

# DEATHS IN CUSTODY AUSTRALIA

## No. 1 Australian Deaths in Custody 1990 & 1991

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  - ◆ *October 1992*
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Deaths in custody are personal tragedies. The incidence and causes of custodial deaths are also indicators of how nations stand with regard to certain basic rights of their people. Countries with poor records of human rights frequently have high rates of suspicious deaths in custody. In Australia, concerns along these lines led to the appointment of the Royal Commission into Aboriginal Deaths in Custody which handed down its report in 1991.

As part of the Commonwealth's response to the Royal Commission the Australian Institute of Criminology has established a program to monitor and conduct research into deaths in custody. *Deaths in Custody, Australia, Number 1* is the first of a series of publications emanating from that program. It focuses on the deaths in custody which occurred in Australia during the 1990 and 1991 calendar years, updating information published by the Royal Commission on the custodial deaths which occurred during the 1980-89 period. Future papers in this series will provide topical information on custodial deaths and will focus on issues of special interest, such as deaths among juveniles and suicide prevention.

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## INTRODUCTION

Deaths in custody have attracted much public attention in Australia in recent years. A public outcry in 1987 about the number of Aboriginal deaths in custody resulted in the establishment of the Royal Commission into Aboriginal Deaths in Custody which investigated deaths which occurred between 1980 and May 1989, and the underlying social, cultural and legal issues which had a bearing on those deaths (Royal Commission into Aboriginal Deaths in Custody 1991). The work of the Royal Commission did much to shed light on the previously neglected area of custodial death. The Criminology Unit of the Royal Commission produced reports on many issues central to an understanding of Aboriginal and non-Aboriginal deaths in custody (see Biles & McDonald 1992).

## SUMMARY OF 1990-91 DATA

During the two years 1990 and 1991, 114 deaths in custody occurred in Australia. Almost two-thirds of these (70 cases) were the deaths of people in prison; the balance (44 cases) were police custody deaths. All but six were males. Aboriginal people were over-represented in the number of deaths, reflecting their high level of over-representation in the prison and police custody populations.

The ages of the people who died ranged from 14 to 74 years, averaging 36 years. Twenty-two of the 70 prison deaths were among remandees who constitute only 17 per cent of all prisoners. The most frequent causes of death were suicide (50 of the 114 deaths) and disease (35 deaths). With regard to the offences which led to custody, the four most serious offences (homicide, assault, sexual offences and robbery) accounted for almost half the cases. Sixteen deaths occurred among people who were in police custody owing to public drunkenness; these all occurred in the three states in which public drunkenness remains an offence.

Overall, the number of deaths in custody has not fallen in the period since the Royal Commission completed its work. Indeed, the trend is generally upward. The 53 deaths which occurred in 1990 is similar to the annual number in previous years, whereas the 61 deaths in 1991 is somewhat higher. The rates of prison deaths are fairly stable, the increasing number of such deaths reflecting the increasing size of the prison population.

In the 1980-89 period, some two-thirds of the Aboriginal deaths in custody occurred in police custody. Over the last two years, however, the proportion has fallen to 25 per cent. This reflects a substantial and pleasing fall in the number of Aboriginal deaths in police custody.

The Aboriginal/non-Aboriginal, prison/police breakdown for the two time periods discussed may be summarised as follows:

Deaths in Custody, Australia							
1980 to 1989				1990 to 1991			
	Ab'l	Non-Ab'l			Ab'l	Non-Ab'l	
Prison	38	285	323	Prison	14	56	70
Police	67	136	203	Police	5	39	44
	105	421	526		19	95	114

Following a recommendation of the Royal Commission, a Deaths in Custody Monitoring and Research Program was established within the Australian Institute of Criminology to continue work on custodial deaths.

As recommended by the Royal Commission, the main responsibilities of this Program are to:

- 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...[Recommendation 41] (Royal Commission into Aboriginal Deaths in Custody 1991, pp. 189-90).*

This paper is a product of the first of these tasks: it updates information on deaths in custody obtained by the Royal Commission, covering the period 1980 until the end of 1989 (see Biles & McDonald 1992). It is, then, a statistical overview of deaths in Australian prison and police custody during the twelve year period, 1 January 1980 to 31 December 1991.

Bald statistics such as those presented here cannot reveal the human tragedy of deaths in custody. Each death represents pain to families, friends and custodial staff. It is intended that future papers in this series will highlight the human dimension of custodial death and explore some of the underlying issues associated with these tragedies. However, as deaths in custody are an important public policy issue, accessible statistical information on this subject is highly desirable. A basic statistical description such as this will be of interest and value to many people, including custodial workers and policy-makers. In order to prevent custodial deaths, a view of the scope and nature of this phenomenon is essential.

This research was undertaken in several stages. The first involved establishing contact with each state and territory police and prison authority. The Head of each corrections department and the Commissioner of each police service was contacted and advised of our research. This project was fully supported by all and they each nominated an officer in their area with whom we could liaise with regard to obtaining data.

The information collected from custodial authorities on cases of custodial death included the personal characteristics of those who died, their custodial and legal status, and the cause and manner of their deaths. For comparative purposes it was necessary that the information obtained be compatible with that collected by the Royal Commission from 1980 to the end of 1989.

It was requested that each custodial contact officer complete an information collection form on each death that occurred in their area of responsibility during the calendar years 1990 and 1991. It was also asked that, where possible, coroners' reports and deceaseds' criminal histories be supplied. The details supplied by custodial authorities were checked against information from available coroners' records. The basic data set was thereby enhanced.

As information on deaths in custody was received, the names of those who died and other information was verified with that from other sources (such as media reports). In this manner it became apparent that some cases of custodial death had been overlooked by some custodial authorities. This was particularly so with police cases where it may not always be obvious that a particular death should be treated as a 'death in custody', for example some fatalities resulting from police shootings.

At issue here is the definition of a custodial death as recommended by the Royal Commission. It was agreed by all mainland state and territory governments in their responses to the Royal Commission's recommendations that a definition of death in custody should 'at least' include:

- 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 escaped from prison custody or police custody or juvenile detention. [Recommendation 41]* (Aboriginal Deaths in Custody: Responses by Governments to the Royal Commission 1992, pp. 135-9).

This definition was brought to the attention of the officers of the police and corrections agencies, and coroners, who provided the bulk of the information summarised here. We have applied the definition rigorously in determining whether any particular case should be included or excluded.

Just as some cases were initially overlooked by custodial authorities owing to the breadth of the definition of custodial death now applied, we were also on occasion supplied with information on cases that were not 'deaths in custody' in the terms of the Royal Commission definition. For example, people who died whilst on parole or serving community-based orders are not viewed, for the purposes of this research, as 'deaths in custody'. There were other, more 'fine-line' cases which required careful consideration and negotiation with custodial authorities in view of the definition.

Once all the information on custodial deaths during 1990 and 1991 was received and coded it was added to the Royal Commission's 1980-89 data set and analysed. Some caveats should be borne in mind when considering this material. First, it is probable that the 1990 and 1991 data set includes some cases which may not have been considered deaths in custody by custodial authorities prior to the Royal Commission. The information on deaths which occurred between 1980 and 1989 was collected by Royal Commission researchers during the period 1988 to 1990. This exercise of retrospective data collection was reliant upon existing police and prison records. As the definition of death in custody has changed over time, it is likely that the definition used by custodial authorities in providing that information was narrower than that now employed.

Secondly, the information presented here is not complete. This report is based upon information received from custodial authorities and coroners by an arbitrary cut-off date. At that point, coroners' reports were not available for approximately one-third of the cases. It is therefore likely that forthcoming reports in this series will revise the information presented here in terms of numbers and details of deaths.

Finally, this report does not include information on juvenile deaths in custody other than those that occurred in police or prison custody. The Royal Commission did not collect information on non-Aboriginal juvenile custodial deaths. The juvenile detention authorities whom we have approached are therefore faced with a greater task than the adult authorities in that they are being asked to trace records back to 1980. Consequently, it is likely that the information on juvenile deaths in custody available at this stage is less complete than the data on adult deaths. Fortunately there are very few deaths in juvenile detention in Australia. These cases will be examined in detail, however, in later reports in this series.

The next section of this paper presents details of the Australian deaths in custody which occurred in 1990 and 1991. This is followed by a discussion of trends in custodial deaths over the last 12 years, and the paper concludes with a discussion of some of the key issues emanating from the data.

## **DEATHS IN CUSTODY 1990 AND 1991**

### **The Incidence of Deaths in Custody**

One hundred and fourteen deaths in custody have been reported in Australia during the two calendar years 1990 and 1991: 53 in 1990 and 61 in 1991. Seventy or 61 per cent of the deaths were of people in prison custody, 44 deaths or 39 per cent were in police custody.

As in previous years, Aboriginal people are heavily over-represented in the numbers of custodial deaths, reflecting their over-representation in the custodial populations. While details are provided below, it is noted in this overview that 19 of the 114 deaths over the two-year period were of Aboriginal people. This represents 17.5 per cent of all deaths, whereas Aboriginal people comprise only 1.5 per cent of the Australian population.

The incidence of deaths among Aboriginal people was higher in prison custody than in police custody. Fifteen (75 per cent) of the 20 Aboriginal deaths occurred in prison and five (25 per cent) in police custody. Fourteen (74 per cent) of the 19 Aboriginal deaths occurred in prison and five (26 per cent) in police custody. This is in contrast to the distribution of non-Aboriginal deaths which were spread more evenly between the two forms of custody, with 56 (59 per cent) of these deaths occurring in prison and 39 (41 per cent) in police custody.

This pattern is in marked contrast to the 1980-89 period, in which some two-thirds of the Aboriginal custodial deaths occurred in police custody and a similar proportion of non-Aboriginal custodial deaths occurred in prison.

Tables 1 and 2 provide details on the numbers of custodial deaths, by state/territory and Aboriginality, for 1990 and 1991 respectively.

TABLE 1  
Aboriginal and Non-Aboriginal Deaths in Police and Prison Custody, Jurisdiction, 1990

	<i>Police</i>		<i>Prison</i>		<i>Total</i>		<i>Grand</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>
NSW	-	3	2	11	2	14	<b>16</b>
Vic.	-	8	-	2	-	10	<b>10</b>
Qld	1	3	2	5	3	8	<b>11</b>
WA	-	3	-	3	-	6	<b>6</b>
SA	-	1	1	2	1	3	<b>4</b>
Tas.	-	-	-	1	-	1	<b>1</b>
NT	1	1	-	1	1	2	<b>3</b>
ACT	-	1	-	-	-	1	<b>1</b>
<b>Aust.</b>	<b>2</b>	<b>20</b>	<b>6</b>	<b>25</b>	<b>8</b>	<b>45</b>	<b>53</b>

TABLE 2  
Aboriginal and Non-Aboriginal Deaths in Police and Prison Custody, Jurisdiction, 1991

	<i>Police</i>		<i>Prison</i>		<i>Total</i>		<i>Grand</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>
NSW	-	3	3	12	3	15	<b>18</b>
Vic.	1	6	-	4	1	10	<b>11</b>
Qld	1	2	2	4	3	6	<b>9</b>
WA	-	1	2	6	2	7	<b>9</b>
SA	1	2	-	4	1	6	<b>7</b>
Tas.	-	2	1	1	1	3	<b>4</b>
NT	-	2	-	-	-	2	<b>2</b>
ACT	-	1	-	-	-	1	<b>1</b>
<b>Aust.</b>	<b>3</b>	<b>19</b>	<b>8</b>	<b>31</b>	<b>11</b>	<b>50</b>	<b>61</b>

Torres Strait Islanders are not shown separately in these tables, since no TSI deaths in custody have been reported for 1990 or 1991.

It will be observed from Tables 1 and 2 that, over the two-year period, New South Wales had the highest number of custodial deaths: 34, which is 30 per cent of the national total. Most of these (28) were in prison rather than police custody. Victoria and Queensland had the next highest number of deaths at 21 each. Queensland followed the New South Wales pattern with two-thirds of the deaths being in prison, whereas the opposite pattern was observed in Victoria where 15 of the 21 deaths were in police custody. (This may reflect a broader definition of custodial death being applied by the Victorian Police compared with some other jurisdictions. We expect that a uniform definition will apply in the future.)

The number of deaths was much smaller in each of the less populous states, with prison deaths substantially exceeding police custody deaths in Western Australia and South Australia. In Tasmania, the number of deaths was similar in police and prison custody; the police custody deaths dominated in the Northern Territory; and the ACT experienced two police custody deaths but none in its single corrections facility, the Belconnen Remand Centre.

## **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. Commencing with the first of these two approaches, it is observed that the crude annual average death rate over the two year period for police and prison custody combined was 0.34 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 0.44 per 100,000.

The recent release of preliminary data from the 1991 Census of Population and Housing enables comparisons to be made between the rates of custodial deaths of Aboriginal people and non-Aboriginal people. Details are in Table 3.

TABLE 3  
**Custodial Death Rates 1990 and 1991;**  
**Denominator: Total Australian Populations**

	<i>Population 1991 census<sup>(a)</sup></i>	<i>Persons 15 years+<sup>(b)</sup></i>	<i>Deaths in custody 1990 &amp; 1991</i>	<i>Deaths per 100,000 population 15 years+, per annum</i>
Aboriginal	257,333	155,017	19	6.13
Non-Aboriginal	16,592,163	12,766,861	85	0.37
<b>Total</b>	<b>16,849,496</b>	<b>12,921,878</b>	<b>114</b>	<b>0.44</b>

(a)Source: ABS, *First Counts, National Summary, 1991 Census of Population and Housing*, Cat. No. 2702.0, ABS, Canberra, 1992.

(b)Estimated by applying the proportions of the population which were Aboriginal and non-Aboriginal, respectively, at the 1986 Census, to the 1991 Census preliminary data.

It will be observed from Table 3 that, although only 16.7 per cent of the deaths were among Aboriginal people, the fact that they comprise only 1.1 per cent of the adult population means that their adult (15 years and above) crude death rate was more than 17 times that of non-Aboriginal people. A future paper in this series will explore age-adjusted mortality rates, once the relevant data from the 1991 Census are released. This adjustment is needed as the Aboriginal and non-Aboriginal populations have very different age structures.

As stated above, it is also useful to express the rates of deaths in custody in terms of the number of deaths compared to the number of people in custody. This is feasible for prison deaths, owing to the availability of high quality data obtained through the annual National Prison Census published by the Australian Institute of Criminology. Unfortunately, comparable data are not available on the size and composition of the police custody population. While the August 1988 National Police Custody Survey (McDonald 1992) provided useful data it is likely that the implementation of changes in legislation and policing practices means that the data do not accurately describe current circumstances. The survey is being repeated in August 1992; when data become available in early 1993 they will be used to calculate police custody mortality rates.

Prison custody death rates are set out in Table 4.



TABLE 4  
**Prison Death Rates 1990 and 1991**

	<i>Mean Prison Population 1990 and 1991*</i>	<i>Prison deaths 1990 &amp; 1991</i>	<i>Deaths per 1000 prisoners, per annum</i>
Aboriginal	2,103	15	3.33
Non-Aboriginal	12,560	56	2.23
<b>Total</b>	<b>14,663</b>	<b>70</b>	<b>2.39</b>

\*Source: Walker, 1991 & 1992.

Perhaps the most significant point to note from Table 4 is that the relative risk of prison custody death for Aboriginal prisoners (compared with non-Aboriginal prisoners) is 1.5 (i.e., 3.33 divided by 2.23). This is in contrast to the corresponding relative risk of 20.6 where the numbers of Aboriginal and non-Aboriginal prison deaths are compared with the relative sizes of the Aboriginal and non-Aboriginal populations. The difference between these two estimates of risk is explained by the continuing over-representation of Aboriginal people in prison custody (Cunneen 1992).

## **Demographic Characteristics**

### *Aboriginality and Gender*

Reflecting the composition of the custodial population, males made up most (95 per cent) of the deaths in custody during 1990 and 1991. As noted above, Aboriginal people comprised 16.7 per cent of the deaths. The six female deaths were evenly distributed between police and prison custody (with three each). All of the female police custody deaths were of non-Aboriginal women; the female prison deaths involved one Aboriginal woman and two non-Aboriginal women. Details are in Table 5.

TABLE 5  
**Aboriginality and Gender, Deaths in Custody**  
**Australia, 1990 and 1991**

	<i>Aboriginal</i>		<i>Non-Aboriginal</i>		<i>Total</i>	
	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>	<i>No.</i>	<i>%</i>
Male	18	16.7	90	83.3	<b>108</b>	<b>100</b>
Female	1	16.7	5	83.3	<b>6</b>	<b>100</b>
Total	20	17.5	95	83.3	<b>114</b>	<b>100</b>

#### *Age*

The people who died in custody during the two years under review were young. Their ages ranged from 14 years to 74 years, with a mean age of 35.6 years and a median (the point above and below which half the cases fell) of 31.5 years. The Aboriginal people were significantly younger than the non-Aboriginal, with median ages of 29 years and 32 years respectively. This pattern reflects the differing age distributions of these two groups, both in the community and in the custodial populations.

Whilst not statistically significant, differences do exist in the mean ages of Aboriginal and non-Aboriginal people in the two custodial environments. The mean age at death of the Aboriginal people in police custody was 36 years, compared with that of non-Aboriginal people, 33 years. A different pattern existed among the prison cases, with the mean age at death of Aboriginal prisoners (28 years) being somewhat younger than that of non-Aboriginal prisoners (39 years).

Details are provided in Table 6. It will be noted that 12 of the deaths occurred among people aged 19 years or younger. This involved one police custody death of a 14-year-old, three police and two prison deaths of 17-year-olds, one police and two prison deaths of 18-year-olds and three prison deaths of 19-year-olds.

TABLE 6  
Age Group, Deaths in Custody 1990 and 1991

Age group	Aboriginal		Non-Aboriginal		Total		General
	No.	%	No.	%	No.	%	population %*
<15	-	-	1	1	1	1	22
15-19	3	16	8	8	11	10	8
20-24	4	21	15	16	19	17	8
25-29	2	11	16	17	18	16	8
30-34	3	16	11	12	14	12	8
35-39	5	26	9	9	14	12	8
40-44	1	5	6	6	7	6	7
45-49	1	5	4	4	5	4	6
50-54	-	-	6	6	6	5	5
55-59	-	-	13	14	13	11	4
60-64	-	-	1	1	1	1	4
65+	-	-	5	5	5	4	11
<b>Total</b>	<b>19</b>	<b>100</b>	<b>95</b>	<b>100</b>	<b>114</b>	<b>100</b>	<b>100</b>

\*Proportions based on preliminary data from the 1991 Census

#### *Legal Status*

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 cases among remandees compared with sentenced prisoners (Biles et al. 1992; Lloyd 1990). Of the 70 prison deaths, 22 (or 31 per cent) were among remandees, 46 (66 per cent) were sentenced prisoners and one case was a person who had been acquitted of a charge of murder on the grounds of insanity and had been ordered by the court to be dealt with under the relevant *Mental Health Act*. (Information on the legal status is, at this stage, missing in one case.) Three of the Aboriginal prisoners (21 per cent) and 19 of the non-Aboriginal prisoners (34 per cent) were remandees.

The overall figure of 31 per cent of the prison deaths having occurred among people on remand should be compared with the prison population as a whole where, over the 1990 and 1991 years, an average of 17.3 per cent of the prisoners were remandees (Walker 1991 & 1992). This produces an odds ratio (or measure of relative risk) of 2.1. In other words, the proportion of deaths among remandees is more than twice what one would expect from their proportion in the prison population. This clearly has implications for the operation of programs aimed at minimising the number of prison deaths.

## **Cause of Death**

Information on the cause and manner of death is derived from two main sources, namely, coroners and the custodial authorities themselves. Usually a considerable period of time elapses between the death and the handing down of the findings of the coroner; this interval is frequently many months, often more than a year. Of course, the cause and manner of death is apparent in many cases, for example, in some deaths from natural causes where a medical practitioner was treating the patient prior to death. In these cases, information received from the custodial authorities is unlikely to differ from the findings of a coroner. Nevertheless, as was made clear in the report of the Royal Commission into Aboriginal Deaths in Custody, in all cases of a death in custody it is essential that a thorough and public coronial inquiry be held to determine the manner and cause of death and to make any recommendations that the coroner believes necessary to minimise the risk of future custodial deaths occurring.

Information in this section is based on coroners' findings in 80 of the 114 cases: 46 of the 70 prison custody deaths and 34 of the 44 police custody deaths. Subsequent reports in this series will update the information presented here if coroners' findings on the cause and/or manner of particular deaths differ from those reported to us by the custodial authorities.

The causes of death for those who died in custody throughout Australia in 1990 and 1991 are summarised in Table 7. Self-inflicted deaths were the most common, accounting for 44 per cent of all deaths, followed by deaths from natural causes (illnesses) at 31 per cent of the cases. Accidental death was the next most frequent at 16 per cent, and homicide at 9 per cent. In other words, self-inflicted deaths and those from disease accounted for 75 per cent of all custodial deaths over this two year period.

TABLE 7  
Cause of Death, Aboriginality and Custodial Authority, 1990 and 1991

	<i>Police</i>		<i>Prison</i>		<i>Total</i>		<i>Grand</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>total</i>
Self-inflicted	1	17	7	25	8	42	<b>50</b>
Natural causes	2	8	6	19	8	27	<b>35</b>
Accident	-	11	-	7	-	18	<b>18</b>
Homicide	2	2	1	5	3	7	<b>10</b>
Not known	-	1	-	-	-	1	<b>1</b>
<b>Total</b>	<b>5</b>	<b>39</b>	<b>14</b>	<b>56</b>	<b>19</b>	<b>95</b>	<b>114</b>

In contrast to the 1980-89 period, during the two years under review no significant differences existed in the causes of custodial deaths of Aboriginal people compared with non-Aboriginal people, nor between the police and prison environments. This is in contrast to the community setting, where the patterns of mortality of Aboriginal people and non-Aboriginal people are very different.

Among prison remandees, self-inflicted deaths were the most frequent. Indeed, of the 22 remandees, 14 deaths (64 per cent) occurred in this manner compared with 16 (35 per cent) of the sentenced prisoners. Only four of the remandees' deaths were from natural causes.

Most of the self-inflicted deaths (40 out of 50 such deaths) were by hanging. An additional two were by gunshot, three from other external trauma, two from drug overdose and three from other causes.

Of the 18 accidental deaths, seven were from drug use, three each from head injury and other external injuries, two from hanging and three from other causes. The number of homicide deaths was small (10 deaths); the proportion of deaths attributed to this cause was similar in each form of custody.

Turning to the deaths from natural causes, again the patterns were similar between Aboriginal and non-Aboriginal people and between police and prison custody deaths. Heart disease was most frequently implicated, accounting for 21 (or 60 per cent) of the 35 deaths from natural causes. No other single disease category was prominent: respiratory diseases caused three deaths with only one death occurring from each of a range of other diseases.

Age is clearly related to cause of death. The mean age of the people who died by their own hands was only 29 years, compared with those who died from natural causes whose mean age was 46 years. With regard to deaths from heart disease, the mean age at death of the Aboriginal detainees was only 36 years, compared with 51 years for non-Aboriginal detainees. This massive difference reflects patterns of deaths from heart

disease in the community at large (Australian Institute of Health and Welfare 1992). In contrast to the deaths from natural causes, no significant difference exists in the ages of the Aboriginal and non-Aboriginal people whose deaths were self-inflicted.

## **Custody**

In this section the circumstances of the custody of those who died during 1990 and 1991 are outlined. Reference has already been made to the fact that almost one-third of the prison custody deaths were among remandees, twice their proportion in the prison population. But what were the offences which led to the deceased detainees being in custody?

### *Offence*

Information is available on the most serious offence associated with people being in custody. Of course, the actual status of the individuals, in criminal justice terms, varied. In many cases, the person had not been convicted of the offence (e.g., in remand cases) and in some instances the person died before being charged or even in the absence of an intention to charge the person, e.g., where the person was in protective custody for public drunkenness where such behaviour is not an offence. Table 8 summarises the information on the most serious offence which led to the person being in custody.

TABLE 8

**Most Serious Offence Leading to Custody, Custodial Authority and Aboriginality, 1990 and 1991**

<i>Offence</i>	<i>Police</i>		<i>Prison</i>		<i>Total</i>		<i>Grand</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>
Homicide	1	2	1	15	2	17	<b>19</b>
Assault	1	3	3	5	4	8	<b>12</b>
Sex offences	-	2	1	12	1	14	<b>15</b>
Other offences							
against person	-	-	-	1	-	1	<b>1</b>
Robbery	-	2	1	3	1	5	<b>6</b>
Break and enter	-	2	2	3	2	5	<b>7</b>
Fraud	-	1	-	2	-	3	<b>3</b>
Motor vehicle							
theft	-	1	1	1	1	2	<b>3</b>
B & E, fraud &							
theft, n.e.c.	-	1	-	4	-	5	<b>5</b>
Property							
damage	-	1	1	2	1	3	<b>4</b>
Justice							
procedures	1	1	3	3	4	4	<b>8</b>
Drunkenness*	2	14	-	-	2	14	<b>16</b>
Other good							
order offences	-	3	-	-	-	3	<b>3</b>
Drug offences	-	-	1	3	1	3	<b>4</b>
Drink driving	-	1	-	-	-	1	<b>1</b>
Other offences	-	1	1	1	1	2	<b>3</b>
Not known	-	4	-	-	-	4	<b>4</b>
<b>Total</b>	<b>5</b>	<b>39</b>	<b>15</b>	<b>55</b>	<b>20</b>	<b>94</b>	<b>114</b>

\*Includes both public drunkenness in the states where it is an offence (Victoria, Queensland and Tasmania) and protective custody owing to intoxication in the other states and territories where public drunkenness has been decriminalised.

As in the 1980-89 period, the highest proportion of the 1990-91 deaths occurred among people whose most serious offence was homicide. Nineteen or 17 per cent of the 114 deaths were in this category. Overall, the

four most serious categories of offences, namely homicide, assault, sexual offences and robbery, made up 46 per cent of the cases.

After homicide, the second most frequent offence category was public drunkenness. This involves the offence of public drunkenness in Victoria, Queensland and Tasmania; these states have not decriminalised this form of behaviour. The category also includes the holding of intoxicated people in police lockups on a protective custody basis in the other states and territories where the offence has been abolished. Sixteen deaths occurred among people for whom drunkenness was the most serious offence; all were in police custody.

No significant difference exists between the Aboriginal and non-Aboriginal people in the patterns of offences involved.

### *Bail*

Any discussion of deaths in custody should raise the issue of the reasons for people being in custody at all. Clearly, in the case of people in prison, they are there at the order of a court. The position is quite different, however, with regard to people in police custody since, in most cases, a police officer has the power to determine whether a person should be held in custody or released on bail pending an initial court hearing.

Among the 44 police custody deaths, there were 18 where it would have been possible for the person to have been released on bail. (Bail was not available in the other cases. They cover a variety of circumstances, such as people in custody where no offence was involved, e.g., protective custody, or where the person died prior to being charged with an offence, e.g., in transit to a police station.) In 12 of the 18 cases, the person was said to have been too intoxicated to be released; all but one of these cases were in Queensland or Victoria where public drunkenness remains an offence. The same proportion (67 per cent) of Aboriginal and non-Aboriginal people were denied bail owing to their level of intoxication. In four cases, the person was in custody by order of a court, either as a remandee or sentenced prisoner. In one case, the alleged offence was said to be of such seriousness that the person was not granted bail, and information is not yet available in this area for one case. These figures illustrate further the heavy contribution of alcohol use to custodial deaths.



*Length of Time in Custody*

Information has been sought on the period of time that people who died in prison had been in custody prior to death. (We expect that the 1992 and subsequent data will also cover the time elapsed in the case of police custody deaths.) Data are currently available on 48 of the 70 prison cases; the high proportion of missing cases means that the data provided here should be used with caution.

The lengths of time in prison ranged from two days to over 13 years, with a mean of two years and a median of 7.5 months. The mean for Aboriginal people was 1.7 years and for non-Aboriginal people 2.1 years, a difference which is not statistically significant.

Insufficient data are available, at present, to describe the relationship between lengths of time in custody and cause of death.

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**TRENDS 1980-1991**

In this section we present information on the trends in custodial deaths over the 12-year-period 1980 to 1991. As discussed in the introduction to this paper, the 1980-89 data were obtained by the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody from each police service and correctional authority. It has been suggested that it is likely that differing criteria for defining deaths in custody were applied at different times and in different states and territories. The information on non-Aboriginal deaths provided to the Royal Commission was not checked by Commission staff against coroners' findings. Perhaps most importantly, it is likely that the definition of a custodial death used for 1990 and 1991 cases, namely that recommended by the Royal Commission based upon its inquiries and Federal Court decisions, is broader than that applied by the custodial authorities in previous years. This means that, in reviewing trends, one should not place too much emphasis on small variations in numbers of cases. Now that the definition of a death in custody is settled, the ongoing data collection in this area will not exhibit the biases potentially found in the retrospective data collecting of the Royal Commission.

Table 9 sets out details on the number of custodial deaths each year for the last 12 years.

TABLE 9  
Year of Death, Custodial Authority and Aboriginality, 1980-91

<i>Year</i>	<i>Police</i>		<i>Prison</i>		<i>Total</i>		<i>Grand</i>
	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Ab'l</i>	<i>Non-Ab'l</i>	<i>Total</i>
1980	5	7	5	25	10	32	<b>42</b>
1981	3	12	1	27	4	39	<b>43</b>
1982	4	15	4	21	8	36	<b>44</b>
1983	6	10	5	26	11	36	<b>47</b>
1984	3	12	4	27	7	3942	<b>46</b>
1985	6	16	4	22	10	38	<b>48</b>
1986	8	13	1	16	9	29	<b>38</b>
1987	15	26	5	48	20	74	<b>94</b>
1988	7	14	6	36	13	50	<b>63</b>
1989	10	11	3	37	13	48	<b>61</b>
1990	2	20	6	24	8	44	<b>53</b>
1991	3	19	9	31	12	50	<b>61</b>
<b>Total</b>	<b>72</b>	<b>175</b>	<b>52</b>	<b>341</b>	<b>124</b>	<b>516</b>	<b>640</b>

Table 9 shows a generally upward trend, including an increase of 48 per cent between the 42 cases in 1980 and the 62 cases in 1991. The mean annual number of deaths over the full period is 53, the median 47. The 95 per cent confidence interval for the mean is 44 to 63. (The 95 per cent confidence interval is the range within which the mean is expected to fall 95 per cent of the time.) The number of deaths falls within this confidence interval for each year except for 1980, 1981 and 1986, when it was a little below the interval, and 1987 when it was far above. The huge increase in custodial deaths in 1987 was the stimulus for the appointment of the Royal Commission into Aboriginal Deaths in Custody and was discussed in its report (1991, vol. 2, pp. 123-30). The annual mean for the full 12-year-period excluding the extreme case of 1987 is 50 deaths, with a 95 per cent confidence interval of 44 to 55 deaths. This highlights the fact that the 61 deaths in 1991 is a relatively high figure, whereas the 53 deaths in 1990 is not exceptional when compared with the numbers over the last five years. This pattern was exhibited, in general, in both the police and prison environments.

The average number of Aboriginal deaths each year over the full 12-year-period was 10.3; it was 9.5 when the 1987 extreme is omitted. The numbers in the recent years (eight in 1990 and 11 in 1991) are relatively close to these means. The 12-year-mean for non-Aboriginal deaths is 43; it is 40 when the 1987 extreme

year is omitted. Seen in this light, the 50 non-Aboriginal deaths in 1991 is a relatively high figure, whereas the 45 deaths in 1990 is not.

The trends by Aboriginality and custodial authority are also revealed in Table 9. Considering *prison* deaths first, it is noted that the 25 deaths of non-Aboriginal people in 1990 is not a large figure in comparison with previous years, but the jump to 31 in 1991 is of concern. The number of Aboriginal deaths in prison custody over the last two years is also relatively high.

Perhaps the most encouraging observation from the time series is the substantial reduction in Aboriginal deaths in *police* custody in 1990 and 1991: two deaths and three deaths respectively. This should be compared with an average of six deaths per annum over the 12-year-period, or 5.2 deaths per annum over the same period excluding 1987. Unfortunately, non-Aboriginal deaths in police custody have not fallen; indeed the 1990 and 1991 numbers are higher than the average for the previous years. (It should be noted that the wider definition of death in custody which is probably being used now, compared with earlier years, impacts on police custody death figures more than it does on prison figures. This fact further emphasises the significance of the fall in the number of Aboriginal deaths in police custody.)

## **The Impact of a Rising Prison Population**

Almost two-thirds of Australia's deaths in custody over the last 12 years have occurred among people in prison custody and the numbers of such deaths have increased over the years. In the main, this reflects trends in imprisonment. First, the Australian prison population is increasing. On 30 June 1987, shortly before the Royal Commission into Aboriginal Deaths in Custody was appointed, Australia had 12,113 people in prison. Four years later, on 30 June 1991, there were 15,021 - a 24 per cent increase. Secondly, the imprisonment rate is increasing: from 101 per 100,000 of the adult population on 30 June 1987 to 115 per 100,000 four years later, an increase of 14 per cent. Thirdly, the proportion of Aboriginal and Torres Strait Islander people among the prison population has not fallen: it was 14.8 per cent in 1987 and 14.9 per cent in 1991 (Walker 1992, p. 121). This is especially disturbing considering the work of the Royal Commission and the supportive government responses to its recommendations relating to minimising the number of Aboriginal people sent to prison.

Data on the prison population may be used to calculate prison death rates. As shown in Table 10, the annual death rates of the prison population as a whole (the 'total' column) have not varied far from the 12 year mean of 2.8 deaths per 1,000 prisoners, except for the extreme case of 1987.

Since the time of the 1987 National Prison Census, information on the Aboriginality of prisoners has been available for each state and territory. Accordingly, the national prison death rates for Aboriginal people and

non-Aboriginal people are shown separately for the 1987-91 years.<sup>1</sup> Although no clear pattern is discernible, the high national Aboriginal prison death rate in 1991 is a matter of considerable concern.

TABLE 10

**Prison Death Rates 1980-1991**  
(per 1,000 prisoners)\*

<i>Year</i>	<i>Aboriginal</i>	<i>Non-Aboriginal</i>	<i>Total</i>
1980	-	-	<b>3.0</b>
1981	-	-	<b>2.8</b>
1982	-	-	<b>2.5</b>
1983	-	-	<b>3.0</b>
1984	-	-	<b>3.2</b>
1985	-	-	<b>2.4</b>
1986	-	-	<b>1.5</b>
1987	2.8	4.7	<b>4.4</b>
1988	3.3	3.5	<b>3.4</b>
1989	1.6	3.4	<b>3.1</b>
1990	2.9	2.1	<b>2.2</b>
1991	3.7	2.5	<b>2.6</b>

\*National rates of Aboriginal and non-Aboriginal prison deaths are not available prior to 1987 as Queensland did not differentiate these groups in its prison censuses prior to that year.

It is not possible to present comparable data regarding police custody deaths, as annual data are not available on the size and composition of the police custody population. This deficiency is being redressed, in part, through the second National Police Custody Survey which the Australian Institute of Criminology, in conjunction with all police services, conducted in August 1992 and which will be repeated regularly in the future.

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<sup>1</sup> The denominators used in the calculation of the mortality rates shown here are the numbers of prisoners enumerated in the annual National Prison Censuses. It would be preferable to use person-year units, derived from daily counts of prisoners. Unfortunately, these data are not available broken down by Aboriginality.

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## DISCUSSION

The primary purpose of this paper has been to present statistical information on the Australian deaths in custody which occurred in the 1990 and 1991 calendar years. In doing so, it updates information previously published by the Royal Commission into Aboriginal Deaths in Custody covering the years 1980 to 1989. The present paper has also pointed to trends in custodial deaths over the 12-year period.

Perhaps the most important observation to be made is that the number of deaths in custody, overall, are not falling, despite the commitments of governments to implement the recommendations of the Royal Commission. It should be acknowledged, however, that the official government responses to the Royal Commission were not announced until March 1992, and the bulk of the increased Commonwealth funding to implement many of the recommendations has first become available in the 1992/93 financial year. The ongoing monitoring of trends in custodial deaths is one element in evaluating the effectiveness of responses to the Royal Commission's recommendations.

The second issue of particular concern is that the *rates* of death in prison are not falling. In other words, the number of deaths in prison is increasing at much the same rate as the size of the prison population is increasing. In the publication *Aboriginal Deaths in Custody: Responses by Governments to the Royal Commission*, all governments (except Tasmania which has yet to respond) have committed themselves to using imprisonment only as a sanction of last resort (1992, vol. 1, pp. 332-5). If this principle is applied widely, the prison population will fall and so will the number of deaths.

We have pointed to the recent (1991) increase in the deaths of Aboriginal people in prison custody and the substantial fall in the number of Aboriginal deaths in police custody. In the absence of information on the size and composition of the police custody population nationally (a deficiency being rectified through the August 1992 National Police Custody Survey) it is not possible to tell whether this reflects a fall in the number of Aboriginal people in police custody, the effective application of preventive measures, or both. Future papers in this series will explore this issue.

The extreme over-representation of Aboriginal deaths in custody, in relation to the number of Aboriginal people in the Australian population as a whole, continues. The recent data confirm earlier findings, that the number of custodial deaths that are of Aboriginal people is generally proportional to their numbers in custody. The over-representation of Aboriginal people in custody remains, therefore, a central issue for remedial action by governments and the community.

Alcohol continues to play a prominent role in custodial deaths. A high proportion of the police custody deaths occurred among people who were in custody because of alcohol-related offences. A high level of intoxication was the reason for the denial of bail in a significant proportion of the cases reported upon here;

it is worth noting that similar proportions of Aboriginal and non-Aboriginal cases were denied bail for this reason. Three jurisdictions, Victoria, Queensland and Tasmania, have yet to decriminalise public drunkenness and establish facilities, other than the police cells, for people found intoxicated in public and in need of care. Alcohol-related illnesses continue to cause custodial deaths (especially in police custody) highlighting the need for the effective screening of intoxicated and withdrawing detainees and the rapid transfer to medical facilities of those in need of medical attention.

In terms of identifying people at especially high risk of death in prison, the 1990 and 1991 data confirm observations from earlier periods that remandees are over-represented in the prison deaths. Unfortunately, the 1990 and 1991 remandees' deaths constituted a similar proportion of all custodial deaths as they did in the previous ten year period. Furthermore, the proportion of suicides among remandees has not fallen. The deaths of remandees are especially tragic when one takes into account the fact that most of these men and women have not been sentenced to imprisonment. A future paper in this series will review current knowledge about the identification of prisoners who are especially at risk of custodial death; the needs of remandees will be a focus of that project.

This paper is the first of a series emanating from the Australian Institute of Criminology's Deaths in Custody Monitoring and Research Program, an initiative of the Commonwealth in response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody. It has covered deaths in police and prison custody. It is anticipated that the next statistical report of this nature will include data on the deaths of detainees of juvenile detention centres.

It is unlikely that deaths in custody will ever be totally eliminated: some deaths from disease and accident are, sadly, inevitable. Suicide prevention programs are essential but can, at best, reduce the number of suicides. This is an area requiring special attention by custodial authorities, based upon the observation that almost half of the 1990 and 1991 deaths were self-inflicted. We hope that the outcomes of the Institute's Monitoring and Research Program will contribute to minimising the number of Australian deaths in custody.

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### ACKNOWLEDGMENTS

We acknowledge with thanks the ready cooperation in this project of each of Australia's police services and prisons administrations in providing data which have substantially contributed to this report. We also acknowledge the support of the coroners and state Justice Departments (or equivalent) who have also demonstrated their willingness to cooperate in a similar manner.

Deaths in Custody, Australia, No. 1:

#### **Australian Deaths in Custody 1990 & 1991**

This is the first research paper in a new series, produced by the Australian Institute of Criminology, concerned with deaths in custody. It has been compiled by the Institute's Deaths in Custody Monitoring and Research Program which was established as one of the Commonwealth Government's responses to the Royal Commission into Aboriginal Deaths in Custody.

Future papers in this series will cover a range of related topics. Regular statistical updates on deaths in custody will be produced. Other topics may include information on particular cases and analyses of action taken or required to minimise the incidence of these deaths. Readers are invited to suggest particular areas of research which the Institute could pursue.

The information on Australian custodial deaths presented here updates, for the 1990 and 1991 years, data collected by the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody. Those data, covering the 1980-1989 period, are now available in the volume, Deaths in custody, Australia, 1980-1989, edited by David Biles and David McDonald and published by the Australian Institute of Criminology, Canberra, 1992.



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 Tel: (02) 6260 9200 Fax: (02) 6260 9201  
 ISSN 1038-667X ISBN 0 642 18447 X

**General Editor: David McDonald**