

The Monitoring of Australian Deaths in Custody: Some Contemporary Issues

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Introduction

In recent years, Australia has experienced some 62 to 65 deaths in custody, from all causes, each year. This number is quite small compared with other categories of death that receive considerable public attention, including deaths from the Sudden Infant Death Syndrome (357 in 1991), motor vehicle crashes (2,221) and suicide (2,360).¹ Although the number of deaths is relatively small, deaths in custody have received a substantial degree of government, media and public attention in recent years. The Royal Commission into Aboriginal Deaths in Custody that was appointed in 1987 and completed its work in 1991 is said to have cost almost \$30 million in direct Commonwealth expenditures alone. The Commonwealth Government's response to the Royal Commission has included the commitment of hundreds of millions of dollars to be spent over the next few years. These funds are to be supplemented by expenditures by the State and Territory governments. It could be argued that the 60-odd deaths do not warrant this level of attention, considering that resources available for addressing public health concerns in the community are so limited.

Why, then, do custodial deaths attract so much attention from community groups and so much government funding? I suggest that the answer lies in two areas. First, people who are in custody — in our prisons, police lockups, juvenile detention centres and other forms of custody — are by definition “in the hands of the state”. Their liberty, and consequently their capacity to care for themselves, has been severely restricted as a result of decisions by the courts or by individual custodians acting as agents of the state. This means that the state, and its agents, have specific responsibilities — duty of care — regarding the people in their custody. The significance of this responsibility is highlighted by the fact that a proportion of these deaths are preventable: that approximately half of them are self-inflicted underscores this point.

The other rationale for placing a great deal of attention on deaths in custody, and their prevention, is that in doing so we are really addressing issues of concern to our society generally about the way in which it uses custodial sanctions. In focusing on individual custodial deaths we inevitably concern ourselves with the number of people in custody, the reasons for their being in custody and the ways in which they are handled within the

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1 Australian Bureau of Statistics, *Causes of Death, Australia, 1991* (1992). These figures refer to deaths registered in 1991, the most recent year for which causes of death data are available.

custodial settings. In other words, attention becomes focused on the use of custody overall and the well-being of people in custody. With over 15,500 people in prison, up to 1,000 in police custody and over 700 in juvenile detention centres, the extent of the duty of care that the community and custodians exercise is quite substantial.

In this paper I will present an overview of a number of contemporary issues concerned with monitoring and research into deaths in custody, focusing on the work of the Australian Institute of Criminology (AIC). Following these introductory remarks, I will outline the deaths in custody monitoring and research work of the AIC, give a brief overview of Australian custodial deaths over the last twelve or thirteen years, refer to the complicated issue of defining a custodial death, and discuss some of the public policy considerations surrounding epidemiological analyses of custodial deaths and the impact of the media. The paper will conclude with a reference to the contribution that monitoring and research can make as part of Australia's overall response to custodial deaths generally and to the deaths of Aboriginal people in custody, in particular.

The Role of the Australian Institute of Criminology in Monitoring and Research

During 1992 the Australian Institute of Criminology established a National Deaths in Custody Monitoring and Research Unit. It did so as part of the Commonwealth Government's response to the Royal Commission into Aboriginal Deaths in Custody: the Royal Commission recommended, at Recommendation 41:

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

- (a) maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);
- (b) report annually to the Commonwealth Parliament;²

Since that time, the Unit has published five monographs in its series *Deaths in Custody, Australia*.³ The first of these covered deaths in custody that occurred during the calendar years 1990 and 1991, the second covered police custody, the third covered deaths of children and young people in juvenile detention, the fourth Australian deaths in custody during calendar year 1992, and the fifth was concerned with the deaths of young people in police and prison custody and juvenile detention over the full period 1980 to 1992. The

2 Royal Commission into Aboriginal Deaths in Custody (1991) at 189–90.

3 Howlett, C, "Deaths in Juvenile Detention, 1980–1992" (1993) *Deaths in Custody Australia, No 3*; Howlett, C, "Deaths of Young People in Police and Prison Custody and Juvenile Detention, 1980–1992" (1993) *Deaths in Custody Australia, No 5*; Howlett, C, and McDonald, D, "Australian Deaths in Custody 1992–1993" (1994) *Deaths in Custody Australia, No 6*; McDonald, D, "National Police Custody Survey 1992: Preliminary Report" (1993) *Deaths in Custody Australia, No 2*; McDonald, D, and Howlett, C, "Australian Deaths in Custody 1990 & 1991" (1992) *Deaths in Custody Australia, No 1*; McDonald, D, and Howlett, C, "Australian Deaths in Custody 1992" (1993) *Deaths in Custody Australia, No 4*.

first annual report by the Commonwealth Government to the Federal and all State and Territory Parliaments on the implementation of the recommendation of the Royal Commission will include details on custodial deaths that occurred during the year to 30 June 1993; this chapter will be prepared by the AIC's Monitoring and Research Unit.

It should be noted that the interest of the Australian Institute of Criminology in research into custodial deaths did not begin with the establishment of the current research program. In 1986, the Institute published a monograph *A National Study of Deaths in Australian Prisons*, prepared by Suzanne Hatty and John Walker.⁴ This was followed, in 1988, by an issue in the series *Trends and Issues* under the title "Aboriginal Deaths in Custody", compiled by Grabosky et al.⁵ In addition, the Institute provided a considerable degree of support to the Royal Commission's Criminology Unit throughout the life of the Royal Commission.

In brief, since its establishment, the AIC's National Deaths in Custody Monitoring and Research Unit has established contact with each of Australia's 24 main custodial authorities, namely, the police, corrections and juvenile justice authorities in each State and Territory. (Contact is also being established with other, more peripheral, custodial authorities such as Immigration and Defence.) Close working contacts have also been established with each State Coroner or equivalent. The method by which the Unit works is that it obtains information, in a standard format (as recommended by the Royal Commission) from each custodial authority concerning the deaths that occur within its area of responsibility.⁶ After inquests are completed, coroners provide copies of their findings and related documentation which enables the information received from custodial authorities to be checked and updated, if necessary. It will be appreciated that often substantial delays exist between when a death occurs and the coroner's findings become available. These delays received much attention from the Royal Commission as they suggested to the Commissioners that governments, as well as the police officers who brief coroners, often fail to place sufficient emphasis on the seriousness of custodial deaths.

Because of considerable interest in trends in custodial deaths, the AIC's Unit obtained, from the Royal Commission, statistical information on the custodial deaths that occurred during the period 1980 to 1989. These data were received by the Royal Commission's Criminology Unit from the police and prison authorities. As we have indicated in our more recent monitoring reports, it is likely that those data are incomplete, particularly regarding non-Aboriginal deaths. The data are not only likely to be incomplete but, furthermore, the definitions of a death in custody used probably varied over time and between custodial authorities. This was not a problem with regard to the Aboriginal deaths since the Royal Commission made strenuous efforts, in conjunction with the Aboriginal and Torres Strait Islander communities, to ensure that all deaths that occurred during the period 1 January 1980 to 31 May 1989 (the period covered by the Royal Commission's Letters Patent) were reported to it. Corresponding rigorous case finding was not undertaken with regard to non-Aboriginal deaths.

4 Hatty, S and Walker, J, *A National Study of Deaths in Australian Prisons* (1986).

5 Grabosky, P, Scandia, A, Hazlehurst, K and Wilson, P, "Aboriginal Deaths in Custody" (1988) 12 *Trends and Issues*.

6 Valuable information is also received from some community groups, such as the Campaign for Preventing Custodial Deaths; see, for example, Searcy, J, "White Deaths in Custody in WA" (1991), 16 (1) *Leg Serv Bull* at 44-5.

Deaths in Custody in Australia 1980–1992: An Overview

During the period 1980 to 1986, Australia experienced on average 44 deaths in police and prison custody each year, with the number each year fluctuating little. The total more than doubled in 1987 to 94 deaths. The percentage increase was similar for both Aboriginal and non-Aboriginal detainees, and for both prison and police custody. The numbers in each of these groupings fell by approximately one-third the following year (1988) and have remained fairly constant since then, except for a recent pleasing fall in Aboriginal deaths in police lockups. Details covering the 1980–1992 period are in Table 1 and Figure 1.⁷

TABLE 1
Year of Death, Custodial Authority and Aboriginality, 1980–92

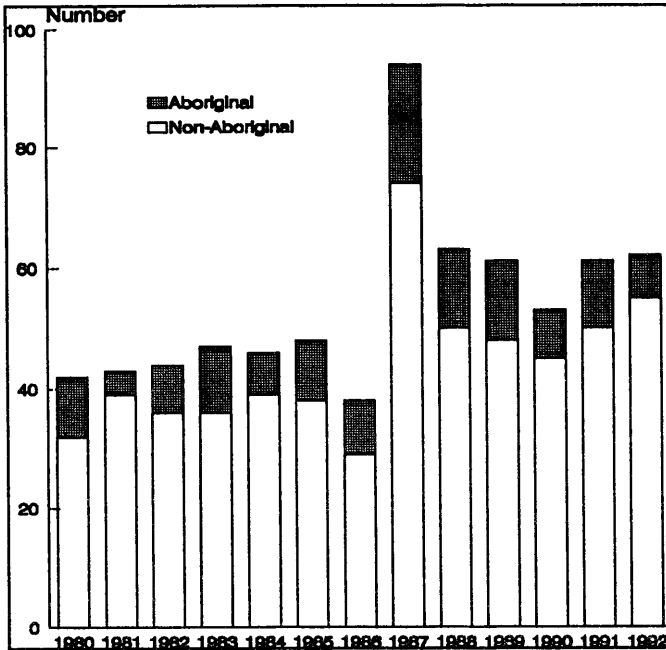
Year	Police			Prison			Total		Grand Total
	A	O	Total	A	O	Total	A	O	
1980	5	7	12	5	25	30	10	32	42
1981	3	12	15	1	27	28	4	39	43
1982	4	15	19	4	21	25	8	36	44
1983	6	10	16	5	26	31	11	36	47
1984	3	12	15	4	27	31	7	39	46
1985	6	16	22	4	22	26	10	38	48
1986	8	13	21	1	16	17	9	29	38
1987	15	26	41	5	48	53	20	74	94
1988	7	14	21	6	36	42	13	50	63
1989	10	11	21	3	37	40	13	48	61
1990	2	20	22	6	25	31	8	45	53
1991	3	19	22	8	31	39	11	50	61
1992	5	21	26	2	34	36	7	55	62
Total	77	196	273	54	375	429	131	571	702

A = Aborigine

O = Other

⁷ Clearly there are sources of error and omission in this data series, as the 1980–1987 data were collected retrospectively; different custodial agencies (the sources of the data) would have applied different inclusion criteria; the inclusion criteria could have changed over time; etc. Nevertheless, these data are the best available and are far more complete than those of most other countries.

FIGURE 1
Year of Death and Aboriginality, 1980–1992



Details follow on the deaths in custody which have been reported as having occurred throughout Australia in 1992, based on information published in McDonald and Howlett.⁸ Table 2, below, shows that 36 of the 62 deaths in 1992 were of people in prison custody with the balance (26) in police custody. Seven Aboriginal deaths occurred, five in police custody (including three in police lockups and two in other forms of police custody) and two in prison.

New South Wales experienced by far the highest number of deaths (27), followed by Queensland with 13 and Victoria with 10. The other jurisdictions had considerably fewer deaths.⁹

8 McDonald, D, and Howlett, C, "Australian Deaths in Custody 1992" (1993) *Deaths in Custody Australia* No 4. This information is updated at six monthly intervals in reports in the series *Deaths in Custody Australia*, published by the Australian Institute of Criminology.

9 These figures are subject to revision. The Queensland Police Service appears to be using a narrower definition of a death in custody than their colleagues in the other seven Police Services, and the decentralised coronial system practised in Queensland makes it difficult to identify cases from sources other than the Police Service. The apparent inconsistency between Queensland and the other jurisdictions is likely to be removed soon.

TABLE 2
Aboriginal and Non-Aboriginal Deaths in Custody, Jurisdiction, 1992

State	Police			Prison			Total		Grand Total
	A	O	Total	A	O	Total	A	O	
NSW	3	11	14	1	12	13	4	23	27
VIC	1	6	7	–	3	3	1	8	10
QLD	1	2	3	1	9	10	2	11	13
WA	–	–	–	–	3	3	–	3	3
SA	–	1	1	–	4	4	–	5	5
TAS	–	1	1	–	2	2	–	3	3
NT	–	–	–	–	1	1	–	1	1
ACT	–	–	–	–	–	–	–	–	–
Aust.	5	21	26	2	34	36	7	55	62

A = Aborigine

O = Other

Most of the deaths were of males, with five females dying in custody during the year. The ages of the deceased detainees ranged from 14 to 77 years, with a mean of 30 and a median of 29.5. Tragically, seven of the deaths were of people aged between 14 and 19 years of age; these all occurred in police or prison custody.

As is usually the case, both in Australia and overseas, remandees were heavily over-represented. Ten of the 36 prison custody deaths were of people on remand; this proportion (28 per cent) should be compared with the proportion of remandees in the national prison population, just 12 per cent.

Turning to the cause and manner of death, it is noted that, nationally, half of the deaths (31 cases) were self-inflicted. Two-thirds (22) of these were by hanging. An additional 11 were caused by gunshot (either inflicted by custodial officers or self-inflicted); nine were attributed to "natural causes", that is, illnesses; three to head injury; seven to other external trauma (for example, assaults and motor vehicle pursuit crashes); eight to alcohol or other drugs; and one each to choking in association with alcohol (inhalation of vomit) and asphyxiation by means of a plastic bag placed over the head. Table 3 has details.

TABLE 3
Manner of Death, Aboriginality and Custodial Authority, 1992

Manner	Police			Prison			Total		Grand Total
	A	O	Total	A	O	Total	A	O	
Hanging	1	3	4	1	17	18	2	20	22
Natural causes	1	1	2	1	6	7	2	7	9
Gunshot	–	9	9	–	2	2	–	11	11
Head injury	–	3	3	–	–	–	–	3	3
Other external trauma	1	2	3	–	4	4	1	6	7
Drugs/alcohol	2	2	4	–	4	4	2	6	8
Other	–	1	1	–	1	1	–	2	2
Total	5	21	26	2	34	36	7	55	62

A = Aborigine

O = Other

The Australian Institute of Criminology publishes six-monthly monographs presenting statistics and analyses of trends in Australian custodial deaths. These are available free on request to the Institute, as part of the Commonwealth's response to the recommendations of the Royal Commission into Aboriginal Deaths in Custody.

What is a Death in Custody?

Establishing and maintaining consistent definitions of key concepts is an integral part of research concerned with monitoring trends in phenomena of interest. On the face of it, it would seem very easy to define just what is a "death in custody" and for that definition to be applied consistently over time. On closer examination, however, it becomes clear that considerable subtleties exist in the definition itself. I discussed this matter in an earlier paper¹⁰ and so here will only touch on the issues briefly and update the material presented in the earlier paper.

Although there is no difficulty in ascertaining death as an ultimate fact, it can be more difficult for the researcher to determine the exact time and place of death.

A far more substantial matter is defining if a death has occurred *in custody*. This was a central issue for the Royal Commission. It conducted many jurisdictional hearings to determine whether a particular death was a death "in custody" as provided for in the Letters Patent issued to the Royal Commissioners. From time-to-time, the Commissioners' jurisdictions were challenged by counsel for various parties, particularly custodians, leading Commissioners to include detailed appendices, covering this issue, to some of their case reports.¹¹

10 McDonald, D, "Methodological Issues in the Calculation of Over-representation and Exposure to Risk in Custody" (1992) in Biles, D and McDonald, D (eds), *Deaths in Custody, Australia, 1980-1989* at 17-52.

11 An example is O'Dea, D, *Report of the Inquiry into the Death of Darryl Horace Garlett* (1989) Royal

The issue was argued most fully in the context of the tragic death of David John Gundy on 27 April 1989, just one month before the cut-off date applied for the inclusion of deaths within the terms of reference of the Royal Commission.¹² In that case, although the Government of New South Wales (the State in which the death occurred) did not dispute that the Royal Commissioner, The Hon Hal Wootten, had jurisdiction to hear the case, such jurisdiction was challenged by a number of the police officers involved in the raid that led to the death of Mr Gundy. The officers argued that Mr Gundy, who died in a raid conducted by police on the house where he was sleeping, was not "in custody" at the time of his death. The matter was heard by a judge of the Federal Court of Australia and, subsequently, by three judges of the Federal Court hearing an appeal from the single judge. The appellants also approached the High Court of Australia seeking approval to appeal to that level but permission to do so was not granted.

One of the clear conclusions of a number of the Royal Commission's jurisdictional hearings and of the Federal Court's decision on the death of David Gundy is that a person is "in custody" if that person is not at liberty to come and go as he or she wishes to do. A person is "in custody" if this situation exists regardless of whether or not the person is physically in a prison or police cell. Probably on the basis of the experience that the Royal Commissioners had in dealing with jurisdictional disputes, they included, in the Royal Commission's final *National Report*, two recommendations covering the definition of a death in custody. Recommendation 6 (which is concerned with post-death investigations) and Recommendation 41 (which is concerned with the role of the Australian Institute of Criminology and custodial agencies in monitoring and research relating to deaths in custody) state 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.¹³

This definition has been discussed with all of Australia's custodial authorities. It presents no real difficulties to the adult corrections and juvenile justice authorities but it has had significant implications for the eight police services. This is because the definition is substantially broader than that used by custodial authorities in the past. For police, it has always been accepted that a death in a police lockup, or in a hospital where a person was

Commission into Aboriginal Deaths in Custody at 19–26.

12 Wootten, J, *Report of the Inquiry into the Death of David John Gundy* Royal Commission into Aboriginal Deaths in Custody (1991).

13 Royal Commission into Aboriginal Deaths in Custody, *National Report* (Commissioner Elliott Johnston) (1991) vol 1 at 190.

transferred there from a lockup when an illness or an injury occurred or developed in a lockup, would be considered a death in custody. What is new for the police services is the Royal Commission's view that the concept should include "the deaths 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, even more significantly, that a person can be "in custody" even though that person is not in a lockup.

Some illustrations may be useful at this point:

Case 1: A self-inflicted hanging in a police cell

A 32-year-old man was found hanging in his cell at the Oakleigh, Victoria, police station at 7.30 pm on 29 January 1993. He was conveyed to the Alfred Hospital and died there the next day. This is a death which would have always been considered to have been a death in custody.

Case 2: Death in a violent struggle with police

Late on the evening of 19 March 1993, police spoke to a young man in Melbourne who was allegedly in the process of stealing a car. He fled from them, was pursued by a police constable who eventually caught up with the man as he was climbing a fence. A violent struggle followed and, according to reports, the alleged offender was subdued by the police officer but collapsed soon after and failed to respond to the constable's efforts at resuscitation. The man was dead by the time an ambulance arrived.

This case would be classified, using the Royal Commission's definition, as a death that occurred in the process of police officers attempting to detain the person. The person was also "in custody" because he was not free to leave the scene: the police were seeking to apprehend him.

Case 3: Individual shot by police during an armed robbery

This death is of a 15-year-old Aboriginal boy who died after being shot by a police officer in Launceston, Tasmania, on 11 August 1993. The youngster was apparently in the process of conducting an armed hold-up of a grocery store; police were called and were confronted by this person who was apparently armed. As it happened, the weapon was a replica pistol but, in the circumstances, it was not possible to differentiate between a replica and an authentic weapon. According to reports, the police officer involved repeatedly called on the alleged offender to put down his weapon; he refused; the police officer considered that his and other people's lives were in danger and so shot the youth who died the next day in the Launceston General Hospital.

This case would not, in the past, have been reported as a death in custody as the young person was not in a lockup and, at that point, was not in the custody of a police officer in the sense that he had not been arrested. Nevertheless, it is clearly a death in custody, as recommended by the Royal Commission, in that the person was not free to leave the scene and the police were clearly in the process of attempting to detain him. That the detention was for the purpose of preventing the further commission of a crime and to protect other people is not relevant.

Case 4: A person shot himself in a police siege

A police siege of a house took place at Mannering Park near Wyong in New South Wales on 5 July 1993. On that occasion, a 19-year-old man allegedly held a woman captive in

the house, using a rifle, for some hours before she was able to escape. Police surrounded the house and, it is said, the young man inside fired a number of shots from the window of the house. After a period the police entered the house and found that the young man had died from what is believed to be a self-inflicted wound to the head.

This is another case that would not, in the past, have been considered to be a death in custody. This is particularly so because the death was self-inflicted and there is no suggestion that the police acted in any way improperly. Nevertheless, in conducting a siege they were clearly seeking to detain the young person and (as in the case of David Gundy) he was clearly not free to leave the location.

Case 5: Motor vehicle pursuit

Considerable publicity has been given, in recent years, to high speed motor vehicle pursuits, including pursuits where deaths have occurred. In this example, State police at Camperdown in New South Wales sought to pull over a car for speeding at about 6.00 am on 26 July 1993. The driver of the vehicle refused the police instructions to stop and, indeed, accelerated away from the police vehicle. According to reports, the police vehicle chased the car for some four kilometres before it crashed. The driver of the car died in the crash.

This death was again a death in custody, within the terms recommended by the Royal Commission, in that the motor vehicle pursuit was action being undertaken by the police in seeking to detain the driver of the car as he had allegedly committed the offences of speeding and failing to stop when requested to do so by the police.

All Australian Governments have accepted Recommendations 6 and 41 of the Royal Commission into Aboriginal Deaths in Custody that established this definition. The issue confronting the police services has been to interpret the definition concerning individual cases. Extensive negotiations between the AIC's Deaths in Custody Unit and the police services, using case examples such as those listed above, have resulted in all police services except the Queensland Police Service accepting and applying a common definition of a death in custody. At the time of writing, the Queensland Police Service is taking a narrower, more traditional approach to defining a custodial death but has indicated that it still has the matter under consideration and that there is a real possibility that it will use the same approach as used by the other seven police services. In the interest of uniform national statistics, important to monitoring trends in custodial deaths, it is essential, in my view, that the Queensland Police Service does come into line with its counterparts in the other jurisdictions.

The importance of differentiating between deaths in lockups and in other circumstances is illustrated using information on 1992 custodial deaths, as set out in Table 4 below. Looking at the 26 police custody deaths during that year, it will be immediately noticed that less than half — only 11 out of the 26 — are labelled as being deaths in “institutions”, in other words, deaths in police lockups or in hospitals following transfer from lockups. The others included a variety of circumstances, such as those illustrated earlier in this paper, including self-inflicted deaths in police sieges, people shot and killed by police, high-speed motor vehicle pursuits, etc. It is intended that monitoring reports on Australian deaths in custody will, from now on, differentiate the lockup deaths from deaths in other circumstances. This will lead to increased accuracy in the interpretation of time series data, particularly regarding police custody deaths. It will also illustrate the variety of circumstances within which custodial deaths occur, and the corresponding breadth of circumstances in which police officers (and other custodians) have to exercise their duty of care.

TABLE 4
Circumstances of Death and Custodial Authority, 1992

Circumstances	Police	Prison	Total
Institution*	11	34	45
Detaining	14	1	15
Escaping	—	1	1
Other	1	—	1
Total	26	36	62

*Deaths in police lockups or prison, or in hospital following transfer from such a facility.

The Death Rates Conundrum

On the face of it, one could be forgiven for concluding that no special issues exist concerning custodial death rates. Surely we know the number of custodial deaths and the sizes of the populations in which these deaths are found; the calculation of death rates becomes a simple matter of arithmetic. Unfortunately, this is not the case and considerable controversy has surrounded the appropriate methods of calculating the custodial death rates and communicating them to policy makers and the public.

The central issues are the development of precise measures of the number of deaths (the numerators in death rates calculations) and the size of the populations from which those deaths are drawn (the denominators). Defining the appropriate denominator in a particular instance is one of the central issues in epidemiology and is a major source of confusion and error. This was well illustrated through the pages of the *Medical Journal of Australia* in 1989 and 1990. The controversy began with an editorial in the *Journal* by Goldney and Reser.¹⁴ Using information published by the Criminology Unit of the Royal Commission into Aboriginal Deaths in Custody, they discussed what was, then, becoming a controversial finding, namely that the death rates of Aboriginal and non-Aboriginal people in custody were similar when the custodial populations were used as the denominators in calculating the rates. However, when the denominators are the total community populations of Aboriginal and non-Aboriginal people, respectively, the death rates for the former are very much higher than for the latter, reflecting the high level of over-representation of Aboriginal people in both police and prison custody.

The editorial elicited a strongly worded response from Broadhurst and Maller.¹⁵ They argued that the analysis put forward by Goldney and Reser led to the conclusion that little would be gained from focusing on the way that people (particularly Aboriginal people) are treated in custody but that this is exactly where attention should be directed. Broadhurst and Maller went on to point out that research then in progress indicated that, when one allows for the recidivism experienced by Aboriginal people, the risks of custodial death faced by any particular Aboriginal person over that person's lifetime is substantially higher than that faced by non-Aboriginal people. (This valuable research was subsequently published under the somewhat provocative title "White Man's Magic Makes Black

14 Goldney, R and Reser, J, (1989) "Aboriginal Deaths in Custody" 151 *Med J Aust* at 181-2.

15 Broadhurst, R and Maller, R, "Black Deaths in Custody" (letter) (1990) 152 *Med J Aust* at 382.

Deaths in Custody Disappear".¹⁶ The controversy remains current as illustrated by correspondence from Wootten and Biles in the July/August 1993 issue of *Criminology Australia* and in a commentary by Goldney¹⁷ to an article prepared by a colleague and myself on the epidemiology of custodial deaths.¹⁸

The approach that we have been taking at the Australian Institute of Criminology, in our regular reports aimed at monitoring custodial deaths, is as follows. We maintain that it is useful to express death rates both as a ratio of the number of deaths to the total population and as the number of deaths to the relevant custodial population, and to calculate estimates of the Aboriginal/non-Aboriginal relative risk using both sets of denominators, separately. We do this on the basis of public policy considerations as well as epidemiological appropriateness.

Presenting death rates in terms of the ratio between the number of custodial deaths and the size of the total Aboriginal and non-Aboriginal populations, and the ratio of these two rates, provides information on what is, in common sense and broad public policy terms, the level of over-representation of Aboriginal custodial deaths. Surely it is a legitimate public interest to relate the number of Aboriginal deaths in custody in Australia to the number of Aboriginal people in the Australian community? Having available these kinds of data immediately draws attention to the needs for action on two fronts, namely reducing the gross over-representation of Aboriginal people in custody and minimising the risk of death once they enter the custodial environment.

On the other hand, presenting information on custodial deaths using the custodial populations as the denominators is also helpful. The contemporary data illustrate that the death rates experienced by Aboriginal people in both prison and police custody are lower than those of non-Aboriginal people. This is as it should be considering the exceedingly high death rates of Aboriginal people (particularly young adults) in the community at large.¹⁹ It draws attention to the need to reduce the risk of custodial death for *all* prisoners but does not, in my view, provide any support for an argument that Australia does not have a serious problem concerning Aboriginal custodial deaths. An obligation exists, I suggest, on the part of researchers and others who make use of research findings to think carefully about the implications of these different ways of calculating death rates and to be conscious of the subtleties in using them in drawing public policy inferences.²⁰

Custodial Suicides: Clustering and the Role of the Media

Approximately half of Australia's custodial deaths are self-inflicted, mostly by hanging. A similar pattern is observed in prison deaths overseas.²¹ Widespread speculation and a

16 Broadhurst, R and Maller, R, "White Man's Magic Makes Black Deaths in Custody Disappear" (1990) 25 *Aust J Soc Iss* at 279-289.

17 Goldney, R, "Deaths in Custody" (1993) 159 *Med J Aust* at 572-573.

18 Thomson, N and McDonald, D, "Australian Deaths in Custody, 1980-1989: Relative Risks of Aborigines and Non-Aborigines" (1993) 159 *Med J Aust* at 577-581.

19 Australian Institute of Health & Welfare, *Australia's Health 1992: The Third Biennial Report of the Australian Institute of Health and Welfare* (1992).

20 New Zealand researchers have recently published data from that country which takes an approach similar to that discussed here. The main difference is that in New Zealand (as in most nations) no data are available on the size and composition of the police custody population. See Skegg, K and Cox, B, "Suicide in Custody: Occurrence in Maori and Non-Maori New Zealanders" (1993) 106(948) *NZ Med J* at 1-3.

body of social science research suggest that the media can have a role in causing, or at least precipitating, suicides.

In September 1774 Goethe published his first novel, *The Sorrows of Young Werther*, whose hero shot himself, unable to bear his desperate love. The book was a sensation and became a European bestseller. Many romantic young men identified themselves with the hero and subsequently the number of suicides rose dramatically. The authorities in Italy, Germany, and Denmark banned the book in hopes of putting a stop to the suicide epidemic.²²

The question has been raised as to whether the Werther effect — the clustering of suicides as a result of media publicity about high profile suicides — was a factor in the increase in custodial deaths experienced in Australia in 1987. This was a virtual doubling of both Aboriginal and non-Aboriginal custodial deaths. The matter was touched on briefly in the report of the Royal Commission.²³

Reser²⁴ has looked closely at the pattern of Aboriginal suicides in custody in the 1980s and has concluded that a clustering effect occurred in 1987. This clustering was primarily self-inflicted deaths by hanging among young Aboriginal males in a small number of Queensland communities. It could be argued that the media publicity concerning the custodial deaths that occurred during 1987 was a factor in precipitating, or even causing, some deaths.

I understand that both the electronic and print media in Australia have a self-imposed and self-regulated prohibition on reporting suicides. This has extended, in recent years, to the self-inflicted deaths of some prominent Australians: in these cases their deaths were reported but the media was quite silent as to the manner of death.

In Britain, suicide deaths in prison receive a very high degree of media attention, partly as a result of the work of some quite effective community pressure groups as well as official enquiries.²⁵ In Australia over the last six years we have taken a much broader approach to custodial deaths, one in which suicide is not nearly so prominent. This approach is appropriate, particularly when we recall that some two-thirds of the Aboriginal deaths investigated by the Royal Commission were from disease and that, over the 1990–92 period, approximately half of all custodial deaths were not self-inflicted.

On the understanding that suicides can be caused or at least precipitated by high profile media reports of suicidal behaviour and that clustering of suicidal deaths has been observed in the community,²⁶ in psychiatric hospitals,²⁷ and in custody,²⁸ it seems prudent that we continue to act with caution in the media depiction of custodial suicides. Such caution will also enable Australia to maintain a broader focus on the range of risks faced by our custodial populations.

21 Liebling, A, *Suicides in Prison* (1992).

22 Taiminen, T, Salmenpera, T and Lehtinen, K, "A Suicide Epidemic in a Psychiatric Hospital" (1992) 22 *Suicide and Life-Threatening Behaviour* at 350.

23 (1991) vol 2 at 123–130.

24 Reser, J, "Australian Aboriginal Suicide Deaths in Custody: Cultural Context and Cluster Evidence" (1989) 24 *Aust Psych* at 325–42.

25 Above n21.

26 For example, Phillips, D and Carstensen, L, "Clustering of Teenage Suicides After Television News Stories About Suicide" (1986) 315 *New England J Med* at 685–9.

27 For example Taiminen et al, see above n22.

28 Reser, above n24.

Conclusion

It is unlikely that deaths in custody will ever be totally eliminated. The type of monitoring role described in this paper will continue to be important so long as such deaths continue to occur. The regular reports issued by the Australian Institute of Criminology continue to attract media attention that has the potential for enhancing their impact on politicians, custodial service administrators and so on.

For some audiences, the information derived through this monitoring program is being seen as important in evaluating the impact of the implementation of the recommendations of the Royal Commission into Aboriginal Deaths in Custody. Although one of the great strengths of the Royal Commission is that its recommendations cover a very wide scope, many people are looking to statistics on the number of custodial deaths, particularly Aboriginal and Torres Strait Islander custodial deaths, as key indicators of the impact of the work flowing from the Royal Commission's recommendations. Current indications are that, nationally, the number of Aboriginal deaths in custody across Australia each year, over the period since the Royal Commission concluded its work, is very similar to the number that occurred during the January 1980 to May 1989 period covered by the Letters Patent under which the Royal Commission operated.²⁹

I suspect that we are all looking for more action, and more effective action, in all the areas addressed by the Royal Commission's recommendations, including the empowerment of Aboriginal and Torres Strait Islander people, economic development, education, health, housing and infrastructure, women's issues, youth issues, law and justice, and so on.

Nevertheless, in public policy terms, even if substantial advances are made in these areas but the number of custodial deaths (particularly the deaths of Aboriginal and Torres Strait Islander people in custody) does not fall substantially, legitimate questions can be raised. Towards the end of 1993, the first Annual Reports (covering the year to 30 June 1993) on the implementation of the Royal Commission's recommendations became available. (Nine different reports are being prepared, a Commonwealth report and one for each State and Territory, as recommended by the Royal Commission.) The Commonwealth report will include a chapter prepared by the Australian Institute of Criminology as recommended by the Royal Commission. It will address trends in Aboriginal deaths in custody and in levels and patterns of incarceration of Australia's indigenous people.

Members of the international community, particularly influential groups such as Amnesty International,³⁰ have focused directly on the number of custodial deaths and on the over-representation of Aboriginal and Torres Strait Islander people in custody as key indicators of the level of human rights within this nation. Having available timely and comprehensive information about the custodial populations and the levels and patterns of custodial deaths will continue to be an important tool for evaluating Australia's progress in this area and for enhancing the level of accountability of the people in government and community agencies who are responsible for actions aimed at reducing the over-representation of indigenous people in custody and minimising the number of deaths in custody.

29 Above n8.

30 Amnesty International, *Australia: A Criminal Justice System Weighted Against Aboriginal People* (1993).