drug-related deaths was of an Aboriginal person.

Of the 10 deaths of Aboriginal prisoners, one was of an Aboriginal woman who died as a result of natural causes (suspected heart disease), and of the nine Aboriginal men, four died as a result of hanging, four from natural causes (all heart disease) and one from homicide (allegedly injected with heroin by another inmate).

Of the total of 17 deaths from natural causes, 9 resulted from heart disease, two from cancer, one from respiratory problems and one from hepatitis/alcoholic liver disease. (The type of illness resulting in death is undetermined as yet in the four remaining cases.)

It should be noted that 23 (or 45 per cent) of the deaths for which information on the manner of death is available were self-inflicted.

Offence & Legal Status

This section provides data on the most serious offence associated with people being in custody and their legal status at the time of death. The highest number of prison custody deaths (12 of the 53) occurred among people in prison for sex offences. After sex offences, the most common offence types were homicide and break and enter, with eight deaths each; seven for robbery; five for assault, four for fraud or theft (not elsewhere classified); two each for motor vehicle theft, property damage and justice procedures; and one each for offences against good order, dealing or trafficking in drugs, and traffic offences.

Overall, the five most serious categories of offences, namely homicide, assault, sex offences, robbery and other offences against the person, accounted for 32 of the 53 cases. Some 60 per cent of both the Aboriginal and non-Aboriginal people who died in prison were being held for one of these more serious offences.

A substantial proportion (34 or 64 per cent) of the people who died in prison custody during 1994 had been sentenced to a period of imprisonment at the time of their death. Another 19 (or 36 per cent) were on remand, unconvicted and awaiting trial.

Information on the legal status of the people who died in prison custody is important: both Australian and overseas research has demonstrated an over-representation of custodial deaths among remandees compared with sentenced prisoners (Biles & McDonald 1992; Liebling 1992). As noted above, during 1994 some 19 (or more than one-third) of the people who died in prison were held on remand. This proportion is very high when compared with the prison population as a whole where, as at 1 June 1994, 13 per cent of the prison population was held on remand (AIC, 1993). This produces a measure of relative risk (an odds ratio) of 3.8. In other words, the proportion of deaths among remand prisoners was almost four times what one would expect from their proportion in the prison population.

JUVENILE CUSTODY DEATHS

In 1994 one 18 year old male died in South Australia while in the custody of juvenile justice authorities. At the time of his death he was a detainee at a Training Centre, having been remanded in custody seven days prior to his death for the offence of breaking and entering. He used a bath robe cord tied to a shower tap to hang himself.

⁵ The health status of Aboriginal people in the community is far worse than that of non-Aboriginal people. Aboriginal people have an age standardised mortality rate three times that of non-Aboriginal people (Bhatia & Anderson 1995).

He had a troubled childhood and an early start to offending at the age of 13. By 1991 he was a regular offender, mainly for the offences of larceny and breaking and entering. He had spent more than 70 per cent of his time in custody since mid 1992 and was known to use a variety of drugs. Although he was not known to have a psychiatric disorder, at one stage he had told another inmate about an attempt to hang himself and apparently he knew that what he was doing was dangerous.

The coroner found that he was devastated to be remanded in custody yet again. There were other problems in the family he was concerned about and was observed to be 'really down' in the days leading up to his death. No extra measures were made to monitor his situation and important information from conversations with people he had confided his worries to was not made available to staff at the Training Centre.

He was locked in his cell at 10.30 pm and found hanging at 6.45 am the following morning. During the night checks were made every 15 minutes using a torch. The coroner concluded that the most likely time of death was between 10.30 pm and midnight. He also noted 'that had all of these "hints" been collated and analysed together, it might have been concluded that [the young man] was at risk of suicide'. The coroner also made several recommendations which he hoped may prevent, or reduce the risk of, the recurrence of a similar tragic event.

TRENDS 1980 TO 31 DECEMBER 1994

This section presents information on the trends in custodial deaths during the period 1 January 1980 to 31 December 1994. The figures for the period 1980 to the end of 1989 are based on data received by the Royal Commission into Aboriginal Deaths in Custody's Criminology Unit directly from the custodial authorities.⁶ It is likely that the definition of a death in custody used over this period varied both between the jurisdictions and over time. For this reason, in reviewing trends one should not place too much emphasis on small variations in numbers of cases.

⁶ While the data set from which these figures were derived contains all the cases reported to the Royal Commission's Criminology Unit, it is possible that it is not a *complete* list of all 1980 to 1989 deaths in custody. As a result, the figures presented here may slightly underestimate the number of deaths which occurred during that period.

TABLE 8*

Australian Deaths in Custody, 1980 to 1994

Year of Death, Custodial Authority and Aboriginality,

Institutional Settings Only**

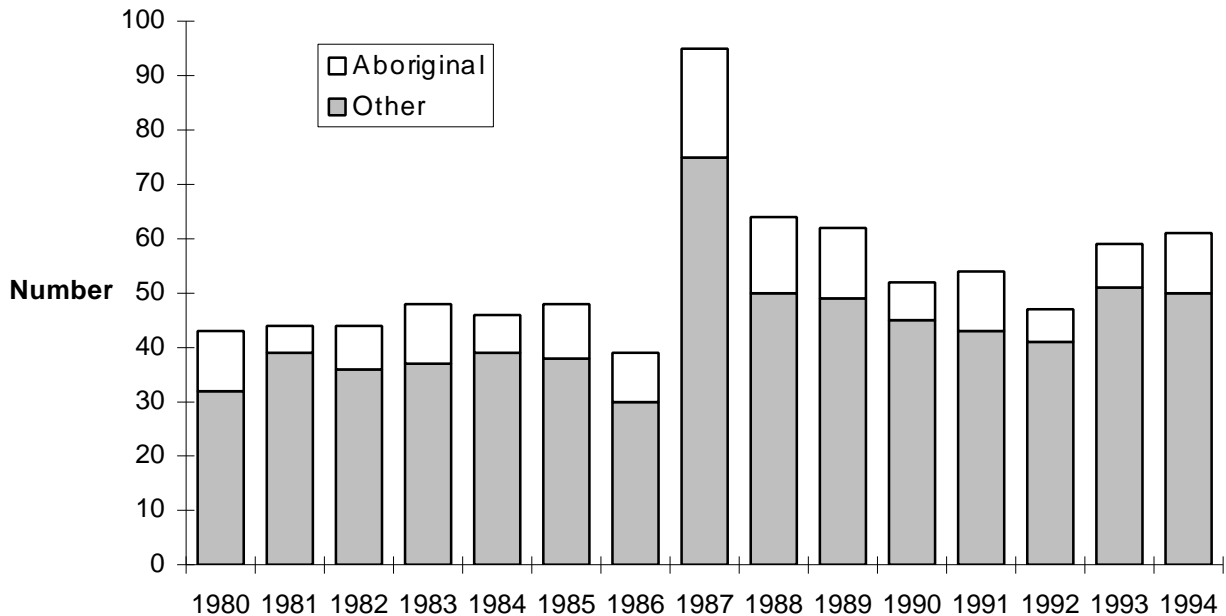
<i>Year</i>	<i>Police</i>			<i>Prison</i>			<i>Juvenile Detention</i>			<i>Total</i>		<i>Grand Total</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	
1980	5	7	12	5	25	30	1	-	1	11	32	43
1981	3	12	15	1	27	28	1	-	1	5	39	44
1982	4	15	19	4	21	25	-	-	-	8	36	44
1983	6	10	16	5	26	31	-	1	1	11	37	48
1984	3	12	15	4	27	31	-	-	-	7	39	46
1985	6	16	22	4	22	26	-	-	-	10	38	48
1986	8	13	21	1	16	17	-	1	1	9	30	39
1987	15	26	41	5	48	53	-	1	1	20	75	95
1988	7	14	21	6	36	42	1	-	1	14	50	64
1989	10	11	21	3	37	40	-	1	1	13	49	62
1990	1	17	18	6	27	33	-	1	1	7	45	52
1991	3	12	15	8	31	39	-	-	-	11	43	54
1992	4	9	13	2	32	34	-	-	-	6	41	47
1993	2	7	9	6	43	49	-	1	1	8	51	59
1994	1	6	7	10	43	53	-	1	1	11	50	61
Total	78	187	265	70	461	531	3	7	10	151	655	806

* The corresponding tables in reports prior to No. 8 in this series are not directly comparable with this table as they covered deaths in all settings whereas (for consistency in the time series) this covers only deaths in institutional settings.

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

FIGURE 4*

Australian Deaths in Custody 1980 to 1994,
Year of Death and Aboriginality, Institutional Settings Only



*The corresponding figures in reports prior to No. 8 in this series are not directly comparable with this figure as they covered deaths in all settings whereas (for consistency in the time series) this covers only deaths in institutional settings.

Table 8 sets out details on the number of custodial deaths reported for each calendar year from 1980 to 31 December 1994, using a consistent definition of a 'death in custody' throughout. Since this report covers the calendar year to 31 December 1994, the following discussion focuses on calendar years. Financial year information will be updated in the next monitoring report in this series.

This table and Figure 4 show the number of prison custody deaths over the full period 1980 to 1994. In the case of police and juvenile justice custody deaths they cover only deaths in detention facilities (e.g. police lock-ups and juvenile detention centres) and deaths which occurred while people were being transported to or from such facilities, or in hospitals etc. following transfer from lock-ups and other detention facilities. The table and figure do not include deaths in police operations such as attempting to detain a person, even though such deaths have fallen within the definition of a 'death in custody' with effect from 1990. Omitting these deaths enables direct and accurate temporal comparisons to be made over the full period 1980 to 1994. Trends in deaths in police operations in non-institutional, community settings are discussed below.

The number of deaths each year was relatively low in the period 1980 to 1986. The substantial increase in Aboriginal deaths in 1987 (which was accompanied by an proportional increase of similar magnitude in non-Aboriginal deaths) was a key factor in precipitating the appointment of the Royal Commission into Aboriginal Deaths in Custody. Following this extreme year, the number of custodial deaths remained high for two years, then fell to a substantially lower level for three years. During the last two years, however, the number of deaths has returned to a relatively high level. Sixty-one deaths occurred in institutional settings (prisons, police lock-ups, etc.) during 1994, a similar level to the previous year (59 in 1993) but a 30 per cent increase on the 1992 figure of 47 deaths.

Table 9 shows the deaths that occurred in *all custodial circumstances* from 1990 to 1994. All of these cases are covered by the post-Royal Commission definition of a 'death in custody', which includes both deaths in institutional settings and in community settings, such as police sieges, shootings and pursuits. It will be observed from this table that the 80 deaths which were reported for the year covered by this report is a similar number to that observed in the previous year when 77 custodial deaths occurred. The number of Aboriginal people who died in all forms of custody in 1994 (13) is substantially higher than the previous year's figure of 9 Aboriginal deaths. The total number of non-Aboriginal people who died in custody was one fewer than the previous calendar year.

TABLE 9

Australian Deaths in Custody 1990 to 1994

Deaths in all custodial circumstances

Year	Police			Prison			Juvenile detention			Total		Grand Total
	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	
1990	5	26	31	6	27	33	1	1	2	12	54	66
1991	5	23	28	8	31	39	-	-	-	13	54	67
1992	6	24	30	2	34	36	-	-	-	8	58	66
1993	3	24	27	6	43	49	-	1	1	9	68	77
1994	3	23	26	10	43	53	-	1	1	13	67	80

Table 10 provides information on custodial deaths that occurred in *institutions only* (i.e. police lockups, prisons, juvenile detention centres, or during transfer to or from such institutions, and in hospitals following transfer from them) for the calendar years from 1990 to 1994. This table therefore incorporates only those cases that would have been covered by the earlier definition of a 'death in custody'. As observed above, this table shows an increase of two deaths (a total of 61) over the number of deaths reported for 1993 (59). The increase occurred entirely among Aboriginal deaths in prison custody, an increase from 6 in 1993 to 10 in 1994. Only one Aboriginal death during the year was related to being held in a police lockup and that was a death from heart disease.

Table 10

Australian Deaths in Custody 1990 to 1994,

Aboriginality and Custodial Authority

Deaths in institutional settings *

Year	Police			Prison			Juvenile detention			Total		Grand Total
	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	
1990	1	17	18	6	27	33	-	1	1	7	45	52
1991	3	12	15	8	31	39	-	-	-	11	43	54
1992	4	9	13	2	32	34	-	-	-	6	41	47
1993	2	7	9	6	43	49	-	1	1	8	51	59
1994	1	6	7	10	43	53	-	1	1	11	50	61

* Deaths in police lockups, prisons, juvenile detention centres, or during transfer to or from such institutions, and in hospitals following transfer from institutional settings.

Table 11 provides information on custodial deaths that occurred in *non-institutional settings* from 1990 to 1994, in accordance with the post-Royal Commission definition of a custodial death. Most of these deaths occurred in pursuits, raids, sieges and police shootings. This table shows that the number of deaths has remained basically stable over the last three years.

Table 11
Australian Deaths in Custody 1990 to 1994,
Aboriginality and Custodial Authority
Deaths in non-institutional settings only*

Year	Police			Prison			Juvenile detention			Total		Grand Total
	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	
1990	4	9	13	-	-	-	1	-	1	5	9	14
1991	2	11	13	-	-	-	-	-	-	2	11	13
1992	2	15	17	-	2	2	-	-	-	2	17	19
1993	1	17	18	-	-	-	-	-	-	1	17	18
1994	2	17	19	-	-	-	-	-	-	2	17	19

* Deaths other than those in police lockups, prisons, juvenile detention centres, or during transfer to or from such institutions and in hospitals following transfer from such facilities (e.g. in a community setting while police or prison authorities were attempting to detain a person).

Trends in Patterns of Police Custody-Related Deaths

Table 12 provides information on deaths in police custody and in related police operations for the period 1990 to 1994. It is based on the two categories referred to earlier where we discussed deaths in police custody and in custody-related police operations. It is notable that the total number of deaths in police custody and in related police operations in 1994 (26) is the lowest figure reported over the five years for which these data are available. The relatively low number is observed among both Aboriginal and non-Aboriginal deaths.

TABLE 12
Australian Deaths in Police Custody and in Related Police Operations,
1990-1994, by Aboriginality

Year	Category 1 - Institutional or Close Contact Custody			Category 2 - Other Custody-related Police Operations			Total		Grand Total
	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	Total	Ab'l	Non-Ab'l	
1990	2	23	25	3	3	6	5	26	31
1991	4	19	23	1	4	5	5	23	28
1992	4	16	20	2	8	10	6	24	30
1993	3	12	15	-	12	12	3	24	27
1994	3	18	21	-	5	5	3	23	26

The data in Table 12 indicate that while Category 2 deaths (i.e. cases where police had little or no capacity to control the behaviour of the deceased have decreased noticeably in 1994 from the number reported for 1993 (a fall from 12 to 5), Category 1 deaths (i.e. deaths in lockups and other situations where police could exercise a considerable degree of control over the deceased) have increased markedly from 15 in 1993 to 21 in 1994. This reflects, in the main, people shot and killed by members of the Victoria Police while they were attempting to detain the people or prevent the commission of an offence.

Deaths since the Royal Commission

In terms of monitoring the impact of the work of the Royal Commission into Aboriginal Deaths in Custody, it is important to consider the number of custodial deaths that have occurred since 9 May 1991, the date on which the Royal Commission's final National Report was tabled. Between that date and 31 December 1994, 39 Aboriginal people and 225 non-Aboriginal people, a total of 264, are reported to have died in all forms of police, prison and juvenile justice custody in Australia. This represents an average of 10.6 Aboriginal deaths each year since the date of tabling.

This average of 10.6 Aboriginal deaths per annum covers deaths in all forms of custody for the period since the tabling of the report, including both deaths in institutional settings and in the community (for example, where police officers were attempting to take a person into custody). As previously discussed, the definition of a 'death in custody' has been modified since 1990, compared with the definition applied by the Royal Commission during the 1980-1989. For purposes of making comparisons with figures for the period of time covered by the Royal Commission's investigations, the figure relating to the period of the Royal Commission needs to be compared with the figures for subsequent years which cover institutional deaths only. The average number of Aboriginal deaths each year for the period covered by the Royal Commission was 10.5, whereas the average annual number of Aboriginal deaths in institutional settings since the tabling of the Royal Commission Report in 1991 was 9.0, a 14 per cent decrease.

It is also notable that, since 31 May 1989, the cut-off date for the deaths investigated by the Royal Commission, 64 Aboriginal and 336 non-Aboriginal custodial deaths have been reported as having occurred throughout Australia. With regard to Aboriginal people, this is an average of 11.5 deaths annually. These figures cover deaths in both institutional and community settings, the definition recommended by the Royal Commission.

Conclusion

In conclusion, it needs to be stressed that the total number of people who died in prison custody during 1994 is equal to the highest figure recorded in Australia since data were first collected in 1980. The number of Aboriginal prison deaths in 1994 is substantially higher than that observed at any time over the last fifteen years. This suggests that key recommendations of the Royal Commission concerned with minimising the number of people held in prison and providing a high quality of care for those in prison 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 stronger action by all governments to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody and to evaluate their impacts on the frequency of both Aboriginal and non-Aboriginal people dying while in the care of the state.

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Deaths in Custody, Australia, No. 9

Australian Deaths in Custody and Custody-Related Police Operations, 1994

This is the ninth research paper in the Deaths in Custody, Australia series produced by the Australian Institute of Criminology. It has been compiled by the Institute's National Deaths in Custody Monitoring and Research Unit which was established as one of the Commonwealth Government's responses to the Royal Commission into Aboriginal Deaths in Custody.

Previously published titles in this series are:

- No. 1, McDonald, D. & Howlett, C., *Australian Deaths in Custody 1990 & 1991*, (October 1992).
- No. 2, McDonald, D., *National Police Custody Survey 1992: Preliminary Report*, (March 1993).
- No. 3, Howlett, C., *Deaths in Juvenile Detention, 1980-1992*, (May 1993).
- No. 4, McDonald, D. & Howlett, C., *Australian Deaths in Custody 1992*, (August 1993).
- No. 5, Howlett, C., *Deaths of Young People in Police and Prison Custody and Juvenile Detention, 1980-1992*, (August 1993).
- No. 6, Howlett, C. & McDonald, D., *Australian Deaths in Custody 1992-93*, (February 1994).
- No. 7, Morrison, S., McDonald, D., & Dalton, V., *Australian Deaths in Custody 1993*, (June 1994).
- No. 8, Halstead, B., McDonald, D., & Dalton, V., *Australian Deaths in Custody & Custody-related Police Operations, 1993-94*, (February 1995).

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APPENDIX

MONITORING OF DEATHS IN POLICE CUSTODY AND IN RELATED POLICE OPERATIONS

CONSENSUS STATEMENT ACCEPTED BY THE AUSTRALASIAN POLICE MINISTERS' COUNCIL, 16 DECEMBER 1994

Purpose

The purpose of this paper is to propose modifications to the collaborative undertaking of the Australian Institute of Criminology and all Australian police services regarding the monitoring and reporting on deaths in custody and certain other deaths related to police operations. The proposal remains consistent with Recommendation 41 of the Royal Commission into Aboriginal Deaths in Custody which has been agreed to by all Governments. This paper has been prepared by the National Deaths in Custody Monitoring and Research Program of the Australian Institute of Criminology, following negotiations between the interested parties as mandated by the Australasian Police Ministers' Council at its 26 May 1994 meeting. It sets out the consensus reached by the parties.

Background

1. Royal Commission into Aboriginal Deaths in Custody Recommendation 41 indicates what the definition of a 'death in custody' should be for the purpose of national monitoring and also suggests that the Australian Institute of Criminology (the AIC) be responsible for monitoring and reporting on trends. All Governments have agreed to these recommendations. The scope of the monitoring program, as recommended by the Royal Commission:
... 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 (Recommendation 41).*
2. The scope of the monitoring program as recommended by the Royal Commission is, therefore, quite broad, in fact broader than the terms of reference of the Royal Commission itself. Implementing the recommendation means that three categories of death related to police operations are monitored within the one program: (a) deaths which occur while the person is in the **custody** of police officers; (b) deaths which occur while police are **attempting to detain** a person; and (c) deaths which occur while a person is **escaping from custody**. In other words, it covers the deaths of people in custody and of people in other custody-related police operations. For the purposes of national monitoring, a person is in police custody (category (a) above) if, as a result of police operations, she or he is not free to come and go at will.

3. The AIC has been implementing the RCIADIC Recommendation 41 since April 1992, applying it to the deaths which have occurred since 1 January 1990. All corrections and juvenile justice authorities are implementing the new approach. All police services except for the Queensland Police Service (QPS) are also doing so. To date the QPS has declined to include certain cases which the AIC considers fall within the scope of the definition, pending the resolution of discussions on the interpretation of the Royal Commission's definition of a 'death in custody' and the resulting scope of the national monitoring program.
4. As a result of a meeting of representatives from all police agencies, the Queensland Police Service and the New South Wales Police Service were tasked to jointly develop a paper on concerns with the approach to the monitoring of deaths in police custody being undertaken by the AIC. This paper was circulated to Police Commissioners in the first half of 1994. With the support of all Police Commissioners, the Queensland Minister for Police presented an agenda on the matter to the 26 May 1994 meeting of the Australasian Police Ministers' Council (APMC). Council resolved that the Queensland Police Service and the New South Wales Police Service (NSWPS) should 'enter discussions with the Australian Institute of Criminology and appropriate Aboriginal and Torres Strait Islander groups on the interpretation of 'deaths in custody'. It also resolved that 'a report on these discussions and recommendations for national action' be provided to its next meeting.
5. Pursuant to the APMC resolution, discussions have been conducted on this matter between staff of the Australian Institute of Criminology, the QPS and NSWPS, members of the ATSIC Board of Commissioners, ATSIC officers, NAILSS and the Commonwealth Attorney-General's Department. This paper has been prepared by the AIC to document the agreements reached by the parties.

PROPOSED MODIFIED APPROACH TO THE MONITORING OF DEATHS IN POLICE CUSTODY AND IN RELATED POLICE OPERATIONS.

1. **The AIC will modify its approach to monitoring deaths in custody and presenting the results of such monitoring** with the aim of enhancing readers' understanding of the circumstances of the deaths and trends in the deaths.

2. **Title of AIC publications**

The Royal Commission's definition of a death in custody for the purposes of national monitoring (as it relates to police) covers three different situations:

- (a) deaths which occur while the person is in the custody of police officers;
- (b) deaths which occur while police are attempting to detain a person; and
- (c) deaths which occur while a person is escaping from custody. Referring to all these disparate circumstances as 'deaths in custody' has apparently created erroneous understandings on the part of some sectors of the media and community about the number of deaths that have occurred in police lockups and in other forms of custody where officers have a high degree of control over the person's behaviour.

Accordingly, the six-monthly publications of the AIC on trends in this area should no longer be titled *Australian Deaths in Custody*. A title which better captures the wide range of cases covered by the agreed Royal Commission recommendation is *Australian Deaths in Custody and in Related Police Operations*. The AIC will use this title in its publications, media releases, etc., so as to improve community understanding of the true scope of the monitoring program. It will do so within the established publications series 'Deaths in Custody, Australia'.

3. **The scope of the monitoring program** will continue to be as recommended by the Royal Commission. In broad terms, it will cover deaths in custody, deaths which occur where police are attempting to detain a person and deaths of people in the process of escaping or attempting to escape from custody. For the purposes of national monitoring a person is in police custody if, as a result of police operations, she or he is not free to come and go at will.

The AIC's monitoring program will exclude deaths which occur in police search and rescue operations where the goal of police officers was rescue *per se*, rather than the goal of detaining the deceased for any reason.

Also excluded from the monitoring process will be self-inflicted deaths where the police officers' involvement is limited to attempting to prevent the suicide or to obtain medical attention needed as a result of the suicide attempt. A self-inflicted death will be included in the monitoring process, however, if the police operation had, as one of its goals, the detaining of the person for any reason (other than simply to prevent suicide or to seek medical attention needed as a result of the attempted suicide), as recommended by the Royal Commission into Aboriginal Deaths in Custody.

4. **The AIC's six-monthly monitoring reports will be restructured** to reflect the modifications listed above.

- 4.1 The reports will categorise the deaths which fall within the Royal Commission's four point definition as follows:

Category 1: (a) deaths in institutional settings (e.g. police stations/lockups, police vehicles, etc.; or during transfer to or from such an institution; or in hospitals, etc. following transfer from an institution); and (b) other deaths in police operations where officers were in close contact with the deceased. This would include most raids and shootings by police. It would not include most sieges where a perimeter was established around a premises but officers did not have such close contact with the person as to be able to significantly influence or control the person's behaviour. (It is proposed that this category be called 'deaths in custody'.)

Category 2: Other deaths during custody-related police operations. This would cover situations where officers did not have such close contact with the person as to be able to significantly influence or control the person's behaviour. It would include most sieges as described above and most cases where officers were attempting to detain a person, e.g. pursuits. (It is proposed that this category be called 'deaths during custody-related police operations'.)

- 4.2 The AIC's monitoring reports will not show a continuous time series of 'deaths in custody' from 1980 to the present, as has been the practice to date, owing to the wider scope of the monitoring process in recent years as recommended by the Royal Commission. Cases prior to 1 January 1990 (the date from which the Royal Commission's definition has been applied) will be shown separately from those since that date and the different scope of the data collections in the two periods will be made clear.

- 4.3 The publications will show the total number of deaths in custody and in related police operations (as described above) which meet the Royal Commission's definition and will also make explicit the number of cases, and trends, in the two categories separately as well as in aggregate terms.

5. **All police services will provide, to the Australian Institute of Criminology, details of all deaths in custody and in other police operations soon after the deaths occur**, on a data collection form which will be redesigned by the AIC to reflect the agreed modifications to the monitoring process set out in this paper. The form will include the information initially available to police, recognising that it may change as a result of subsequent investigations and the coronial process.

Where the categorisation of a particular death is unclear, the AIC and the relevant police service will discuss whether or not the case falls within the scope of the monitoring program as recommended by the Royal Commission and, if it is within scope, the appropriate categorisation, i.e. a 'death in custody' (category 1, above) or a 'death in a custody-related police operations' (category 2, above).

6. **An independent adjudication process will be established to resolve any conflicts which may arise between the AIC and a police service concerning the monitoring process.** In particular, it will adjudicate where the AIC and a police service cannot agree as to whether or not a particular death falls within the scope of the monitoring process or whether it should be categorised as a 'death in custody' (category 1, above) or a 'death in custody-related police operations' (category 2, above). Subject to their agreement, members of the adjudication panel will be the AIC, the relevant police service, the ATSIC Board Member responsible for law and justice matters (or his or her delegate), a representative of the National Aboriginal and Islander Legal Services Secretariat, a representative of the Aboriginal Justice Advisory Committee (or equivalent) for the relevant State or Territory, and a representative of the Australian Bureau of Statistics' National Crime Statistics Unit. The ABS representative would be invited to be panel chairperson. The AIC will meet the reasonable costs of the members of the adjudication panel, other than the police service which will meet its own costs.

7. **The AIC will distribute drafts of its 'deaths in custody and in related police operations' publications to each police service for comment prior to publication.** This will occur on the conditions that (a) police services will provide their comments within the time frame identified by the AIC on any particular occasion; and (b) police agencies will accept that their comments will receive careful consideration but that the AIC, as an Commonwealth statutory authority, reserves the right to accept or not accept any changes to the draft publications which may be suggested by the police services.

This approach will not apply to all AIC and other Commonwealth publications on deaths in custody and related matters. (Exceptions could include, for example, the Commonwealth's reports to Parliament or to international agencies and articles submitted by AIC staff to professional or academic journals.)

Conclusion

Modifying the monitoring process along these lines will ensure that the implementation of Recommendation 41 of the Royal Commission into Aboriginal Deaths in Custody will occur in a manner which enhances community understanding of deaths in custody and in related police operations and minimises the scope for the media and others to misinterpret the data emanating from the monitoring process.