

1 Introduction

Deloitte was commissioned by the Department of the Prime Minister and Cabinet (PM&C) to review the status of the implementation of the recommendations from the Royal Commission into Aboriginal deaths in custody (RCIADIC).

1.1 The Royal Commission into Aboriginal deaths in custody

The RCIADIC was established in October 1987 in response to growing public concern over deaths of Aboriginal and Torres Strait Islander people in custody. The RCIADIC was tasked with inquiring into 99 Aboriginal and Torres Strait Islander deaths in custody that occurred between 1980 and 1989², including any action subsequently taken in respect of each of those deaths and the conduct of coronial, police and other inquiries. The RCIADIC examined both the primary causes of death as well as secondary factors resulting in Aboriginal and Torres Strait Islander incarceration. The terms of reference included accounting for social, cultural and legal factors that have a bearing on the deaths of Aboriginal and Torres Strait Islander people in custody.

The final report of the RCIADIC was delivered in 1991 and made 339 recommendations concerning procedures for persons in custody as well as social factors including youth policy, alcohol, health, employment, housing, land rights, self-determination and reconciliation. It was found that police and prisons failing their duty of care, and high numbers of Aboriginal and Torres Strait Islander people being arrested and incarcerated were key contributors to Aboriginal and Torres Strait Islander deaths in custody.

Responsibility for implementing the RCIADIC's recommendations covered nine jurisdictions in Australia, including the Commonwealth, and the eight States and Territories. This review, commissioned 27 years after the RCIADIC Report, is intended to revisit the status of the RCIADIC's recommendations in light of new policies and initiatives that address the recommendations, as well as broader social developments affecting Aboriginal and Torres Strait Islander people.

1.2 Context

Aboriginal and Torres Strait Islander people comprise approximately 3% of Australia's population, but continue to face disadvantage in a number of areas including education, employment, health and well-being. Aboriginal and Torres Strait Islander people also experience disproportionately high rates of incarceration and continue to die in custody, albeit at reducing rates as discussed below.

The RCIADIC's terms of reference included accounting for social, cultural and legal factors that have a bearing on the deaths of Aboriginal and Torres Strait Islander people in custody. A key finding of the RCIADIC Report was that reductions in rates of imprisonment could translate to a reduced risk of death in custody. Indeed, significant progress has been made on a number of themes identified by the RCIADIC, including:

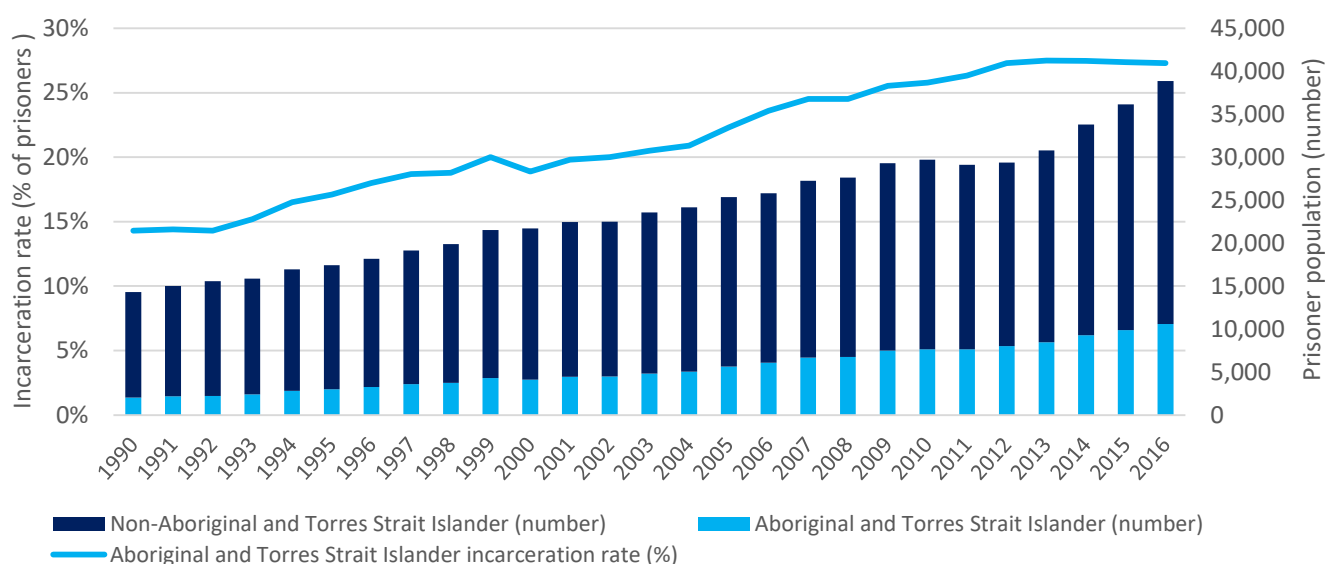
- The 1997 'Bringing Them Home' report of *the National inquiry into the separation of Aboriginal and Torres Strait Island children from their families*, which concluded that Aboriginal and Torres Strait Islander communities have endured gross violations of human rights, and made recommendations for additional funding for affected people and formal apologies by Australian parliaments; and

² The scope of the deaths included in the RCIADIC was expanded in 1988 and again in 1989, after the establishment of the RCIADIC in 1987.

- The *Closing the Gap* campaign initiated by the Council of Australian Governments (C) in 2008, which set measurable targets for reducing Aboriginal and Torres Strait Islander disadvantage, including in health, education and employment outcomes.

However, 25 years after the RCIADIC handed down its report, the incarceration rate among Aboriginal and Torres Strait Islander people has increased compared to that of the rest of the population. The share of the prison population that is made up by Aboriginal and Torres Strait Islander people has nearly doubled between 1990 and 2016, climbing from 14% to 27% (Chart 1.1). In absolute numbers, the Aboriginal and Torres Strait Islander prisoner population reached over 10,600 in 2016, up from 2,046 in 1990 (a more than fivefold increase). Over the same period the number of non-Aboriginal and Torres Strait Islander prisoners more than doubled from 12,200 to just over 28,000. Data from the ABS show that the incarceration rate of Aboriginal and Torres Strait Islander people is 15 times higher than the incarceration rate of non-Aboriginal and Torres Strait Islander people (ABS, 2016).

Chart 1.1 Aboriginal and Torres Strait Islander prison population (number) and incarceration rate (% of prisoners)



Source: ABS (2016).

Deaths in custody also remain a persistent challenge in Australian police watch-houses and correctional institutions. In 2012-13, there were 71 deaths in custody across both police and prison settings (Australian Institute of Criminology (AIC), 2015). Of these, 13 deaths were Aboriginal and Torres Strait Islander people. This is up slightly from 61 deaths in 1990-91, of which 8 were Aboriginal and Torres Strait Islander people. Overall, during the 10 years to 2012-13, there were 142 Aboriginal and Torres Strait Islander deaths in prison and police custody. However, rates of death in prison custody (per 100 prisoners) have fallen since 1990-91 for all prisoners (Chart 1.2). In 2012-13, there were 0.11 Aboriginal and Torres Strait Islander deaths per 100 prisoners, compared to 0.24 in 1990-91. Due to limited data on the number of people in police custody, the rate of death in police custody cannot be determined.

Chart 1.2 Deaths in prison custody by Aboriginal and Torres Strait Islander status (per 100 prisoners)



Source: Deloitte Access Economics analysis; ABS (2016); AIC (2015).

While there have been a number of positive steps taken since the RCIADIC Report in 1991, it is clear that further work is still required to successfully address the disproportionately high, and growing, rates of incarceration among Aboriginal and Torres Strait Island people. The findings of the RCIADIC continue to be relevant in guiding future policies and initiatives aimed at addressing Aboriginal and Torres Strait Islander disadvantage and reducing rates of incarceration. This report represents an important opportunity to systematically review progress on implementing the RCIADIC’s recommendations and identify areas where further action may be warranted.

1.3 Project overview

This review included:

- developing an assessment methodology to assess the progress made against each recommendation;
- conducting desktop research into the actions taken to respond to each recommendation. Key documents that were utilised in the desktop review are noted in Section 2.2;
- consulting with government agencies from each of the nine jurisdictions to collect information on the major actions undertaken to address the RCIADIC recommendations; and
- assessing the status of each recommendation based on the available information.

The scope of the report was limited to:

- assessing the actions taken to respond to each recommendation, noting that commentary on whether the intended outcomes from each recommendation have been achieved was outside of scope; and
- considering the major actions taken to respond to each recommendation, noting that an exhaustive history of all the relevant government actions since 1991 was also outside of scope.

Further detail on the scope of the analysis is provided in Chapter 2.

1.4 Report structure and terminology

The report has been structured as follows:

- Chapter 2 outlines the assessment methodology that was used in assessing the implementation of each recommendation.
- The analysis of each recommendation has been divided into the following sections, which have been grouped thematically based on the categorisations used in the RCIADIC Report:

- Chapter 3 (Coronial matters: recommendations 1-47): overview, the findings of the Commissioners as to the deaths, post-death investigations, and the adequacy of information.
 - Chapter 4 (The justice system: recommendations 48-62): Aboriginal society today, relations with the non-Aboriginal community, the criminal justice system (relations with police), and young Aboriginal people and the juvenile justice system.
 - Chapter 5 (Aboriginal and Torres Strait Islander disadvantage: recommendations 63-78): the harmful use of alcohol and other drugs, schooling, housing and infrastructure, and self-determination and local government.
 - Chapter 6 (Non-custodial approaches: recommendations 79-121): diversion from police custody, and imprisonment as a last resort.
 - Chapter 7 (Prison safety: recommendations 122-187): custodial health and safety, and the prison experience.
 - Chapter 8 (Self-determination: recommendations 188-213): the path to self-determination, and accommodating difference (relations between Aboriginal and non-Aboriginal people)
 - Chapter 9 (Cycle of offending: recommendations 214-245): improving the criminal justice system, and breaking the cycle.
 - Chapter 10 (Health and education: recommendations 246-299): towards better health, coping with alcohol and other drugs (strategies for change), and educating for the future.
 - Chapter 11 (Equal opportunity: recommendations 300-327): increasing economic opportunity, and improving the living environment (housing and infrastructure).
 - Chapter 12 (Reconciliation, land needs and international obligations: recommendations 328-339): conforming with international obligations, addressing land needs, and the process of reconciliation.
- Appendix A includes a list of government agencies who were consulted in the development of this report.
 - Appendix B provides a concordance that records the responsibility designation, and status of implementation, for each recommendation.
 - Appendix C contains responses from government to the findings of this report.

The following terminology has been used throughout the report:

- The final report from the RCIADIC is referred to as the "RCIADIC Report". Subsequent annual reports which reported on the implementation of the recommendations are referred to as '*[Year] Annual Report*' or '*[Year] Implementation Report*'.
- The term "Aboriginal and Torres Strait Islander" has been used throughout the report, with the following exceptions:
 - The RCIADIC Report used the term "Aboriginal". The original text of each recommendation has been reproduced in Deloitte's report.
 - Titles which use the term "Aboriginal" (for example, Aboriginal Health Workers) or the term "Indigenous" (for example, the Indigenous Advancement Strategy).
 - The NSW Government advised that the term "Aboriginal" should be used in NSW.
 - Terminology used in the input received from governments has been retained.

Throughout the report, the key actions and statuses for each of the nine jurisdictions have been listed based on the population of each jurisdiction: the Commonwealth, followed by New South Wales, Victoria, Queensland, South Australia, Western Australia, Tasmania, the Northern Territory, and the Australian Capital Territory.