

Three decades on, officials still under fire over Aboriginal deaths in custody

By Tammy Mills
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Why was a sober, harmless man who had caused no injury to anyone locked up at all?

It was a question posed by the Royal Commission into Aboriginal Deaths in Custody when the inquiry examined the death of Yorta Yorta man Harrison Day, locked up in a police cell in Echuca in 1982. Left unchecked for three hours, he suffered an epileptic fit that killed him.

The same question posed by Commissioner Hal Wootten 30 years ago could be asked again in 2017. Tanya Day, Mr Day's niece, hit her head in a police cell at Castlemaine and died in hospital. She had been arrested for public drunkenness after she was found intoxicated and sleeping peacefully on a V-Line train to Melbourne.



Tanya Day, Yorta Yorta mother and grandmother.

Although Commissioner Wootten called in 1991 for the “absurd system for punishing public drunkenness” to be abolished in Victoria – after NSW had rid itself of the law a decade earlier – the bill decriminalising the offence was passed only in February this year. Too late for Tanya Day.

Thursday marks 30 years since the commission's findings were handed down.

Victorian Aboriginal Legal Service chief executive Nerita Waight said governments around Australia had overstated the degree to which the inquiry's recommendations had been implemented, and Victoria had gone backwards.

"The governments' failures are utterly reprehensible," Ms Waight told *The Age*. Though the decriminalisation of public drunkenness is a welcome step forward, the change doesn't take effect for 19 months. Indigenous organisations also say Victoria's punitive bail laws are disproportionately affecting vulnerable Aboriginal women, the state government continues to build prisons and there has been no commitment to raising the criminal age of responsibility from 10 to 14.

"The Victorian government is wedded to a destructive law and order strategy that it thinks will win it votes but in reality sacrifices Aboriginal lives and makes Victoria less safe, not more," Ms Waight said. "Thirty years after the royal commission handed down its report, this is truly shameful."

Corrections Minister Natalie Hutchins says the government hears the amplified pain and anger of Aboriginal and Torres Strait Islander people.

"We know we can – and must – do better," Ms Hutchins said.



Veronica Marie Nelson Walker died in prison last year.

In response to the 2017 Bourke Street massacre, laws were changed to tighten eligibility for bail. The changes meant people who committed an indictable offence – which could include minor crimes such as shop theft – while on bail or on community corrections orders, were taken back into custody.

Such was the case for Yorta Yorta woman Veronica Marie Nelson Walker, found dead in her prison cell in January last year.

Ms Nelson Walker, whose cause of death is being investigated by a coroner, was on remand charged with shoplifting and other offences after allegedly breaching her community corrections order. She was being held in the Dame Phyllis Frost Centre, the prison set to be expanded by another 106 beds following a \$118.9 million government announcement last month.

Since the bail changes in 2017, the number of people on remand has gone up by 40 per cent – according to Corrections Victoria figures – with the Sentencing Advisory Council finding the increase in Victoria’s prison population has been driven by the number of people on remand or awaiting sentence.

“The harsh bail laws in Victoria mean that Aboriginal and Torres Strait Islander peoples are being locked up while they wait for their day in court for offences that are so minor that they’ll never result in a custodial sentence at all,” Change the Record co-chair Cheryl Axleby said.

Antoinette Braybrook, the chief executive of Aboriginal women’s service Djirra, supported the call for bail reform.

Statistics from June last year, during the COVID-19 pandemic, showed about a 30 per cent decrease in the number of women in Victorian prisons.

But Ms Braybrook said the number of Indigenous women in Victorian prisons had increased exponentially overall, with figures from the Australian Bureau of Statistics showing the number of Indigenous women in custody has gone up 100 per cent over a decade.



Djirra chief executive Antoinette Braybrook.

“So we know it’s possible to keep our people out of prison and off remand,” Ms Braybrook said.

“And we know that when the numbers continue to rise, this is because the government chooses not to act.”

Minister Hutchins accepted more needed to be done to tackle the over-representation of Aboriginal Victorians in the justice system.

She said the government continued to work with Aboriginal communities and the Aboriginal Justice Caucus to reduce rates and improve outcomes for Aboriginal youths.

The government also established the Yoo-rrook Justice Commission in partnership with the First Peoples’ Assembly of Victoria. The inquiry has the full powers of a royal commission and will investigate historical and ongoing injustices against Aboriginal Victorians.

“Only by reconciling with our past and committing to doing things differently can we reach a fairer, more just future - for all Victorians,” Ms Hutchins said.

The Australian Law Council on Wednesday added its support to raising the age of criminal responsibility nationally to 14 years.

Though Victoria’s rate of detention for Indigenous children aged between 10 and 17 is lower than the national average, young Aboriginal and Torres Strait Islander people are nine times more likely to be in custody than their non-Indigenous peers, according to a Productivity Commission report from January.

“The greatest gift that this government could give is to raise the age, to break the cycle of our children, our future generations of getting stuck in the quicksand of the justice system,” Ms Axleby said.

In July last year, the nation’s lawmakers, including the then Victorian attorney-general, Jill Hennessy, deferred a decision to raise the age for a year, agreeing more work needed to be done to find alternative ways to deal with young offenders.

Since the royal commission handed down its findings in 1991, at least another 455 Indigenous people have died in custody, according to the latest-available statistics from the 2018-19 National Deaths in Custody program.

The death rate of Indigenous prisoners is consistently lower than that of non-Indigenous prisoners nationally, though in 2018-19 the rate was slightly higher in Victoria and the Northern Territory.

Aboriginal and Torres Strait Islander people are consistently and significantly more likely to be arrested and imprisoned. Indigenous people make up just 3 per cent of the Australian population, but 28 per cent of the prisoner population.

In Victoria, 24 Indigenous people died in police or prison custody between 1991 and 2018. The number of deaths was four in 2017-18. The most recent death in custody was that of Michael Suckling, who was found unresponsive in his cell at Ravenhall Correctional Centre last month.

Families of those who have died in custody, including the Day family, called this week for the meaningful implementation of all the commission's recommendations. They also called for adequate independent investigative bodies to inquire into police and prison officers, funding to be redirected from expanding prisons to the community, the end to solitary confinement in prison and repealing punitive bail among a suite of demands.