

Black mark of Indigenous deaths in custody hasn't faded



John Quigley represented more than 100 police and prison guards called before the inquiry 30 years ago. Now as Western Australia's attorney-general he's determined to reduce Indigenous incarceration.

By Paige Taylor
Indigenous Affairs Correspondent
April 10, 2021

Indigenous people made up one in every seven prisoners when the Royal Commission into Aboriginal Deaths in Custody presented its final report on April 15, 1991 — 30 years ago on Thursday.

Patrick Dodson, then 43 years old, was one of five commissioners who wrote: “Too many Aboriginal people are in custody for too long.”

The now 73-year-old senator has lived to see his words become a grim understatement because today, almost one in three Australian prisoners is Indigenous.

The raw numbers are confronting. Of the 41,668 inmates in Australian jails in the December quarter of last year, some 12,344 were Aboriginal and Torres Strait Islander people. That means the proportion of Australian prisoners who are Indigenous has climbed from 14 per cent in 1991 to 29.6 per cent in the three decades since the royal commission described Indigenous incarceration rates as grossly disproportionate.

Six Indigenous people died in custody in 1990, the last year of the royal commission. In just the first four months of 2021, five Indigenous people are known to have died in custody. They include a 37-year-old man who suffered a medical episode while

running from police in Broken Hill, and a 45-year-old prisoner with heart and lung problems who died on the operating table at a Perth hospital.

Dodson sees disproportionate incarceration as still the key issue.



Pat Dodson.

“I am disappointed that we’re still having this conversation in a very narrow sense of focusing back on people’s deaths in custody, when I know people die from all sorts of causes when in custody, health being one of those,” he says.

“It is tragic when anyone dies in custody,” Dodson adds, particularly if there has been neglect or unauthorised use of force.

In 2014, he was vocal in his outrage at the treatment of a 22-year-old domestic violence victim, known for cultural reasons as Miss Dhu, who died in custody despite asking for help over three days. She was in excruciating pain from the septicaemia she had contracted after her boyfriend broke her rib. But police at the remote Pilbara watch house where she was being held for unpaid fines were sceptical.

An inquest heard when police finally took her to the emergency department of the South Hedland hospital, they told the medical staff “she is putting it on”. A nurse rolled her eyes at Miss Dhu. A doctor wrote “behavioural gain” in his notes, apparently because he too thought she was pretending to be ill to get out of custody.

“And the cop was giving her a hard time for pretending; he let her know that she was no more than a drug addict,” says Dodson. “ I mean it was a terrible thing.”

More recently, Dodson was aghast to learn that one of five Indigenous people known to have died in custody in a five-week period in March and April this year took her own life at NSW’s Silverwater Women’s Prison on March 5 by using a hanging point in her cell.

The royal commission recommended the removal of all hanging points from watch houses and prison cells in its final report.

In the past 30 years, Australia’s police and prison systems have introduced some effective measures to reduce deaths in custody. Assessments vary about how many of and how well the report’s 339 recommendations have been implemented. However, in the years since the royal commission, held between 1987 and 1991, the death rate of Indigenous prisoners has halved from 0.26 to 0.13 deaths per 1000. This is lower than the death rate for non-Indigenous prisoners, according to a report by the Australian Institute of Criminology published last December.

Dodson recalls his high hopes, when the royal commission completed its work, that the changes ahead would not only mean fewer prison deaths but better lives for Indigenous Australians. He believed that by getting young Indigenous people off the path to jail, Aboriginal and Torres Strait Islander Australians could transform their lives.

“The optimism that people like me had was that if the goodwill that was around could be harnessed and focused on the preventative measures, we not only reduce the people going into custody but we create a quality of life for people,” Dodson says. “They would be able to work out the strategies, in collaboration with governments, (and) have greater effect on determining the future directions of the Aboriginal people’s lives of this nation.”

The royal commission was under way and focused on the conduct of prison guards and police in individual cases when it broadened its view, according to John Quigley, the lawyer who represented more than 100 police and prison guards called before the inquiry.

Quigley is now the West Australian Attorney-General in charge of a reform agenda that is reducing the state’s shockingly high Indigenous incarceration rates.

He was a man to be feared at the royal commission, Dodson recalls. In later years, Quigley changed direction and became an advocate for victims of police malpractice, incompetence and violence.

The WA Police Union stripped him of his life membership because of his relentless pursuit of justice for Andrew Mallard, a non-Indigenous man who was railroaded into a bizarre “confession” to a murder that he did not commit. Quigley helped expose the horror of the death in custody of Aboriginal elder Mr Ward, who was locked up by police and denied bail for drink driving in the northern goldfields town of Laverton. Police put him in a prison van with a can of Coke and a frozen pie for a 359km trip

through the WA desert to court in Kalgoorlie. The airconditioning system for the rear compartment failed and Mr Ward, as he is known for cultural reasons, literally cooked to death as two guards sat upfront oblivious until they heard his body hit the floor of the van as he lost consciousness.

As a state opposition MP in 2010, Quigley again pursued police over their excessive tasing of Aboriginal man Kevin Spratt.

The former friend to police proved a formidable foe. Police officers were dragged through a corruption inquiry while Spratt was given an ex-gratia payment for his appalling treatment.

As WA's first law officer, Quigley has done away with the fine default system that so cruelly captured Miss Dhu and has introduced a custody notification system — providing an immediate legal advocate for every Indigenous person arrested — that could potentially have saved her and Mr Ward.

Today, he looks back on his role defending police and prison guards with some discomfort. He became a figure of hate in the 1980s for his work at the inquest into the death credited with sparking the royal commission, that of John Pat. The 16-year-old Pat died after his head hit the road outside the notorious Victoria Hotel in Roebourne during a brawl between off-duty police who had been drinking there and Yingibarndi males, who had also been drinking, on September 28, 1983. Police took Pat, not to a doctor or to the nearest hospital, but to a prison cell, where he was soon found dead.

“Everyone was throwing punches, and one of the police — uncertain who, you know, it was dark, they were getting punched and they were punching back — one of the police had knocked, punched John Pat, who went down and sustained what we now know to be a classic one-punch death,” Quigley says.

Asked if he feels uncomfortable about his role, Quigley says some of his cross-examinations of some of the witnesses were aggressive.

“Looking back on it, do I feel uncomfortable the officers were acquitted? No, because the royal commission found as a fact none of them applied excessive force,” Quigley says.

“Do I feel uncomfortable about some of my cross-examination? In retrospect, yes, but that comes with experience. Do I feel uncomfortable about representing officers who could have done more for John Pat? Yes. How do I reconcile that with who I am today? Well, I've changed. I've entered public life and I've worked hard to expose injustices to Indigenous prisoners.”

Quigley's defence of police and guards during the first two cases considered by the royal commission was so fierce it caused a stalemate that he says resulted in the inquiry changing course. The commission had examined Pat's death and then moved on to the distressing story of Charles Michael, an Indigenous man with an undiagnosed heart condition.

The royal commission found that when Michael died he was face down on the floor of the senior officer's small office at Barton's Mill prison, handcuffed, ankles secured together by a belt, another belt securing the handcuffs to the ankle restraint. He died following or during a struggle with several prison officers during which he remained at all times on the floor. No attempt was made to resuscitate him.

Quigley believes the then prime minister Bob Hawke was prompted to announce the royal commission after coronial photos showing Michael's tied-up body were published by The New York Times.

Quigley points to evidence that, unbeknown to prison medical authorities and even to Michael, he had atheroma anti-coronary thrombosis, which made him prone to the heart attack that killed him.

The head of the royal commission, Elliot Johnston QC, ultimately found: "There is no evidence which supports either directly or inferentially that any prison officer, including the superintendent, intended to inflict pain and or grievous bodily harm on Michael, or to kill him, and I so find."

But by now tensions were at boiling point at the commission. Quigley was hit with a subpoena to produce his papers. He responded with an injunction against the commission. In a meeting with Johnston that bears the hallmarks of a peace deal, Quigley says the inquiry took a new direction.

"It was agreed that I'd back off my injunctions if they gave a list of questions. I'd tell them, within the bounds of legal professional privilege, what I knew and the royal commission would proceed in a less prosecutorial fashion — more inquisitorial as to what's behind all these deaths," Quigley says.

"It was most productive. It was going nowhere when they were trying to make individual officers personally responsible for a particular death rather than (looking at) there being systemic failure."

Indigenous Australians Minister Ken Wyatt tells Inquirer he was struck by some of the profound insights about systemic failure when he re-read the commission's more than 500-page report recently. This included observations about the over-policing of Indigenous people and the disadvantage that put them on a path to jail. Beyond law reform, the commission concluded: "There are issues underlying the alienation of Aboriginal people and their continuing conflict with the law which cannot be solved by police and Aboriginal people alone.

"The key is to be found in the hearts and minds of all Australians. It lies in the recognition of the Aboriginal people as a distinct people, the Indigenous people of Australia who were cruelly dispossessed of their land and until recent times denied respect as human beings and the opportunity to re-establish themselves on an equal basis," the report's preface states.

Wyatt laments that so much of the report rings true today. He sees the prejudice in some new police officers who think Indigenous kids are trouble. He sees the popular

“three strikes” legislation in some jurisdictions as a reason why incarceration rates of Indigenous people continue to climb.

They are on opposite sides of politics, but Wyatt and Dodson agree that, while criminals must not get a free pass, early diversion is crucial.

“All the evidence is there that it is better to break the cycle of recidivism so these kids don’t end up in adult prison ... so they end up in further education or jobs that have some meaning for them,” Wyatt says.