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## **Death in black and white The rate at which Indigenous people imprisoned has doubled over the past 25 years**

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Imagine if a royal commission was held into a matter of national shame and, after tens of millions of dollars was spent and a five-volume report produced, the headline indicators of that shame actually went backwards.

Consider the public reaction if, 25 years on, one of the commissioners who produced the report lamented that the situation was now worse than when the report was published, and the federal minister responsible issued a statement applauding progress.

Contemplate the level of anger, outrage and despair, especially within the community covered by the report, if deaths every bit shocking as the one that triggered the commission were still taking place.

Then consider the deeper, more disturbing, truth: all of the above is accurate, yet the vast majority of Australians are only vaguely aware of the grim reality, and most of the politicians representing them seem content with things as they are.

This was not the expectation when the report of the Royal Commission into Aboriginal Deaths in Custody was tabled in Parliament on May 9, 1991. In a powerful editorial endorsing all 339 recommendations, The Age called it "a judgment in black and white".

At the time, Ron Merkel QC, the prominent barrister and (then) president of the Victorian Council for Civil Liberties, sounded one note of caution. In a letter to this newspaper, he wrote that the inquiry delivered a "unique catalogue of the destruction of the culture, spirit and lives of Aboriginal people"; examined a wide range of policies designed to avoid the failures of the past; and proposed a "blueprint" for tackling the underlying causes of the disintegration in Aboriginal society.

What outraged Merkel was that a mere 150 copies of the report were made available for public sale (another 200 were offered in response to complaints), denying an invaluable resource to the scores of agencies, government departments and organisations that desperately needed one.

"It is no small irony that the principal finding as to the cause of so many of the problems investigated was the failure to educate the Australian public about Aboriginal people," Merkel wrote.

So what is the story, 25 years on? According to Indigenous Affairs Minister Nigel Scullion, many of the recommendations have been implemented and the anniversary

is a time "to acknowledge the progress that has occurred to reduce Indigenous deaths in custody".

"At the time the royal commission was established in 1989, First Australians were more likely to die in custody than non-Indigenous Australians. This is no longer the case," he said.

With respect, minister, this is beside the point.

The issue is whether Indigenous people are more likely to be placed in custody or prison because of their Aboriginality, with the inevitable result that lives are destroyed and lost.

On this, the royal commission was explicit: "An examination of the lives of the 99 [deaths investigated] shows that facts associated in every case with their Aboriginality played a significant, and in most cases dominant, role in their being in custody and dying in custody."

As Patrick Dodson, one of the commissioners, reported this week, the rate at which Indigenous people are imprisoned has more than doubled over the past 25 years; the incarceration of Indigenous women has risen by 74 per cent in the past 15 years; and Indigenous youths now comprise more than 50 per cent of juveniles in detention.

This is the big picture, borne out by the statistics, with one notable exception: Victoria, the only state to reach a formal Aboriginal Justice Agreement after a 1997 summit reviewed progress in implementing the commission's recommendations.

The small picture is revealed in two recent inquests of Aboriginal women in the west that expose failings as comprehensive as in any of the deaths investigated by the commission.

One is the case of Ms Mandijarra, who was found dead in the Broome police lock-up in November 2012 after being arrested for drinking on the local oval. The other concerned Ms Dhu, 22, who was in police cells for non-payment of fines that stemmed from offences that began when she swore at police as a 17-year-old.

A compelling case can be made that both women would be alive today if the recommendations of the royal commission had been implemented in a comprehensive manner.

For all the claims by governments and their agencies that the commission's report as been acted on, Peter Collins, of the Aboriginal Legal Service of WA, says: "The reality outside Victoria is the recommendations dropped off the radar long ago. If you asked a police officer working in a busy regional police station in WA whether he knows about any of the recommendations, the likely answer would be 'no'."

Greens senator Rachel Siewert sees value in an inquiry into if, and how, the states and territories have implemented the commission's recommendations, but what impact such a move would have is unclear.

"It isn't ignorance of the recommendations that is the problem - it's the enduring belief that locking more and more people up is going to solve the problems of criminal offending and make the community safer, despite decades of evidence that

shows the absolute opposite," says Jonathon Hunyor, principal legal officer of the North Australian Aboriginal Justice Agency.

Another step forward would be to accede to the calls from groups like the Change The Record coalition and commit to justice targets and invest more early intervention, prevention and diversion strategies.

If those in power need motivation, they could do worse than put themselves in the shoes of Gunditjmara man Richard Frankland, who worked as a field officer for the royal commission, compiling the case stories of those who died in custody.

The impact is summed up by Jack, a character in *Conversations With The Dead*, the confronting play Frankland wrote about his experience.

"Imagine that you're a Koorie, that you're in your mid-20s, that your job is to look into the lives of the dead and the process, policy and attitude that killed them.

"Imagine seeing that much death and grief that you lose your family, and you begin to wonder at your own sanity. Imagine when the job's over but the nightmares remain and the deaths keep on happening more than ever.

"What would you do? Where would you put the memories? What would keep you sane? Who do you think could understand what you carry inside you?"

What would you do?