

# Community fact sheet: Ending Aboriginal Deaths in Custody

## What was the Royal Commission into Aboriginal Deaths in Custody?

The Royal Commission into Aboriginal Deaths in Custody (**RCIADIC**) was an inquiry called by the Australian Government in 1987, after growing public attention on the deaths of Aboriginal people in prisons and police stations. Over four years, it investigated 99 individual deaths across Australia and systemic problems which had helped cause them. The Commission's final report in April 1991 found major failures by governments, police and prison authorities, and made 339 recommendations to address these problems and end Aboriginal deaths in custody.

## What has the Government done since the Royal Commission into Aboriginal Deaths in Custody?

Recommendations from the RCIADIC included changes to prison conditions and procedures, reforms to how police worked, and changes in the law to keep Aboriginal people out of prison. Governments have not done enough to implement these recommendations, and in many cases they have gone backwards. For example, the Victorian Government is only now decriminalising public drunkenness – more than 30 years after the RCIADIC's report – and has made it harder to access bail, when the RCIADIC recommended it should be easier.

The Commonwealth Government's own review found that only 64% of the RCIADIC's recommendations have been fully recommended – and an independent report by Aboriginal scholars found that number is much lower. Many recommendations have been implemented then reversed, or implemented on paper without leading to the intended outcomes.

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### Has the number of Aboriginal deaths in custody decreased?

No. The Royal Commission was established after public outcry about 99 Aboriginal deaths in custody between 1980 and 1989 – about one every month. Since the RCIADIC published its final report, at least 500 Aboriginal people have died in custody – about one every 22 days.

One of the key findings of the Royal Commission was that Aboriginal deaths in custody occur at such a high rate primarily because so many Aboriginal people are arrested and imprisoned. This problem also has not been addressed. In 1991, the incarceration rate of Aboriginal people in Victoria was 767.9 per 100,000 people. In 2019, it had risen to 2,219.9 per 100,000.

### How can we end Aboriginal deaths in custody?

#### Reduce the number of Aboriginal people who are incarcerated

Aboriginal people now make up more than 10% of the people held in prison in Victoria, compared to less than 1% of the Victorian population. Reducing incarceration rates will require changes in housing, health and social support, not just the legal system. However, several simple changes would immediately make a difference.

#### Public drunkenness

Criminal charges of public drunkenness are disproportionately used by police against Aboriginal people. The tragic case of Tanya Day, who died in custody in December 2017 after being arrested for being drunk in public, shows how Aboriginal people are brought to police stations when they pose no danger to anyone.

After extensive advocacy by the Day family, Victoria passed a law to decriminalise public drunkenness. There will now be a health-based response to people who are drunk in public, but the details are still being worked out by the Government. It is crucial that the Government does not involve police in responding to people who are drunk in public, and that nobody is ever held in a police cell because they are drunk.

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## Reform Victoria's punitive bail laws

Over thirty years ago, the RCIADIC recommended that all governments should “revise any criteria which inappropriately restrict the granting of bail to Aboriginal people”. Instead, Victoria has consistently tightened its bail laws. Changes in 2013, 2017 and 2018 have made it harder to access bail, especially for people without stable housing. As a result, the number of unsentenced Aboriginal people held in Victorian prisons quadrupled from June 2015 to June 2019.

More than half of the Aboriginal people who have died in custody since the Royal Commission had not been sentenced to jail time – they died while being held by police or on remand, after they were refused bail. The Victorian Government's punitive bail laws are putting more and more Aboriginal people in custody and at risk. It must urgently reform the Bail Act, invest in culturally appropriate bail accommodation and support, and allow Koori Courts to hear bail applications.

## Raise the age of criminal responsibility

The minimum age for being charged with a criminal offence should be 14, and the minimum age for incarceration should be 16. Currently, children as young as 10 can be imprisoned. Aboriginal children are detained at nearly seven times the rate of non-Aboriginal children in Victoria. The Productivity Commission has found that, nationally, raising the age to 14 would reduce the number of Aboriginal children in prison by 15%.

## Improve prison conditions through independent inspections and higher standards

Conditions in prisons and police cells can have devastating effects on the mental and physical health of Aboriginal people. While some lessons have been learned from the Royal Commission's report, many have not. The use of solitary confinement needs to be ended, and healthcare should be equivalent to what is available in the community – both recommended by the RCIADIC in 1991. An independent report highlighted repeated abuses in Victorian prisons, and found that prison staff do not understand their duty to care for the human rights of people in prison.

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Improving conditions in prisons and police cells will only happen with independent oversight. Under an international treaty, the Optional Protocol to the Convention Against Torture (**OPCAT**), Australian governments have to establish an independent agency to inspect prisons and make recommendations for how conditions need to be improved.

Victoria has missed the deadline for implementing OPCAT by January 2022. The Victorian Government needs to consult on how to make sure detention inspections are culturally appropriate for Aboriginal people, and implement OPCAT as a matter of urgency. You can read VALS' fact sheet on OPCAT [here](#).

### Create an Aboriginal and Torres Strait Islander Social Justice Commissioner

The RCIADIC made 339 recommendations, and in the thirty years since there have been countless recommendations from coronial inquests, parliamentary inquiries and other Royal Commissions. There is no transparency or accountability on the Government to put these recommendations into action and end Aboriginal deaths in custody. VALS and the Aboriginal Justice Caucus have consistently called for an independent Aboriginal Social Justice Commissioner to monitor the Government's progress in making the recommended changes. As long as the Government is not accountable for making change happen, the number of Aboriginal deaths in custody will continue to grow.

## Where can I learn more about ending Aboriginal deaths in custody?

- [Submission to the Parliamentary Inquiry on Victoria's Criminal Justice System](#)
- [VALS' Aboriginal deaths in custody information page](#)
- [Community fact sheet: the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment \(OPCAT\)](#)