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Black death myths abound

By David Biles
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Black death myths abound Decades after the Royal Commission into Aboriginal Deaths in Custody, we need to set the record straight.

Continued Page 4 It is now 25 years since the final report of the Royal Commission into Aboriginal Deaths in Custody was tabled in Federal Parliament, and this has prompted many people to comment on what is seen as the success or failure of the inquiry.

Leading the pack was Pat Dodson, one of the commissioners, who made a moving speech to the National Press Club in which he displayed an enormous breadth of knowledge on the subject. He also injected some self-deprecating wit into his answers to questions.

Dodson is one of many who say the problem of black deaths in custody is now much worse than it was a quarter of a century ago, based on the fact that Indigenous over-representation in prison has doubled in that time.

There are undoubtedly many more Aboriginal deaths in custody each year now than previously, but the rate of Aboriginal deaths in prison (that is, say, the number of deaths per 1000 Aboriginal prisoners) has remained virtually unchanged.

However, the royal commission was never about Aboriginal over-representation in prison or police custody; it was primarily about deaths and duty of care. The royal commission was required to consider the underlying social factors leading to deaths in custody, but the Letters Patent (or terms of reference) made no mention of over-representation, or even imprisonment rates. Nor was it required to compare Aboriginal and non-Aboriginal deaths in custody.

In fact, in the early days of the royal commission, when I and a small team of researchers were able to prove unequivocally that Aboriginal people were slightly less likely to die in prison or police custody than non-Aboriginal people, we were met with derision and disbelief. We were even accused of disloyalty to the royal commission.

I am not for a moment suggesting the royal commission was a complete success, but neither was it a complete failure. Let's go back to the basic facts.

The royal commission examined 99 deaths of Aboriginal people between 1980 and 1989. Sixty-three were in police custody, 33 occurred in prisons, and three in juvenile detention. In other words, the focus of the royal commission was mainly about deaths in police custody.

Aboriginal deaths in prisons occurred relatively less frequently.

In fact, in three of the eight Australian jurisdictions (Victoria, Tasmania and the ACT), there were none in the whole of that decade.

It was only after the royal commission that Aboriginal deaths in prisons increased markedly, while at the same time deaths in police custody decreased significantly.

The decrease was brought about by Australian police generally making a concerted effort to transfer Aboriginal detainees to prison as soon as practicable, release them on bail, or find someone to stay with them. These informal efforts were largely successful from a police perspective, even though they simply handed many risky cases over to correctional authorities.

The royal commission was only partially successful because it was founded on the wrong question. It should have been required either to examine both Indigenous and non-Indigenous deaths in custody, or to establish the facts and seek to explain the gross over- representation of Indigenous people in both forms of custody.

As it was, the royal commission wasted many hours establishing the details of the 99 cases, some of which had occurred up to 10 years earlier. In only a handful of cases were referrals made to crown prosecution services or police commissioners, but none of these led to prosecutions or disciplinary action.

Also, I doubt that anyone read every word of all the (well over 100) reports the commission published.

For a cost of about \$40 million and a further outlay of about \$400 million to implement the recommendations in the final report, it must be largely seen as a waste of time and money.

One of the myths surrounding this subject is the belief that most Aboriginal prisoners are incarcerated for minor offences, such as public drunkenness or traffic offences.

There probably was some basis for that belief years ago, but it is not the case today. A glance at the relevant Black deaths in custody myths and half-truths abound From Page 1 Indigenous offenders may be given lesser sentences.

Illustration: Andrew Dyson Australian Bureau of Statistics data shows there is very little difference between the severity of the offences committed by Indigenous and non-Indigenous prisoners.

Most of the Indigenous prisoners have committed serious offences that would have had the same result if they were not Indigenous.

Another fact that will not be welcomed is that some research has suggested Indigenous offenders may be given lesser sentences than others. Certainly, at an anecdotal level, several judges and magistrates will admit in private that they look for a "discount" in the sentences they impose on Indigenous offenders. More research is needed on this sensitive issue.

It may take many years to make any observable progress towards reducing over-representation, and the consequential deaths, but I am hopeful Dodson, when he takes his place in the Senate, may be able to use his wide experience, natural

authority and powers of persuasion to create a national consensus on the urgent need for this blight on Australian society to be resolved.

I can't think of any other person who has a better chance of achieving this result.

In pursuing this end, I am quite sure Dodson will draw on some of the work of the royal commission, such as focusing on the basic facts of Aboriginal disadvantage, and I also hope he will stress the need for continuous high-quality research.

Finally, I hope he will leave aside his belief in "justice re- investment", which, in my view, cannot solve the problem.

David Biles is a semi-retired criminologist. For three years he was head of the criminology research group of the royal commission.

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