

The Sydney Morning Herald

National [Opinion](#)

This was published 7 years ago

Aboriginal deaths in custody: NT's 'paperless arrest' police powers need urgent review

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Updated May 31, 2015 – 9.15pm, first published at 9.00pm

A respected Aboriginal man from central Australia died in Darwin's police cells two weeks ago. Few facts are known: he was taken into custody for minor alcohol-related offences, he was detained under new "paperless arrest" police powers, he was found dead in his cell about three hours later.

The coronial inquest should provide the full facts and determine whether the death was avoidable. For now, the irrefutable reality is that yet another Aboriginal person has died the most inhuman of deaths: without family around, on a cold, concrete floor of a police cell.



The family and community trauma caused by a death in custody cannot be over-stated. ANDREW MEARES

As a nation, we should be unified in an unwavering commitment to stop Aboriginal deaths in custody. All governments' laws, policies and practices should support rather than undermine this end.

The family and community trauma caused by a death in custody cannot be over-stated. Families must wait months, sometimes years, for answers. When the time comes, they are left sitting through a coronial inquiry learning the hard reality of their loss from people they've never met, giving evidence in a court room. Whatever the circumstances, they learn how their brother/son/husband/cousin tragically died in a context that most of us would find unfathomable.

The devastating irony of the Northern Territory's new paperless arrest laws and this death in custody can, to some extent, be understood by imagining the public outcry if, in 20 years, we'd largely failed to implement the recommendations of the Royal Commission into Institutional Child Sexual Abuse. And institutional child sexual abuse continued at similar levels.

In 1987 the Royal Commission into Aboriginal Deaths in Custody was established in response to growing numbers of unexplained deaths in custody. The commission looked at Aboriginal deaths in custody in all states and territories, spanning a 10-year period. It resulted in more than 330 expert recommendations for change.

At the core of the recommendations is the straightforward equation: if we want to reduce Aboriginal deaths in custody, we need to reduce the rates at which Aboriginal people are taken into custody. In other words, custody should only be used as a last resort, reserved for the most serious of situations and where absolutely necessary.

The Northern Territory's "paperless arrest" laws are perhaps the antithesis of what the Royal Commission into Aboriginal Deaths in Custody had in mind.

Introduced late last year, the laws give police the power to lock someone up for four hours for minor offences like making undue noise; swearing in public; or keeping a front yard untidy. These offences would normally only attract an on-the-spot fine.

A person locked up under these powers has no effective opportunity to challenge their detention or to ask a court to release them. The police essentially act as both judge and jury.

The Northern Territory's Attorney-General said that the new paperless arrest laws make it simpler for police to "catch and release people". Police have a tough job and every reasonable effort should be made to make their job easier, but efficiency is not the be-all and end-all: putting safeguards around police powers is entirely appropriate in a liberal democracy.

A recent freedom of information application showed the paperless arrest laws have already been used an extraordinary amount of times – more than 700 times in their first three months of operation. It also showed that they are having a disproportionate impact: more than 75 per cent of people arrested have been Aboriginal.

It is clear that these laws have and will continue to see more Aboriginal people locked up for minor offences.

This inequality is perhaps unsurprising. In the Northern Territory, Aboriginal people comprise about 30 per cent of the general population, yet more than 85 per cent of the prison population. The Northern Territory's imprisonment rate is around three times the national average, and closer to America's than any other Australian jurisdiction.

The paperless arrest laws are currently being challenged in the High Court of Australia. Irrespective of the court's ultimate decision, this death and the evidence showing the laws' disproportionate impact on Aboriginal people should prompt an urgent rethink.

12/12/2022, 09:56

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The fact of the matter is, if you lock up vulnerable people, the risk of a tragic death in custody is increased. The royal commission taught us this, yet successive Aboriginal deaths in custody like Mr Ward in 2008 and Ms Dhu last year are horrible markers of this lesson-not-yet-learnt. And now, we are once again reminded that myopic governments have not grasped the magnitude of this lesson.

Another Aboriginal person was locked up for minor offences and died in custody. On these bare facts alone, as a nation we should be outraged.

Eddie Cubillo is the executive officer of the National Aboriginal and Torres Strait Islander Legal Services.