

Aboriginal deaths in custody: 25 years on, the vicious cycle remains

About 340 Indigenous people have died in prisons and police cells since the 1991 royal commission report. Critics say the lack of progress is 'mind-blowing'



Carol Roe outside the inquest into the death of her granddaughter Ms Dhu. On Friday she joined a march in Perth calling for the recommendations of the Aboriginal deaths in custody royal commission to be implemented.

By Calla Wahlquist
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Carol Roe's house overlooks a cemetery. From her door she can see across the road to the grave where her granddaughter, known for cultural reasons only as Ms Dhu, is buried. Dhu has been there for 20 months.

"Sometimes I lay in my bed after I put all the grannies [grandchildren] to sleep and think, 'Why am I here?'" Roe told Guardian Australia from her home in Geraldton, Western Australia, this week. "My husband passed and my grannies are going before me. They should be putting me to rest."

Dhu, a 22-year-old Yamatji woman, died from a severe infection in police custody in Port Hedland on 4 August 2014. She is one of about 340

Indigenous people to have died in custody since the royal commission into such deaths handed down its final report on 15 April 1991.

The bulk of the commission's 339 recommendations remain unimplemented or only partially implemented, a 2015 report by law firm Clayton Utz found. In some places laws have been introduced that directly contradict the recommendation that jail be the option of last resort for Indigenous people.

These include paperless arrest laws in the Northern Territory, which allow police to detain people for minor offences without charge and have been linked to at least one death in custody. In Western Australia laws imposing mandatory sentencing and jail for fine defaulters were strengthened by the current government, and Queensland explicitly removed the principle that detention should be the option of last resort for children.

On Friday, the 25th anniversary of the final report, Roe and other members of Dhu's family joined a march in Perth to protest about the lack of action.

"In another 25 years we will be doing another one," Roe said. "We need another royal commission now, but will they do the recommendations?"

The commission investigated the deaths of 99 Aboriginal people between 1980 and 1989, but the 1983 death of 16-year-old John Pat, in a police cell in Roebourne, 190km down the road from where Dhu died 21 years later, was the catalyst. Its overarching finding was that Indigenous people were more likely to die in custody because they were more likely to be in custody, and urged governments to address the imbalance in incarceration.

The Yawuru man and national Indigenous leader Pat Dodson says governments have comprehensively failed to achieve this end. At an address to the National Press Club on Wednesday, Dodson, who was on the royal commission, said the number of Aboriginal people in jail was now double that in 1991 – thanks, he said, to a culture "that permits the criminal justice system to continue to suck us up like a vacuum cleaner and deposit us like waste in custodial institutions".

The situation is worst in WA, which has the highest rate of racialised imprisonment in the country, followed by the NT. Indigenous children in WA are 53 times more likely to be jailed than non-Indigenous children; adults 17 times more likely.

Dhu was jailed on a warrant of commitment for \$3,622 in unpaid fines and died 45 hours after being put into the lockup. Her family have campaigned for an end to the practice of sending people to jail for failing to pay fines, and for the introduction of an independent mandatory custody notification system –

both recommendations of the royal commission that have been implemented in other states, such as New South Wales, but not WA.

Dhu's uncle, Shaun Harris, who has led the public campaign for legislative change in the wake of her death, believes that if the commission's recommendations had been fully implemented his niece would not have died. "Another commission would be just more money wasted – they need to implement the changes from the one we have already done," Harris said.

"[Dhu would] be 25 in December, she was born eight months after the findings were released," Harris said. "That proves that nothing has changed, that she could be born and die before these findings are implemented."

In 2015 Indigenous people were 13 times more likely to be jailed than non-Indigenous people and made up 27% of the prison population, according to the Australian Bureau of Statistics. The imprisonment rate has been climbing for the past decade. In 1991 the ABS reported that Indigenous people, then counted as a smaller proportion of the overall population, were 18 times more likely to be imprisoned and made up 20% of the prison population.

"Certainly one has to wonder what happened to the principle of imprisonment as a last resort, and the 29 recommendations relating to this issue," Dodson told the press club. "A quarter of a century after we handed down our findings, the vicious cycle remains the same. Mandatory sentencing, imprisonment for fine defaults, paperless arrest laws, tough bail and parole conditions, and punitive sentencing regimes certainly haven't helped. Neither do funding cuts to frontline legal aid services."

A recommendation that had succeeded, Dodson said, was for the removal of ligature points from prison and police cells, leading to reduction in the number of deaths by hanging. But Indigenous people in custody still die this way: on 6 March 2013, a 20-year-old Bibbulmun man, Jayden Bennell, was found hanged in Perth's Casuarina prison, the first of four Aboriginal men to die in this way at that prison in a three-year period. Another Aboriginal man died in similar circumstances in Broome lockup in December.

"I want no more kids to die in prison – because we don't have a death sentence in Australia," Bennell's mother, Maxine, told the ABC this week.

Ruth Barson, from the Human Rights Law Centre, said the lack of change since the royal commission was "mind-blowing" and would not be accepted on other issues.

"If we could imagine that the royal commission into institutional responses to child sex abuse happened, they made their recommendations, and then

25 years later double the amount of people were coming forward as victims of sexual abuse and the recommendation had not been implemented – the community would not stand for it,” she said.

The opposition leader, Bill Shorten, has called for national justice targets to be included in Close the Gap goals, which would mean the prime minister would have to report on progress around reducing Indigenous imprisonment rates to parliament.

But the Indigenous affairs minister, Nigel Scullion, has maintained justice targets are an issue for individual states and territories, a point he reiterated in a press release marking the anniversary of the royal commission.

“There are very clear lines of responsibility in this important area of public policy,” he said. “The states and territories are responsible for directly running the criminal justice system.”

An Amnesty International spokesman, Julian Cleary, said the statement was a “dodging of responsibility” and misleading in its claim that the number of Indigenous deaths in custody had fallen.

“Minister Scullion’s statement attempted to pass the buck to the states and territories, but these statistics prove this is a crisis at a national level, and requires federal government action,” Cleary said.

The first recommendation of the royal commission was for state and territory governments to report annually to the federal government on their progress implementing the recommendations. This had not happened, Cleary said.

“Today, one in five people who die in custody are Indigenous,” he said. “This must not be presented as a success; it is a disaster in a nation where Aboriginal and Torres Strait Islander people make up less than 3% of our population.”

Dhu’s family has joined the Aboriginal Legal Service of WA and the Human Rights Law Council in lobbying the West Australian government to introduce specific justice targets, but the premier, Colin Barnett, is yet to respond. The state police minister, Liza Harvey, said in a statement to Guardian Australia that the government was “continuing working on tackling the issue of Aboriginal over-representation in the justice system and deaths in custody” and that “several programs have already been implemented and others are progressing”.

But Dennis Eggington, the chief executive of the Aboriginal Legal Service of WA, said the justice system was at “crisis point”.

“It perpetuates inequality and injustice – which is exactly the opposite of what it is intended to do,” he said.