



## Race Discrimination Commissioner speaks about Deaths in Custody

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The following is a recent speech by Graeme Innes the Australian Race Discrimination Officer. In it he makes some excellent and much needed comments about deaths in custody, the NT Intervention and the urgent need to reinstate FULLY the Racial Discrimination Act.

**Race Discrimination Commissioner, Graeme Innes**  
**Guest speaker**  
**Annual General Meeting of Death in Custody Watch Committee (WA) Inc**  
**27 Moore Street, East Perth.**

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Good evening. I would like to begin by acknowledging the traditional and true owners of the land on which we meet the Nyoongar people, and pay my respects to their elders past and present.

Acknowledging elders past takes on a particular meaning when you are discussing deaths in custody. I also acknowledge the families who have lost mothers, cousins, sisters, children in custody. These families suffer forever. The Ward family, the Mulrungi family. How many deaths should I actually name? The fifty, one hundred, one thousand deaths that have occurred since the Royal Commission made its recommendations?

Finally I acknowledge the excellent and dedicated work of Aboriginal Legal Services who have consistently stressed the need for improvement in this area.

Like the Northern Territory Intervention and the decision making that has gone before it, the position of many Indigenous people, families, communities has worsened at the same time as governments named them as beneficiaries. I acknowledge and welcome the steps that the Australian Government has taken to partially reinstate the Racial Discrimination Act (RDA).

When the Howard Government suspended the RDA they suspended *their own* legislation – Commonwealth legislation. More importantly, they suspended *your* legislation. **The RDA is about your protections. You will never, you can never, it is not possible to improve the quality of living or human lives by suspending human rights protections.**

**I make another call for the Australian Government to fully reinstate the RDA in the Northern Territory. I call the Australian Government to explain what this reinstatement would mean in practical terms for affected communities. And I call on the Australian Government to name an END date for the Intervention.**

If government would like advice about where to start, I've had some sound advice from communities in the Northern Territory. Begin by pulling down the blue signs that sit across the 73 prescribed communities. The tall blue signs that identify prescribed communities and that shame many of the men, the women, the families, the communities that live behind them.

The value in the Intervention is that it is a cautionary principle for governments – don't impose, don't intervene and don't inflict. Instead, engage, consult, negotiate and support communities to define and create their own futures.

Addressing Indigenous over-representation in the criminal justice system in a lasting manner will require a fundamental change to the existing relationship between mainstream Australia and Indigenous communities. It will require that the control over Indigenous people's lives be removed from the public institutions of our mainstream society, and that the unequal basis of the relationship be remedied by addressing the profound economic, social and cultural disadvantage experienced by Indigenous peoples. Ultimately, it required return of control of Aboriginal lives and communities to Aboriginal hands.

Among the findings in the Royal Commission was the critical importance of self determination. More positively, we have had some success in developing a better understanding of the meaning of self determination through the *Declaration on the Rights of Indigenous Peoples*. Self determined peoples that are connected to culture and to country sustain healthy and proud communities.

Colonization, racial inequality, racism, and cultural chauvinism have a long shelf life. And this is a reality that we have to come to terms with in relation to decision making and public policy development.

The *Royal Commission into Aboriginal Deaths in Custody* was established in 1987. A consideration in the terms of reference for the Royal Commission was to consider the *underlying causes* of incarceration. Unfortunately, the reality then is not far from the current reality. Among the core findings of the Commission is that the Aboriginal population was grossly overrepresented in prison. And that too many Aboriginal people die in custody too often. In over twenty years, how has this picture changed?

Another year passes and there are multiple deaths in custody and multiple suicides in custody. And another year, and another year and so on.

Indigenous adults are 13 times more likely to be imprisoned than their non-Indigenous counterparts, a 48 percent increase on when the Deaths in Custody report was released.

In Western Australia, there has been an 18 percent increase in the prison population over the last year due, among other reasons, to more parole denials and cancellations and an increase of 118 days in the average sentencing length.

If we are going to be serious about eliminating preventable deaths in custody, reducing the Indigenous youth suicide rate, and closing the gap in life expectancy – then we need to be serious about changing the system that generates disadvantage, inequality and poverty. It is the same system that results in disproportionate Aboriginal incarceration rates and over-representation in our corrections systems.

Mandatory sentencing laws in Western Australia seriously compound these problems and raise questions regarding how we meet our obligations on the Convention on the *Elimination of Racial Discrimination*, the *Convention on the Rights of the Child* and the *International Convention on Civil and Political Rights*.

***Where is the comprehensive plan to reduce Aboriginal deaths in custody?*** I refer you to 2009 Social Justice Commission Report that recommends the adoption of a justice reinvestment strategy and the allocation of more resources to the social and economic factors underpinning indigenous incarceration rates.

Many of you are probably familiar with this strategy.

Justice reinvestment has a rigorous methodology with four steps. The first step is *analysis and mapping* of where the offenders are coming from and calculating how much is being spent in these areas on imprisonment. This leads to demographic and socio-economic information on how much is being spent on imprisonment in certain communities.

A holistic analysis of the criminal justice system is a key feature of the justice reinvestment methodology. Consideration is given to policing, judicial systems, probation and parole, prevention programs, community supervision and diversion options as well as the geographic mapping.

*Step 2 involves developing options to generate savings and improve local communities.* We must then look at ways to save imprisonment costs so funds can be re-spent in the community. This involves looking at why there is such a high rate of imprisonment and particularly, return to custody.

The options will be different for each community, based on the offender profile and the needs of the community. This step also involves community consultation and engagement around the causes and solutions to crime.

*Step 3 involves quantifying savings and reinvesting in high needs communities.*

Based on the information gathered in the previous two steps, it is possible to project savings based on reductions in imprisonment spending. Savings can then be put towards the services and projects identified by communities.

*And finally, measuring and evaluating the impact.*

A justice reinvestment approach is evidence based and measures performance outcomes such as the amount of imprisonment money saved; reduction in imprisonment; reduction in recidivism; and indicators of community well being and capacity.

This is a strategy that has been tested and found to work in both the US and United Kingdom.

The West Australian Department of Corrective Services estimated that it costs \$262 per day to keep a prisoner in custody, compared to \$35 per day if the prisoner remains under community supervision. This amount rises to \$622 per day to keep each young offender in detention, compared to \$125 in the community.

When you consider this in light of the 4700 people incarcerated in Western Australia, it costs the state 1.2 million dollars per day to maintain its prison population. Imagine what that kind of money could do if it was used for effective programs and services.

I support Deaths in Custody Watch WA, the Community Legal Centres and the many NGO's that have repeatedly called for the full and effective implementation of each of the 339 recommendations of the Royal Commission. Aboriginal and Torres Strait Islander peoples are still being arrested for minor offences – particularly public intoxication at the same time as there is little investment in culturally appropriate detox services. Aboriginal communities in Adelaide have made consistent calls for precisely these services for over 20 years.

The Australian Human Rights Commission has intervened in a number of deaths in custody cases, and will continue to do so for as long as it takes for systemic change to happen.

In 2006, the Coroner's report adopted all 40 recommendations from the Commission's submission to the Inquest into the death of Mulrunji.

The Commission's submission to the Inquest on the death of Mr. Ward made a number of recommendations in improving some of the systemic failures with the police force, including:

- ensuring that police operating manuals make refusal of bail a last resort.
- Better training for officers working in Aboriginal communities.
- reviewing current arrangements for the supply of food and beverages to persons in police custody
- taking urgent steps to consider appropriate interim measures and modifications to address the level of safety and dignity of the current vehicle fleet.
- reviewing policies relating to medical emergency procedures during escorts.

A question worth considering is when our state and territory police agencies last held dedicated training around de-escalation tactics, in particular when dealing with people from vulnerable or minority communities?

As recently as 2010, the CERD Committee recognised the government's continued failure to implement the recommendation made under the Royal Commission.

In its concluding observations in August 2010 the United Nations Committee called for the Elimination of Racial Discrimination said the following:

While welcoming the endorsement of National Indigenous Law and Justice Framework by all Australian Governments, the Committee reiterates its concern about the disproportionate incarceration rates and the persisting problems leading to deaths in custody of a considerable number of Indigenous Australians over the years. The Committee expresses concern in particular about the growing imprisonment rates of Indigenous women as well as the substandard conditions in many prisons (art. 5, 6).

The Commission's Social Justice Report stated "the issues around Aboriginal women and incarceration remain largely invisible to policy makers and program designers". In 2010 there is still too little attention devoted to their specific situation and needs. This remains important, particularly because of the impact that imprisonment has on Indigenous families and communities -especially through separation from children.

The UN CERD Committee then went on to say:

The Committee recommends that the State party dedicate sufficient resources to address the social and economic factors underpinning Indigenous contact with the criminal justice system. It encourages the State party to adopt a justice reinvestment strategy, continuing and increasing the use of Indigenous courts and conciliation mechanisms, diversionary and prevention programs and restorative justice strategies. And that, in consultation with Indigenous communities, take immediate steps to review the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*, identifying those which remain relevant with a view to their implementation. The Committee also recommends that the State

party implement the measures outlined in the National Indigenous Law and Justice Framework. The Committee encourages the State party to ensure the provision of adequate health care to prisoners.

The Commission is committed to working more closely with government and NGO's to ensure the effective implementation of the Committee's Concluding Observations. I urge you to also consider how you may be able to utilise these observations as a platform to progress your work.

So where to from here? How much longer are we prepared to ignore the existing situation, and why do we continue to not act on what we know and what we were told explicitly in 1987?

To fail to respond comprehensively and to let another 23 years pass without an improvement in the incarceration statistics or deaths in custody... that would be the greatest tragedy of all. When Aboriginal and Torres Strait Islander peoples continue to be overrepresented in our prison system and the deaths continue, community networks are profoundly damaged. When elders die in custody, they lose their lives and their communities lose their leaders.

More human rights education is vital. People need to know what their rights and responsibilities. They need to be reminded that we all have the right to live with dignity, in safety and in safe spaces.

It is in rooms like these where we can be reminded of the urgency of these issues and the importance of leadership and clear action. I thank you for your hard work, and for your time tonight.