4. ADEQUACY OF INFORMATION (RECOMMENDATIONS 41 - 47)

1. Introduction

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) examined the statistics of Indigenous and non-Indigenous deaths in custody and drew comparisons between Indigenous and non-Indigenous deaths revealing a number of significant differences between the two groups.

In Chapter 5 of the National Report,\(^1\) the RCIADIC found that, although Indigenous and non-Indigenous people in custody have similar death rates, on a per capita basis, higher proportions of Indigenous people died in custody.\(^2\) In Chapter 6 of the National Report, the RCIADIC also examined some basic demographic information on the Indigenous people in custody, including age and gender distributions of the Indigenous people in police and prison custody in comparison with those of non-Indigenous people.\(^3\) In particular, it found that the mean age among Indigenous people held in the cells was 1.4 years older than the mean of the non-Indigenous people,\(^4\) that a substantial number of young people under the age of 18 years were placed in police cells\(^5\) and that a high proportion of Indigenous women were placed in custody.\(^6\)

In reviewing the statistics and making these findings, the RCIADIC emphasised the importance of monitoring and maintaining accurate information about deaths in custody.\(^7\) The statistical information in Chapter 5 of the National Report was derived from information supplied by all Australian police and prison authorities to the Criminology Research Unit of the Royal Commission.\(^8\) The RCIADIC also relied upon estimates derived from 1986 Census of Population and Housing conducted by the Australian Bureau of Statistics.\(^9\) This information assisted the RCIADIC to gain a

\(^2\) Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) vol 1, ch 5, 103 [5.1.3].
\(^3\) Ibid ch 6.
\(^4\) Ibid 105 [6.1.3].
\(^5\) Ibid 106 [6.1.5].
\(^6\) Ibid [6.1.6].
\(^7\) Ibid 104 [5.1.5].
\(^8\) Ibid ch 5, 103 [5.1.1].
\(^9\) Ibid [5.1.2].
wider understanding of the nature and extent of the phenomenon of deaths in custody in general.\(^{10}\)

However, the RCIADIC considered that the demographical information about people in police custody was scarce.\(^{11}\) In an attempt to address the unsatisfactory shortage of information, a National Police Custody Survey was conducted for the month of August 1988 by the Criminology Research Unit of the Royal Commission (with the co-operation of the Commissioners of Police).\(^{12}\) The survey recorded the basic information on each occasion on which a person was taken into police custody during the month of August 1988.\(^{13}\) The RCIADIC reported that, apart from this survey, there was virtually no information available to describe the demographic characteristics of the people who are at risk of death in custody and the police forces did not collect any such data.\(^{14}\) Having available such data is critical if appropriate policies in this area are to be developed and implemented. Accordingly, the RCIADIC considered it essential that all jurisdictions have available detailed information on people being held in police cells and that the Australian Police Ministers' Council and the State Governments should give priority to addressing the deficiencies in information and attaining comparable data across jurisdictions that can be aggregated to produce a national overview.\(^{15}\)

In light of the urgent need for adequate information on people in police, corrections or juvenile custody, the RCIADIC made a number of Recommendations aimed at ensuring high quality data is available on custodial populations, including that:

- The Australian Institute of Criminology regularly monitor the statistics on Indigenous and non-Indigenous deaths in custody (Recommendation 41);
- there be a requirement by the government to regularly provide and publish detailed information on people passing through police cells (Recommendation 42);
- regular national surveys be conducted to monitor effectiveness of improvements in legislation and policies on police custody (Recommendation 43);
- the Australian Institute of Criminology co-ordinate and implement the recommended series of national surveys (Recommendation 44);
- Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody (Recommendation 45);

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\(^{10}\) Ibid [5.1.1].
\(^{11}\) Ibid ch 6, 104 [6.1.1].
\(^{12}\) Ibid ch 6, 104–105 [6.1.1]–[6.1.2].
\(^{13}\) Ibid 105 [6.1.2].
\(^{14}\) Ibid ch 6, 106–107 [6.1.7].
\(^{15}\) Ibid 106 [6.1.7], 107 [6.1.9], 107 [6.1.11], 107 [6.1.12].
• the national surveys establish uniform procedures to facilitate comparisons between Australian and other jurisdictions (Recommendation 46); and

• Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held, including whether the persons detained were or were not Indigenous people (Recommendation 47).

This Report's findings reveal that the Australian Institute of Criminology, in particular through its National Deaths in Custody Program, is consistently attempting to implement the Recommendations of the RCIADIC. While there has been cooperation from the various State and Territory police and custodial agencies, there does not appear to be any legislative or formal policy implementation from the relevant State and Territory governments to ensure that the Recommendations are or continue to be fully implemented. Formal legislation is required by all States and Territories to fully implement the Recommendations of the RCIADIC.

2. Monitoring Statistics of Deaths in Custody (Recommendation 41)

Recommendation 41: That statistics and other information on Indigenous and non-Indigenous deaths in prison, police custody and juvenile detention centres, and related matters, be monitored nationally on an ongoing basis. I suggest that responsibility for this be established within the Australian Institute of Criminology and that all custodial agencies co-operate with the Institute to enable it to carry out the responsibility. The responsibility should include at least the following functions:

a) Maintain a statistical data base relating to deaths in custody of Aboriginal and non-Aboriginal persons (distinguishing Aboriginal people from Torres Strait Islanders);

b) Report annually to the Commonwealth Parliament; and

c) Negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody. Such definition should include at least the following categories:

i) the death wherever occurring of a person who is in prison custody or police custody or detention as a juvenile;

ii) the death wherever occurring of a person whose death is caused or contributed to by traumatic injuries sustained or by lack of proper care whilst in such custody or detention;

iii) the death wherever occurring of a person who dies or is fatally injured in the process of police or prison officers attempting to detain that person; and
iv) the death wherever occurring of a person who dies or is fatally injured in the process of that person escaping or attempting to escape from prison custody or police custody or juvenile detention.

2.1 Establishment of NDICP

In 1992 the Australian Institute of Criminology (‘AIC’), an independent crime and justice research agency within the Australian Commonwealth government, established the National Deaths in Custody Program (‘NDICP’) as part of the Australian government’s commitment to implementing the Recommendations of the RCIADIC. The NDICP collects and disseminates data on all deaths which occur in police, prison and juvenile custody (and police custody-related operations), including the number of deaths, the patterns and trends observed in those deaths.  

2.2 Paragraph (a) of Recommendation 41

The NDICP maintains a database, which holds information for 32 financial years from 1979-80 to 2010-11.  

The information in the database is said to be based on 2 main sources:  

- NDICP data collection forms completed by State and Territory police services and corrective services departments and juvenile justice agencies, when a death in custody occurs; and  

- State coronial findings (including toxicology and autopsy reports) accessed through the National Coronial Information System for every jurisdiction.  

The AIC also draws on media sources as a way of monitoring deaths in custody, using these as a trigger for seeking information about potential deaths in custody from custodial authorities. However, media reports are not relied on to inform the NDICP database.  

For the purposes of completing the NDICP data collection form, custodial authorities indicate whether the deceased is known to be of Aboriginal, Torres Strait Islander or non-Indigenous background and this is recorded in the database. The Indigenous status of each deceased person is then cross-checked with the coronial findings.  

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17 Ibid 10.  
18 Ibid 7.  
19 Ibid 150.  
20 Ibid 7.  
21 Ibid.
Therefore, the statistical database distinguishes between Indigenous and Torres Strait Islander peoples.

This NDICP and its database implements paragraph (a) of Recommendation 41.

2.3 Paragraph (b) of Recommendation 41

The AIC has been publishing annual data on deaths in custody in all Australian States and Territories since the commencement of the NDICP in 1992. However, there is no indication that a comprehensive set of that published data is presented to the Commonwealth Parliament annually.

As a Commonwealth entity, the AIC must prepare and provide an annual report to the Minister of Justice, to be tabled before the Commonwealth Parliament, on its activities and performance, which includes the NDICP. However, there is no legislative or policy requirement that the AIC report to Commonwealth Parliament specifically about the statistics of Indigenous deaths in custody statistics.

Notwithstanding this, the annual reports presented to Commonwealth Parliament each year include an overview of the activities carried out by the NDICP and identify any reports or papers published by the AIC on annual data relating to deaths in custody for that year. At times, the reports have also provided a brief summary of the findings from the annual data on deaths in custody published by the AIC. For example, the most recent data on deaths in custody (covering the financial years from 2008–2009 to 2010–2011) was published in a Monitoring Report in May 2013. That report marks the twentieth anniversary of the RCIADIC, and 20 years of monitoring deaths in custody by the AIC. A brief summary of the data found in that report is mentioned in the AIC Annual Report 2012–2013, which was presented to Commonwealth Parliament in November 2013.


23 See section 46 of the Public Governance, Performance and Accountability Act 2013 (Cth).


25 Mathew Lyneham and Andy Chan, above n 16.


and was scheduled for release in late 2014. Therefore, no data was presented in the AIC Annual Report 2013–2014.

However, in order for paragraph (b) of Recommendation 41 to be fully implemented, a complete set of the statistical data published by the AIC each year should be required, by legislation or policy, to be tabled before Commonwealth Parliament on an annual basis. This may be achieved by requiring the data to be included in the AIC annual report and presented to Parliament.

2.4 Paragraph (c) of Recommendation 41

In summary, paragraph (c) contains the following recommendations:

- the AIC should negotiate with all custodial agencies with a view to formulating a nationally agreed standard form of statistical input and a standard definition of deaths in custody; and

- the standard definition of deaths in custody should cover the types of death in custody referred to in paragraphs (i) to (iv) of paragraph (c).

On 26 May 1994, the Australasian Police Ministers' Council ('APMC') resolved that negotiations be conducted between the AIC and the Queensland Police Services ('QPS') and the New South Wales Police Services ('NSWPS') (with the support of all Police Commissioners) on the interpretation of "deaths in custody" for the purposes of monitoring and reporting on deaths in custody and certain other deaths related to police operations.29

Following those negotiations, the AIC reached an agreement with, inter alia, the QPS, NSWPS and the Commonwealth Attorney-General's Department, which modified the approach to monitoring deaths in custody, including the scope and definition of the "deaths in custody" and the form of statistic input. The consensus was documented by the NDICP in the Consensus Statement accepted by the APMC dated 16 December 2014 (Consensus Statement).30

Consistent with the Recommendation, the AIC and the police services agreed in the Consensus Statement to monitor the types of "deaths in custody" referred to in Recommendation 41(c)(i) - (iv),31 which in broad terms covers (a) deaths occurring while the person is in custody, (b) deaths which occur where police are attempting to detain a person; and (c) deaths of people escaping or attempting to escape from custody. The Consensus Statement further clarified that a person is considered to be

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29 Mathew Lyneham and Andy Chan, above n 16, 162–165.
30 Ibid.
31 Ibid 163, [3].
in police custody if, as a result of police operations, the person is not free to come and go at will.\textsuperscript{32}

However, for the purposes of reporting the monitoring, the parties agreed that the four types of deaths in custody (as referred to in Recommendation 41(c)) be reported by reference to the following defined categories:\textsuperscript{33}

- **Category 1 (Deaths in custody)**
  
  Deaths in institutional settings (for example, police stations or lockups, police vehicles, during transfer to or from such an institution, or in hospitals following transfer from an institution).

  Other deaths in police operations where officers were in close contact with the deceased. This would include most raids and shootings by police. However, it would not include most sieges where a perimeter was established around a premises and officers did not have such close contact with the person as to be able to significantly influence or control the person’s behaviour.

- **Category 2 (Deaths during custody related police operations)**
  
  Other deaths during police custody-related operations. This would cover situations were officers did not have such close contact with the person to be able to significantly influence or control the person’s behaviour. It would include most sieges, as described above, and most cases where officers were attempting to detain a person, for example, during a motor vehicle pursuit.

Notwithstanding the restructure of the definition of "deaths in custody", the agreed categories appear to implement paragraphs (c)(i) - (iv) of Recommendation 41.

In relation to the form of statistical input, the parties also agreed in the Consensus Statement that all police services provide details of all deaths in custody, soon after the deaths occur, on a data collection form designed by the AIC to reflect the monitoring process set out in the Consensus Statement.\textsuperscript{34}

The current AIC data collection form designed by the AIC records approximately 65 variables of information relating to the circumstances and characteristics of each death.\textsuperscript{35} The forms are sent by the AIC to all State and Territory police services, correctional departments and juvenile justice agencies to be completed and returned to the NDICP of the AIC whenever a death occurs.\textsuperscript{36}

2.5 **Conclusion on Recommendation 41**

\textsuperscript{32} Ibid.
\textsuperscript{33} Ibid 164, [4].
\textsuperscript{34} Ibid 164, [5].
\textsuperscript{35} Ibid xiii.
\textsuperscript{36} Ibid 7. A copy of the form is at: 157–160.
This Report’s findings indicate that paragraphs (a) and (c) of Recommendation 41 have been implemented by the AIC, but that paragraph (b) of Recommendation 41 – the obligation to table reports annually before the Commonwealth Parliament – has not been implemented by legislation or formal policy.

3. **Provision and publication of numbers and details of people in cells (Recommendation 42)**

**Recommendation 42:** That governments require the provision of and publish, on a regular and frequent basis, detailed information on the numbers and details of the people passing through their police cells.

Since the RCIADIC, the AIC has also continued to prepare and publish a few National Police Custody Surveys, in response to Recommendation 42 and Recommendation 43. In this regard, see our commentary on Recommendation 43 below.

Although the AIC appear to address the regular provision and publication of required information in accordance with Recommendation 42, there does not appear to be any legislation in the States or Territories requiring the provision or publication of the information on the number and details of people passing through police cells.

3.1 **Conclusion on Recommendation 42**

It appears that this Recommendation has not been implemented by any legislation or policy in any jurisdiction. Legislation is required in order to implement Recommendation 42.

4. **Regular surveys to be conducted (Recommendation 43)**

**Recommendation 43:** That a survey such as the 1988 National Police Custody Survey be conducted at regular intervals of, say, two to five years, with the aim of systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.

In response to this Recommendation, the AIC conducted a second National Police Custody Survey in 1992, a third National Police Custody Survey in 1995 and a fourth National Police Custody Survey in 2002. The surveys aim to capture data for

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39 Natalie Taylor and Michael Bareja, ‘2002 National Police Custody Survey’ (Technical and Background Paper No. 11, Australian Institute of Criminology, June 2005)
any persons held in a police cell anywhere in Australia during August 1992, August 1995 and October 2002. Each survey is a snapshot in time, as it only shows information for people in custody in that particular month in the relevant year.

Since 2002, no surveys have been published. The AIC conducted a survey in 2007, but the results of the survey were not published, as the methodology of collection and recording of that data introduced a number of comparability issues between jurisdictions which could not be reasonably resolved using statistical and weighting procedures.40

The aim of the National Police Custody Surveys is to identify the following:

- how many people go into and out of police cells over the course of one month;
- why people are placed in custody;
- the types of offences involved;
- the proportion of Indigenous people taken into custody;
- the rate of Indigenous and non-Indigenous custody per head of population;
- whether these patterns change over time.41

These surveys do not include, or consider, any data on deaths in custody. Recommendation 43 suggests that the surveys be conducted with the aim of:

“systematically monitoring and evaluating the degree to which needed improvements in legislation, attitudes, policies and procedures that affect police custody are implemented.”

The surveys clearly provide data on the number of people, Indigenous and non-Indigenous, in custody, and the types of offences for which they are held, in each month surveyed. They also provide information on the trends in those numbers over the period 1988–2002, including establishing a decline the numbers of Indigenous people in custody.

However, the data collected is not sufficient to conclusively monitor or evaluate why such trends occur. The surveys can only deduce that the Recommendations from the RCIADIC “may be having some impact in terms of reducing numbers of Indigenous people from being detained.”42

4.1 Conclusion on Recommendation 43

Although the AIC conducted a survey in 2007, there have been no surveys published since 2002. Therefore, Recommendation 43 is not being adequately implemented in

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40 This information is not published and was informally provided by the Australian Institute of Criminology in May 2013.
41 Natalie Taylor and Michael Bareja, above n 39, 11.
42 Natalie Taylor and Michael Bareja, above n 39, 15.

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practice and there does not appear to be any legislation or formal policy requiring the implementation of this Recommendation.

The data collected is also not sufficient to conclusively monitor or evaluate the degree to which needed improvements are implemented. However, in the opinion of this Report, the aim of evaluating the degree to which the improvements are implemented is largely aspirational and is not considered to be appropriate for legislative implementation.

5. Implementation of national surveys and establishment of uniform procedures (Recommendations 44 and 46)

Recommendation 44: That the Australian Institute of Criminology co-ordinate and implement the recommended series of national surveys. The experience of the first national survey points to the fact that careful planning with all the relevant authorities will be needed to ensure that the maximum amount of useful information is derived from the surveys.

Recommendation 46: That the national deaths in custody surveys which I have recommended be undertaken by the Australian Institute of Criminology include the establishment of uniform procedures and methodologies which would not only enhance the state of knowledge in this area but also facilitate the making of comparisons between Australian and other jurisdictions, and facilitate communication of research findings.

The AIC co-ordinated and implemented the National Police Custody Surveys in 1992, 1995 and 2002, which were conducted in conjunction with each police jurisdiction in Australia.

According to the survey conducted in 2002, the information provided to the AIC was not gathered by each State and Territory in accordance with a uniform procedure and methodology. Instead, survey data provided to the AIC were collected in two different ways:

- data for the Australian Capital Territory, South Australia and Victoria were collected by police officers at the station who manually completed a separate data collection form for each occasion of custody and forwarded the form to the AIC for coding, data entry, editing and analysis; and

- data for New South Wales, Queensland, Western Australia, Northern Territory and Tasmania were provided in the form of electronic datasets, from which an AIC researcher had to manually seek and extract survey information retrospectively.

This differs from previous surveys where data collection forms were completed by police officers at the station in all jurisdictions.

However, the introduction of the electronic method of data provision created issues with the comparability of the data between jurisdictions. Compared to the hard copy
surveys, the electronic datasets required extensive and time-consuming manual searching by the AIC to retrospectively collect survey data and in some cases survey variables simply could not be identified or retrieved.\textsuperscript{43}

In 2007, a further survey was conducted but it was not published, due to the same comparability issues experienced by the mixed method approach of collecting and recording paper surveys from some jurisdictions and electronic records from others.\textsuperscript{44}

Currently, the AIC plans to work with the all States and Territories to arrive at a nationally uniform electronic data collection process for future surveys.\textsuperscript{45} In particular, the AIC recommends that, for jurisdictions wishing to provide electronic data, specially tailored data requirements and parameters be established and agreed with each jurisdiction so that data extraction and submission is simplified.\textsuperscript{46} The AIC continues to manage the surveys, however, there is no indication as to when the next survey will be published.

5.1 Conclusion on Recommendations 44 and 46

It seems that these Recommendations have not been sufficiently implemented, and the AIC is required to co-ordinate and implement further surveys at more regular intervals and establish uniform procedures for the collection of data in order to fully satisfy Recommendations 44 and 46 in practice. This Report also could not locate any legislation or formal policy requiring the AIC to co-ordinate and implement the National Police Custody Surveys at regular intervals nor any legislation requiring the establishment of uniform procedures and methodologies for the surveys.

6. Ministers to strive for commonality of approach (Recommendation 45)

**Recommendation 45**: That the appropriate Ministerial Councils strive to achieve a commonality of approach in data collections concerning both police and prison custody.

This appears to be an aspirational recommendation and unlikely to be relevant for legislation or policy.

Nonetheless, the Consensus Statement accepted by the Australasian Police Ministers' Council is evidence that the Ministerial Council is keen to achieve the objective of a common approach to monitoring deaths in custody.

The National Deaths in Custody reports published by the AIC to date are based on information compiled in the NDICP database. The information held in that database

\textsuperscript{43} Natalie Taylor and Michael Bareja, above n 39, 58.
\textsuperscript{44} This information is not published and was informally provided by the Australian Institute of Criminology in May 2013.
\textsuperscript{45} This information is not published and was informally provided by the Australian Institute of Criminology in May 2013.
\textsuperscript{46} Natalie Taylor and Michael Bareja, above n 39, 58.
is from NDICP data collection forms completed by all State and Territory police services and correctional departments and from coronial records. This reflects a commonality between the data collection for police custody and prison custody. In respect of the National Police Custody Surveys discussed above, the AIC continues to strive to achieve a nationally uniform electronic data collection process for future surveys in light of previously encountered data collection issues.

7. Ministers report annually to Parliament (Recommendation 47)

In Chapter 6 of the National Report, the RCIADIC found that there were a number of shortcomings in the annual census of persons held in prison conducted by the AIC in cooperation with all State and Territories responsible for corrective services. Specifically, it found that there was a significant deficiency, by some jurisdictions, in providing information regarding the Indigenous status of a prisoner.47

On this basis, the RCIADIC recommended:

**Recommendation 47:** That relevant Ministers report annually to their State and Territory Parliaments as to the numbers of persons held in police, prison and juvenile centre custody with statistical details as to the legal status of the persons so held (for example, on arrest; on remand for trial; on remand for sentence; sentenced; for fine default or on other warrant; for breach of non-custodial court orders; protective custody or as the case may be), including whether the persons detained were or were not Aboriginal or Torres Strait Islander people.

The annual national census of persons held in prisons has been conducted each year since 1982 by the AIC.48 The AIC maintained the collection until June 1993.49 In September 1995 the Australian Bureau of Statistics (‘ABS’) took over responsibility for the collection50 and continues to conduct an annual National Prisoner Census on persons held in custody in Australian prisons at 30 June each year.51 Statistics are derived from information collected by the ABS from administrative records held by corrective service agencies in each State and Territory.52 A range of information is presented on the demographic and legal characteristics of prisoners such as age, sex, country of birth, Aboriginal and Torres

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47 Commonwealth, above n 2, ch 6, 107 [6.2.1].
48 Ibid.
52 Ibid.
Strait Islander status, legal status, prior imprisonment, most serious offence/charge, aggregate sentence and expected time to serve, as well as time on remand.\textsuperscript{53}

The publication of the National Prisoner Census is usually released in December of that year. The main publication is \textit{Prisoners in Australia}.\textsuperscript{54} The first official ABS release of National Prisoner Census statistics was in 2000. Prior to this, the data were presented as an annual report for the Corrective Services Ministers' Council by the National Corrective Services Statistics Unit.\textsuperscript{55}

The ABS has also published quarterly reports since 1998, titled \textit{Corrective Services, Australia}, on national and jurisdictional level information on persons in corrective services, including data about the number of persons in prisons, detention centres, community custody centres, cells in court by sex, Aboriginal and Torres Strait Islander status, legal status and sentence type.\textsuperscript{56}

However, the above collections do not include police custody and juvenile detention centres and those reports are not tabled in Parliament.

\subsection*{Victoria}

In Victoria, the appropriate Minister of the Department of Justice, which Ministerial portfolios include Police and Emergency Services, Corrections, Crime Prevention, must table to State Parliament the operations of the Department during the financial year pursuant to the \textit{Financial Management Services Act 1994 (Vic)}.\textsuperscript{57}

The Office of Correctional Services Review, an independent business unit of the Department of Justice monitors and reviews the effectiveness of the Victorian prison system to achieve the safe custody and welfare of prisoners and offenders. As part of the Department’s obligation to report on the operations of the Department of Justice, the Department frequently includes in the annual report the prison service statistics\textsuperscript{58} including the total annual daily average number of prisoners, the total

\begin{itemize}
\item \textsuperscript{53} Ibid.
\item \textsuperscript{55} The Australian Bureau of Statistics also publishes quarterly reports (since 1998) entitled "Corrective Services, Australia", which present national and jurisdictional-level information on persons in custody and persons serving community-based corrections orders under the authority of corrective services agencies in Australia.
\item \textsuperscript{56} Australian Bureau of Statistics, above n 51.
\end{itemize}
number of deaths in custody and the total number of Indigenous deaths in custody. As the annual reports are tabled to State Parliament each year, these statistics are reported to the State Parliament by the relevant Minister in accordance with the Recommendation. However, the annual report does not provide the number of persons held in police and juvenile centre custody nor any of the other statistical details identified in Recommendation 47.

Corrections Victoria – a business unit of the Department of Justice responsible for prison management of Victoria – also publishes an annual Statistical Profile of the Victorian Prison System report\(^{59}\) covering all of the major characteristics of the prisoner population over the previous five years, including the number of persons held in prisons with statistical details as to the legal status of the persons so held and whether the persons were Indigenous. However, the report does not cover statistics on persons in police and juvenile custody and does not report on all of the types of legal statuses envisaged in Recommendation 47. This particular report is also not required to be and is not tabled to State Parliament by the Minister.

Therefore, it appears that only some of the recommended statistical information is being collated in Victoria and even less is being presented to State Parliament.

### 7.2 New South Wales

Corrective Services New South Wales (NSW), a division of the NSW Department of Justice, conducts and publishes an annual Inmate Census as part of the National Prisoner Census conducted by the Australian Bureau of Statistics each year.\(^{60}\) The publication of the Inmate Census contains summary statistics of inmates held in full time prison, police and juvenile centre custody at the time the Inmate Census was conducted and includes statistical details as to the legal and Indigenous status of the persons so held. However, the Minister of the Department of Justice is not required by legislation to report those detailed statistics to their State Parliament.

The Minister of the NSW Department of Justice is nonetheless required to table to State Parliament the operations of the Department during the financial year pursuant to the Annual Reports (Departments) Act 1985.\(^{61}\) As part of that obligation, the Department includes in its annual report a summary of the statistics obtained by Correction Services NSW, including relevant statistical details as to the legal status of full-time (prison, police and juvenile centre) custody offenders by Aboriginality and Gender. Therefore, the NSW Minister of the Department of Justice appears to fully implement this Recommendation as part of its annual reporting requirements.

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\(^{59}\) For access to all reports, see Department of Justice (Vic), *Statistical Profile of the Victorian Prison System* (2 May 2014) Corrections, Prisons & Parole (Vic) <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/statistical+profile+of+the+vic+prison+system>.


\(^{61}\) Annual Reports (Departments) Act 1985 (NSW) pt 2.
without the need for specific legislation requiring that the Minister report the recommended statistical details annually to their State Parliament.

7.3 Queensland

The Financial Accountability Act 2009\textsuperscript{62} and the Annual reporting requirements for Queensland Government agencies\textsuperscript{63} require the Department of Community Safety to prepare annual reports on non-financial and financial performance for tabling before State Parliament. The Corrective Services Act 2006\textsuperscript{64} also specifically requires that the Queensland Parole Board provide an annual report to the Minister in relation to parole orders, including the number of persons who are released on parole and return to prison after the parole. Similar to the other jurisdictions, these statutes and regulations do not specifically require the Minister to report to State Parliament on the numbers of persons held in police, prison and juvenile centre custody, with statistical details as to the legal status of the persons so held including whether the persons detained were or were not Aboriginal or Torres Strait Islander people.

The Department of Community Safety annual reports do nonetheless contain statistical data with respect to Indigenous offenders. For example, the annual report for 2011–2012\textsuperscript{65} supplied statistical data concerning Indigenous offenders in the following categories:

- death rate (unnatural cause only);
- proportion of Indigenous prisoners (custodial);
- proportion of male Indigenous prisoners (custodial);
- proportion of female Indigenous prisoners (custodial);
- proportion of prisoners who are Indigenous (probation and parole);
- proportion of male prisoners who are Indigenous (probation and parole); and
- proportion of female prisoners who are Indigenous (probation and parole);
- number of male prisoners in high security/low security;
- number of female prisoners in high security/low security;

\textsuperscript{62} Financial Accountability Act 2009 (QLD) s 63.
\textsuperscript{64} Corrective Services Act 2006 (QLD) s 228.

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• escape rate;
• assault rate; and
• profiles for prisoners with short sentences (i.e. less than or equal to 1 year).

However, the annual reports lack statistical details as to the legal status of the persons held in custody and it is unclear whether or not the statistics relate to prison, police or juvenile centre custody.

In conclusion therefore, whilst the Department of Community Safety annual reports provides annual reports on some detailed statistics that Recommendation 47 requires, further statistical details are required in order to fully implement the Recommendation. Importantly, there is also no legislative or policy requirement for the Minister to specifically report to State Parliament on those recommended statistics.

7.4 South Australia

In South Australia, the Department for Correctional Services produces an annual report on the operation of the Correctional Services Act 1982 (SA) and the work of the Department. The annual reports often provide detailed statistical information on persons in custody for that year including whether or not the persons detailed are Indigenous. In accordance with Correctional Services Act 1982, the annual report is provided to the Minister and must be laid before the State Parliament. The annual reports are also required to be prepared pursuant to the Public Sector Act 2009.

Appendix 6 of the annual report details 'Prisoner Statistical Information' including whether the prisoner is sentenced, unsentenced or unknown and Indigenous, Non-Indigenous or unknown.

South Australia has detailed information in its annual report compared to the other States and appears to have successfully implemented Recommendation 47. However, legislation may be required to ensure that South Australia continues to include such detailed statistics in its annual report and present that annual report to State Parliament.

7.5 Australian Capital Territory

The Justice and Community Safety Directorate of the ACT publishes the ACT Criminal Justice Statistical Profile (‘the Profile’) which is tabled each quarter in the

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66 For access to all annual reports, see Department for Correctional Services (SA), Annual Reports <http://www.corrections.sa.gov.au/reports-and-media/annual-reports>.
68 Public Sector Act 2009 (SA) s 12.
The Profile is a historical series of crime data that is compiled quarterly by the Legislation, Policy and Programs Branch of the ACT Justice and Community Safety Directorate and then tabled at Territory Parliament.

The Profile contains a comprehensive data set of the number of persons held in prisons and youth justice centres for the previous three months, with statistical details of the Indigenous status, gender, offence and legal status (including on remand or sentenced). Whilst the Profile sets out the number of incidents, offences and apprehensions of person by police, it does not however identify the number of persons held in police custody.

The ACT Department of Justice and Community Safety also publishes an annual report that is tabled in the ACT Legislative Assembly each year pursuant to the Annual Reports (Government Agencies) Act 2004. Small sections of those reports are dedicated to Indigenous matters, including the number of persons held in prison and juvenile centre custody by Indigenous status.

Similar to South Australia, it appears that the ACT has been comprehensively and frequently reporting on most of the matters set out in Recommendation 47. However, legislation may be required to ensure that ACT continues to publish and table the Profile to the Legislative Assembly and ensure that it includes detailed statistics on persons held in police custody, not just prison and juvenile centres.

7.6 Northern Territory

Pursuant to section 28 of the Public Sector Employment and Management Act 2002 (NT) the Chief Executive Officer of an agency (e.g. the Northern Territory Police Department, Fire and Emergency Services or the Northern Territory Department of Correctional Services) must present an annual report on its operations to the appropriate Minister for tabling in the Legislative Assembly. In accordance with section 28, certain information must be contained in the annual reports for each agency, such as information regarding the agency’s operations, initiatives and achievements. However, there is no requirement under section 28 to report on any specific statistics, so it is therefore at the discretion of each agency what statistics it includes in its annual reports.

Nonetheless, the annual report published by the Northern Territory Police, Fire and Emergency Services includes a chapter on "Crime Statistics" setting out the type and

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69 For access to all Profile publications, see Department of Justice and Community Safety (ACT), Criminal Justice Statistical Profiles (11 December 2014) <http://www.justice.act.gov.au/criminal_and_civil_justice/criminal_justice_statistical_profiles>.

70 The Profile obtains its data from ACT Policing, ACT Law Courts, ACT Corrective Services, Restorative Justice Unit, Galambany Court, Office of Children, Youth and Family Support and Victims Support ACT.

71 Annual Reports (Government Agencies) Act 2004 (ACT) s 13.
number of offences. However, it does not include the number of persons held in custody and statistical details about those persons.

The annual report published by the Northern Territory Department of Correctional services also includes statistics on the number of persons held in prison and youth detention custody. However, neither category of statistics reports any information regarding the age, gender or race of the prisoners or youth detainees and police custody statistics are also not reported.

Therefore the information contained in this annual report does not fully comply with the matters set out in Recommendation 47, nor is there any express legislative or formal policy requirement to prepare a report on such matters.

7.7 Western Australia

In accordance with the Financial Management Act 2006 (WA), the Minister for the Department of Corrective Services must submit an annual report on the operations of the department to the State Parliament. The 2012–2013 annual report supplied a summary of the statistical data concerning adults in prison custody including the percentage of Indigenous offenders in custody, deaths in custody, escapes from custody and other significant issues. But it does not contain any further detail or specific information regarding those Indigenous adults (e.g. age, gender etc.).

Therefore, the Department of Corrective Services report is consistent with Recommendation 47 only insofar as it collates statistical data regarding the percentage of those Indigenous adults in prison custody at the relevant time. This report fails to provide any further statistical data in accordance with Recommendation 47 as to the legal status of those Indigenous adults (i.e. whether on remand for trial or remand for sentence). Furthermore, this report only relates to Indigenous adults in prison. No information is reported with regard to youth offenders or adults in police custody.

Therefore the information contained in this annual report does not comply with the matters set out in Recommendation 47, nor is there any express legislative or formal policy requirement to report on such matters.

72 NT Police, Fire and Emergency Services, 2013–14 Annual Report, 128
For access to all annual reports, see NT Police, Fire and Emergency Services, Tri-service publications and forms at <http://www.pfes.nt.gov.au/Publications-and-forms.aspx>.

73 Department of Correctional Services (NT), 2013–14 Annual Report, 23–33

74 Financial Management Act 2006 (WA) s 64.
7.8 Tasmania

Each year, the Tasmanian Justice Department produces an annual report which includes a chapter on 'Corrective Services'. The Corrective Services chapter details statistical information on persons in custody for that year including whether or not the persons detained are Indigenous or non-Indigenous. However, the reports do not include statistical details as to the legal status of the persons so held as is set out in Recommendation 47.

The annual reports are published pursuant to section 36 of the State Service Act 2000 (TAS) and are tabled before State Parliament. The Act requires that the report provide information relating to the performance of the functions of the department, however there is no requirement to report on any specific statistics.

7.9 Conclusion on Recommendation 47

Whilst all of the States and Territories table in Parliament annual reports regarding its operations and performance, the annual reports contain limited information about the number of persons held in custody, in particular prison custody. The balance of the information, including persons held in juvenile detention centres, police custody and the legal and Indigenous status is not currently adequately provided. Specific legislation and formal policy may be required to mandate annual reporting on these matters to State and Territory Parliaments.


4. ADEQUACY OF INFORMATION (RECOMMENDATIONS 41-47)