



Australian Government

Australian Institute of Criminology

Questions on Notice

Parliamentary Joint Committee on Law Enforcement —
National Deaths in Custody Program

Response prepared by the Australian Institute of Criminology

Questions on Notice 1: Australian and international deaths in custody data

Australia is the only English speaking country that administers a national data collection on prison and police custody deaths.

Prison custody

Data on the number and rates of prison custody deaths in Australia compared with rates published for New Zealand, England and Wales, US and Canada in Table 1. Data refer to the most recent year of data publicly available or 2017–18 data for comparison purposes with published data from the Australian Institute of Criminology’s (AIC) National Deaths in Custody Program (NDICP). These data are not directly comparable largely due to differences in the prison institutions included or excluded in the death counts. Nonetheless, the prison custody death rate is lower in Australia compared with New Zealand, England and Wales and the US. The lower death rate in Canada may be due to the exclusion of non-federal prisons in the death count.

| Country | Collection | Most recent year of data | n | Rate |
|-------------------|---|--------------------------|-------|------|
| Australia | National Deaths in Custody Program ^a | 2017–18 | 72 | 0.17 |
| New Zealand | Deaths in prison ^b | 2015–16 | 26 | 0.28 |
| England and Wales | Safety in custody ^c | 2017–18 | 310 | 0.37 |
| US | Mortality in Correctional Institutions (State prison) ^d | 2016 | 3,729 | 0.30 |
| | Mortality in Correctional Institutions (Federal prison) ^d | 2016 | 388 | 0.25 |
| | Mortality in Correctional Institutions (Jails) ^e | 2016 | 1,071 | 0.15 |
| Canada | Deaths in a correction service institution (Federal custody) ^f | 2015–16 | 65 | 0.04 |

Note: Prison custody death rates from England and Wales and Canada are published as per 1,000 prisoner population and US death rates per 100,000 prisoner population. These have been presented in Table 1 as per 100 prisoner population

Sources: a: Doherty & Bricknell 2020. *Deaths in custody in Australia 2017–18*. Statistical Report no. 21. Canberra: AIC. <https://www.aic.gov.au/publications/sr/sr21>; b: NZ Department of Corrections nd. *Deaths in prison*. https://www.corrections.govt.nz/resources/research_and_statistics/deaths_in_custody; c: Ministry of Justice 2018. *Safety in custody quarterly: update to March 2018*. <https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2018>; d: Carson EA & Cowhig MP 2020a. *Mortality in state and federal prisons, 2001–2016 – Statistical tables*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/msfp0116st.pdf>; e: Carson EA & Cowhig MP 2020b. *Mortality in local jails, 2001–2016 – Statistical tables*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/mlj0016st.pdf>; f: Correctional Service Canada 2017. *Annual report on deaths in custody 2015–2016*. Ottawa, Ontario: CSC. <https://www.csc-scc.gc.ca/research/005008-3010-en.shtml>. Federal penitentiaries house inmates with sentences of two years or more. Data from Canada excludes provincial prisons for inmates with shorter sentences

Police custody

Data on deaths in police custody are collected in Australia and England and Wales. A national collection is not administered in New Zealand or Canada and the US Arrest-Related Deaths data collection is being revised and historical data is not currently available.

There were 21 deaths in police custody in Australia between 1 July 2017 and 30 June 2018 and 170 deaths in England and Wales between 1 April 2017 and 31 March 2018. Again, these data are not directly comparable due to different definitions and counting rules. Deaths in police custody collected in the NDICP refer to all deaths in institutional settings or police operations where officers were in close contact with the deceased (Category 1) and custody-related police operations (Category 2). Deaths during or following police contact in England and Wales include: road traffic fatalities, fatal shootings, deaths in or following police custody, apparent suicides following police custody, other deaths following police contact that were subject to an independent investigation and where there is an allegation or indication that police contact, directly or indirectly, contributed to the death (IOPC 2018).

Table 2: Deaths in police custody

| Country | Collection | Most recent year of data | n |
|-------------------|--|--------------------------|-----|
| Australia | National Deaths in Custody Program ^a | 2017–18 | 21 |
| New Zealand | None | – | na |
| England and Wales | Deaths during or following police contact ^b | 2017–18 | 170 |
| US | Arrest-Related Deaths ^c | – | na |
| Canada | None | – | na |

Notes: – not applicable na not available

Sources: a: Doherty & Bricknell 2020. *Deaths in custody in Australia 2017–18*. Statistical Report no. 21. Canberra: AIC. <https://www.aic.gov.au/publications/sr/sr21>; b: Independent Office for Police Conduct 2018. *Deaths during or following police contact: Statistics for England and Wales 2017/18*. London: IOPC. https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201718.pdf; c: The Arrest-Related Deaths is an annual national census of persons who died either during the process of arrest or while in the custody of state or local law enforcement personnel. Data were collected between 2003 and 2009 but data tables are not currently available. The collection is being revised (see summary at <https://www.bjs.gov/index.cfm?ty=tp&tid=82>)

Questions on Notice 2: Population death rates

The standardised death rate for the Aboriginal and Torres Strait Islander population in 2017 was 976.3 per 100,000 (n=2,988; ABS 2018). The rate for males was 1070.3 per 100,000 for males and 887.4 per 100,000 for females (ABS 2018). The death rate for adults aged 18 years and over is not available; instead 2017 death rates are shown for each 10 year age group (see Table 3). Rates are calculated using the total Aboriginal and Torres Strait Islander population.

Table 3: Standardised death rates for Aboriginal and Torres Strait Islander people, 2018

| Age group | Rate per 100,000 |
|-------------|------------------|
| 15–24 | 105.9 |
| 25–34 | 231.9 |
| 35–44 | 508.5 |
| 45–54 | 988.6 |
| 55–64 | 1,578.8 |
| 65–74 | 3057.5 |
| 75 and over | 7808.3 |

Source: ABS 2018. Causes of Death, Australia, 2017. ABS cat. no. 3303.0. Canberra: AIC

Prison custody death rates are calculated using the prisoner population (not the Aboriginal and Torres Strait Islander population) and different age groups. In 2017–18 Indigenous prisoners aged 55 years and over had the highest death rates (0.58 per 100 prisoners) followed by prisoners aged 40 to 54 years (0.24 per 100 prisoners). The death rates for younger Indigenous prisoners was 0.12 per 100 for Indigenous prisoners aged 18–24 years and 0.08 per 100 for Indigenous prisoners aged 25–39 years.

Questions on Notice 3: Method of recording Indigenous status

The NDICP uses two main sources of data: NDICP notification forms completed by all state and territory police services and correctional departments in Australia and coronial records accessed through the National Coronial Information System (NCIS). The NCIS is an online repository of coronial data for Australia and New Zealand. The NDICP notification form includes a data field for the Indigenous status of the deceased (Aboriginal, Torres Strait Islander, Aboriginal and Torres Strait Islander, Neither Aboriginal or Torres Strait Islander). These data are cross-referenced with Indigenous origin and Indigenous status information recorded by the NCIS for each deceased.

The NCIS provides a data quality statement on the identification of Aboriginal and Torres Strait Islander people on its database (see <https://www.ncis.org.au/wp-content/uploads/2019/11/Data-Statement-about-indigenous-identification.pdf>). The statement notes that two data fields — Indigenous origin and Indigenous status — are used to confirm whether the deceased had identified as an Aboriginal or Torres Strait Islander. Indigenous origin is drawn from a dataset provided to the NCIS by Coroners Courts and Indigenous status information is provided by Births, Deaths and Marriages registries. These are used to cross-refer and confirm Indigenous identification. The NCIS notes that it does not combine the two data items as:

(it) is primarily a collection of data from the Coroners Courts about reportable deaths. It is therefore important the indigenous origin of the deceased as recorded by the Court remains

reflected in the NCIS. Displaying the two data sources separately also allows for some possible indications to be drawn as to the accuracy of a value. If both sources note the deceased was of the same indigenous background, there should be a reasonable level of confidence in the accuracy of this data as it was obtained through separate processes (NCIS 2019: 2)

The method used by the NCIS to record Indigenous status is outlined in its Explanatory Notes (see <https://www.ncis.org.au/about-the-data/explanatory-notes/>):

The Indigenous status of a deceased person is primarily sourced from the police summary of death form provided to the investigating coroner. This information is not always known or collected. In cases where no information about the Indigenous status of the deceased person is available, the Indigenous status field on the NCIS database is coded as *Unlikely to be Known*. Jurisdictional comparisons of fatalities among Indigenous persons must take into account these limitations (NCIS nd: np)

Questions on Notice 4: Collection of data on lack of proper care in NDICP collection

The NDICP was established to monitor and conduct research into deaths in prison and police custody.

The primary responsibility of the NDICP is to maintain a database that provides accessible statistical information on the scope and nature of deaths in custody. This purpose informed the development of data items included in the database — measurable, quantitative information about the deceased (e.g. age, gender, Indigenous status, legal status) and the cause, manner, location and circumstances of the death that can be consistently derived from the two primary data sources cited above. These data are the basis for the reports published in the *Deaths in custody in Australia* series.

Information on lack of proper of care and similar indicators of conduct and lack/absence of procedural compliance is qualitatively derived from published coronial findings and outside the scope of NDICP database processes. Further, it is a broad measure that is best captured and understood by qualitatively examining the range of scenarios and factors that contributed to the death. This function of the program relies on qualitative analysis of relevant coronial findings and recommendations and served through discrete studies on specific issues of custodial death (e.g. shooting deaths in police custody, motor vehicle pursuits). These examinations are listed in the AIC Deaths in custody publications document tabled by the Deputy Director Dr Rick Brown at the commencement of the hearing

Questions on Notice 5: Objective review of coronial findings

As noted in the previous response, the AIC has summarised reviews of coronial findings and recommendations and relevant policy documents in previous deaths in custody research papers. The NDICP produces an annual Statistical Report and one to two Statistical Bulletins each year. It has been proposed that the latter, which focus on a specific death in custody issue, incorporate additional contextual analyses of coronial findings. Qualitative analysis depends on the availability of coronial records on the NCIS. The AIC currently has access to closed cases in Western Australia and open and closed cases in the remaining jurisdictions.

Questions on Notice 6: Publication of deaths in custody distinguishing Aboriginal and Torres Strait Islander deaths

The NDICP collects data on Indigenous status according to the ABS standard (see below). Data has not been presented as Aboriginal and Torres Strait Islander deaths due to the small, financial year numbers of Torres Strait Islander deaths in prison custody and Indigenous deaths in police custody overall. While small cell sizes ($n \leq 5$) are used in the *Deaths in custody in Australia* report series to ensure transparent reporting of Indigenous deaths in custody, there is also the need to reduce risk of identification which may affect Torres Strait Islander deaths.

Between 1979–80 and 2017–18, there were 328 Indigenous deaths in custody. Of these, 319 of the deceased identified as Aboriginal and nine identified as Torres Strait Islander (see Table 4). Among the 167 Indigenous deaths in police custody, 164 of the deceased identified as Aboriginal and three as Torres Strait Islanders.

Table 4: Aboriginal and Torres Strait Islander deaths in prison and police custody

| | Aboriginal | Torres Strait Islander | Aboriginal and Torres Strait Islander | Total |
|---------------------------------|------------|------------------------|---------------------------------------|-------|
| Prison custody ^a | 319 | 9 | 0 | 328 |
| Juvenile detention ^a | 8 | 0 | 0 | 8 |
| Police custody ^b | 164 | 3 | 0 | 167 |

a: Deaths from 1979–80 to 2017–18

b: Deaths from 1989–90 to 2017–18

Source: NDICP 1979–2018 [computer file]

Questions on Notice 7: Indigenous population estimates

The Australian Bureau of Statistics (ABS) publishes data on the size and growth of the Aboriginal and Torres Strait Islander population in the *Estimates and Projections, Aboriginal and Torres Strait Islander Australians* series. The most recent publication *Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2006 to 2031* provides national and state/territory estimate population for the years 2006 to 2016 and projected population changes from 2017 to 2031.

In 2016, 3.3 percent of the Australian population were Aboriginal and Torres Strait Islander people ($n=798,400$) (ABS 2019). The experimental estimated population in 2006 was 517,000 people, or 2.5 percent of the total Australian population (ABS 2008). Please note a revised estimate population for 2006 was recorded as 640,036 in the most recent estimates and projections series (ABS 2019) but a proportion of the Australian population was not provided. The increase and projected increases in the Aboriginal and Torres Strait Islander population is due to ‘an increase in the number of women of child-bearing ages...as well as the assumption of increasing paternity rates’ (ABS 2019: np).

Indigenous status information is collected in Australia through self-identification questions. The Indigenous status standard developed by the ABS and used in the collection of Census data and the derivation of backcast and projected population estimates is shown in Box 1. The ABS notes that ‘the

significant volatility in the Aboriginal and Torres Strait Islander Census counts and the quality of data on births, deaths and migration of Aboriginal and Torres Strait Islander persons do not support the use of the standard approach to population estimation' (ABS 2019: nd). Hence the methods used to derive population numbers and proportions are not clarified here but can be found in the Explanatory Notes to the Estimates and Projections, Aboriginal and Torres Strait Islander Australians, 2006 to 2031 report (see <https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3238.0Explanatory%20Notes502006%20to%202031?OpenDocument>)

Box 1: Indigenous status standard

[Are you] [Is the person] [Is (name)] of Aboriginal or Torres Strait Islander origin? (For persons of both Aboriginal and Torres Strait Islander origin, mark both 'Yes' boxes.)

No

Yes, Aboriginal

Yes, Torres Strait Islander

Source: ABS 2014. Indigenous Status Standard, 2014, Version 1.5. ABS cat. No. 1200.0.55.008. Canberra: ABS

Questions on Notice 8: Access to interpreters as a factor in Indigenous deaths in custody

There has not been a formal examination of access to interpreters as a factor in Indigenous deaths in custody. The issue of interpreter access was noted but not examined in detail in a 1996 report prepared by the Office of the Aboriginal and Torres Strait Islander Social Justice Commissioner on deaths in custody between 1989 and 1996.

References

- Australian Bureau of Statistics (ABS) 2019. *Estimates and projections, Aboriginal and Torres Strait Islander Australians, 2006 to 2031*. Cat no. 3238.0. Canberra: ABS.
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3238.0Main+Features12006%20to%202031?OpenDocument>
- Australian Bureau of Statistics (ABS) 2018. *Causes of Death, Australia, 2017*. ABS cat. no. 3303.0. Canberra: AIC.
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/allprimarymainfeatures/D5FFC33C35BDEB78CA25847F0013A20C?opendocument>
- Australian Bureau of Statistics (ABS) 2008. *Experimental estimates of Aboriginal and Torres Strait Islander Australians, Jun 2006*. Cat no. 3238.0.55.001. Canberra: ABS.
<https://www.abs.gov.au/AUSSTATS/abs@.nsf/Lookup/3238.0.55.001Main+Features1Jun%202006?>
- Carson EA & Cowhig MP 2020a. *Mortality in state and federal prisons, 2001–2016 – Statistical tables*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/msfp0116st.pdf>
- Carson EA & Cowhig MP 2020b. *Mortality in local jails, 2001–2016 – Statistical tables*. Bureau of Justice Statistics. <https://www.bjs.gov/content/pub/pdf/mlj0016st.pdf>
- Correctional Service Canada 2017. *Annual report on deaths in custody 2015–2016*. Ottawa, Ontario: CSC.
<https://www.csc-scc.gc.ca/research/005008-3010-en.shtml>
- Doherty & Bricknell 2020. *Deaths in custody in Australia 2017–18. Statistical Report no. 21*. Canberra: AIC.
<https://www.aic.gov.au/publications/sr/sr21>
- Independent Office for Police Conduct 2018. *Deaths during or following police contact: Statistics for England and Wales 2017/18*. London: IOPC.
https://www.policeconduct.gov.uk/sites/default/files/Documents/statistics/deaths_during_following_police_contact_201718.pdf
- Ministry of Justice 2018. *Safety in custody quarterly: update to March 2018*.
<https://www.gov.uk/government/statistics/safety-in-custody-quarterly-update-to-march-2018>
- New Zealand Department of Corrections nd. *Deaths in prison*.
https://www.corrections.govt.nz/resources/research_and_statistics/deaths_in_custody

Additional resource

- Australian Institute of Health and Welfare (AIHW) 2019. *The health of Australia's prisoners 2018*. Canberra: AIHW. <https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/contents/table-of-contents>