



Communities
& Justice

The Hon. Adam Searle MLC
Chair, High Level of First Nations People in Custody
and Oversight and Review of Deaths in Custody
Parliament House
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Dear Chair

Inquiry into High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody: responses to questions on notice

Thank you for the opportunity to appear before the Inquiry on 7 December 2020.

Attached are the Department of Communities and Justice's responses to the questions taken on notice at that hearing.

If you would like more information, please contact Rani Young, Principal Project Officer, at
or on

Yours sincerely

Michael Coutts-Trotter
Secretary

Department of Communities and Justice (DCJ) responses to Questions on Notice taken at the 7 December 2020 hearing of the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

Question 1 (p.51) - Coercive Control

The Hon. PENNY SHARPE:

The one issue that has been raised with us with a number of the women's legal and Aboriginal legal services is this cumulative impact of women being identified as aggressors when it comes to domestic violence incidents. The argument is that essentially they are victims over a long period of time, so in this particular moment in time there are real issues there. Given the remit again of the cluster and the work that is being done around domestic violence, can you tell us where that is up to in terms of discussion? Is it something that the department is aware of? Is there work being done on that? Is there some sort of examination of that particular issue? It has been raised with us quite a lot. You can take it on notice. That is fine.

Mr COUTTS-TROTTER: I will take it on notice and provide specifics. The short answer is yes, but I will come back to you on the detail of that. It was flagged as well in the discussion paper on coercive control.

Answer:

The Department of Communities and Justice is aware that the misidentification of victims of domestic and family violence as the primary aggressor is an important issue and can have significant consequences. The Department is considering this issue in the context of developing justice system responses to coercive and controlling behaviour. The Government's *Discussion Paper on Coercive Control* highlights that patterns of behaviour that constitute coercive control are deeply contextual, and that triggers of fear and intimidation that enable control may be so frequent and subtle they are not evident from the outside of the relationship. The distinction between coercive and controlling behaviours on the one hand, and voluntary choices in a relationship on the other hand, may be difficult to determine.

These factors may heighten the potential risk of misidentification of primary aggressors when responding to domestic and family violence. This is particularly so when considering the traditionally incident-focussed approach of the criminal law, which does not ordinarily address patterns of behaviour that characterise coercive control. Misidentification is one of several interrelated matters that are outlined in the Government's Discussion Paper, which the Joint Select Committee on Coercive Control is to have regard to. The Department looks forward to reviewing the findings of the Committee in relation to whole of system reform options to respond to coercive control when it reports in 2021.

The Department recommends that information be requested from the NSW Police Force in relation to its existing domestic and family training and operations, as the question relates to police practice.

Question 2 (p.52) – Aboriginal Death in Custody Statistics

The CHAIR: Mr Coutts-Trotter, in your opening statement you were talking about the relative numbers of First Nations deaths in custody and non-First Nations deaths in custody. I think they were measured as deaths per 100 inmates?

Mr COUTTS-TROTTER: Yes, per year.

The CHAIR: I am not a statistician, so just for me do you have what those figures might be on an annual basis? For example, in a given year there might be X number of deaths in custody; how many of those are First Nations people?

Mr COUTTS-TROTTER: Happy to provide that year by year for the Committee. I have seen data from 1990 onwards, so the last 30 years, if that is of help.

The CHAIR: That would be very useful. I do not want to put you to too much trouble, but is it possible to have those figures recut excluding natural causes?

Mr COUTTS-TROTTER: Certainly. Yes, we can do that.

Answer:

See table entitled Indigenous deaths in Corrective Services NSW (CSNSW) custody by apparent cause of death.

Indigenous deaths in CSNSW custody by apparent cause of death; 1990/91 to 2020/21 (as at 13 January 2021)

Financial year	Natural	Un-natural	Total	Rate*
1993/94	3	1	4	0.53
1994/95	2	2	4	0.51
1995/96	2	2	4	0.46
1996/97	0	3	3	0.33
1997/98	0	4	4	0.42
1998/99	1	3	4	0.34
1999/00	2	5	7	0.61
2000/01	2	2	4	0.34
2001/02	0	1	1	0.08
2002/03	1	2	3	0.21
2003/04	0	0	0	0.00
2004/05	1	3	4	0.23
2005/06	0	0	0	0.00
2006/07	2	2	4	0.20
2007/08	1	0	1	0.05
2008/09	0	1	1	0.05
2009/10	3	1	4	0.18
2010/11	0	1	1	0.04
2011/12	1	1	2	0.09
2012/13	1	0	1	0.04
2013/14	1	0	1	0.04
2014/15	5	0	5	0.19
2015/16	1	1	2	0.07
2016/17	0	0	0	0.00
2017/18	3	2	5	0.15
2018/19	2	2	4	0.12
2019/20	3	2	5	0.14
2020/21	1	1	2	0.11

* Rate per 100 inmates per year. Rate for 2020/21 represents full-year equivalent rate.

The un-natural category includes deaths where the apparent cause of death was recorded as suicide, murder, drug overdose, other cause (other than natural cause e.g. accidental death), deaths where the apparent cause of death has yet to be determine and those where the Coroner unable to determine whether the death was suicide.

Question 3 (p.54) - Coroner's draft Practice Note

Mr COUTTS-TROTTER: I understand there is a draft note that is being consulted on with stakeholders. I have not yet seen it but I have asked for a copy. It is very well developed. I know the Chief Magistrate in his submission to the Committee said that that would be happening and it is his prerogative, but I understand it is very close to complete.

The Hon. TREVOR KHAN: Is there any reason why, if you get a copy of it, we cannot have a squiz?

Mr COUTTS-TROTTER: Other than offending the Chief Magistrate, which would be a very good reason not to!

The CHAIR: Perhaps we could put it in a more diplomatic way: We would like to see that if it is able to be provided to us, even on a confidential basis.

Mr COUTTS-TROTTER: Yes, of course

Answer:

The Chief Magistrate has advised that the draft Practice Note is still being finalised and will not be shared.

If the Select Committee have any further questions in relation to the Practice Note, these should be directed to the Chief Magistrate's Office.

Question 4 (p.54) – Aboriginal Inmate numbers at Tamworth Correctional Centre

The Hon. TREVOR KHAN: I will come to specifics with regards to it. Would you agree with me that Tamworth jail however described by name—at least in my time up there—was essentially a remand jail?

Commissioner SEVERIN: That is correct. It is also a jail that processes a lot of inmates coming in because of the courts it services. It has got a number of sentenced inmates and a lot of those are locals who really would like and want to stay there. With the changes that we are now making to the prison bed program as a result of the new infrastructure, we will further reduce the footprint. The minimum security component will go and again that will mean that we will continue to use it as a prison rather than a transitional centre because it is too important in that particular geographic space

The Hon. TREVOR KHAN: Sure. I understand the difficulty in terms of the movement of the prisoners. My assessment in the past was—and I think it is probably still the case—that the prison population there is overwhelmingly Aboriginal, is it not?

Commissioner SEVERIN: Yes. I would have to take the exact number on notice but given the areas they service like Moree and other parts of that part of the State, the north-west, I would assume that that is correct.

The Hon. TREVOR KHAN: There is no trick in this; it just seemed to me that that was always the case.

Commissioner SEVERIN: No, I just have not got the exact number at present.

Answer:

As at 1 December 2020, 31 of the 50 inmates held at Tamworth Correctional Centre were Aboriginal.

Question 5 (p.56) - Cost estimate to retrofit existing cells

Mr DAVID SHOEBRIDGE: Commissioner, given your previous evidence was that many estimates have been undertaken as to what it would take to retrofit existing cells, can you provide us on notice with what those estimates have shown and when they were done?

Commissioner SEVERIN: Certainly. If they are still available from whenever they have been undertaken here in New South Wales, I am more than happy to do that.

Answer:

The Prison Bed Capacity Program (PBCP) has delivered 2,878 new maximum security beds since 2016, significantly reducing the need to use older, higher risk cells.

In addition to this program, and subject to Budget outcomes, the Department expects to be able to use some of its FY2021/22 financial year capital budget for a program to improve cell safety by reducing hanging points in existing correctional facilities. The full extent of the requirements and cost of the program is currently being assessed.

Based on previous work and general knowledge in the industry:

- Retrofitting / modifying existing cells in operating prisons is an inefficient way of spending capital monies
- Work done in other jurisdictions identified the cost of modifying a cell at around \$100,000 (not adjusted for inflation)
- In the mid-1990s, Queensland Corrective Services undertook an audit and estimated that the total cost of removing hanging points in cells to be in the order of \$160m (not adjusted for inflation).

Question 6 (p.56) - Hanging Points

Mr DAVID SHOEBRIDGE: You said that there was some distinction between programs and projects. Commissioner, can you tell us on notice what all of the projects or programs are for removing hanging points in the cells at the moment, and what that will mean when it is completed in terms of how many cells still have hanging points?

Mr COUTTS-TROTTER: What has changed since the Commissioner's evidence in September is that we have had our departmental and cluster budget rebased. It is a much more certain budget in four years now. We can now rely upon a minor capital works program that was unavailable to the department previously. I have seen a draft proposal for the coming year's minor capital works program and it contains a whole range of projects, a couple of million dollars' worth of projects, to remove hanging points. It may be a question of semantics about whether we have a program or not, but we definitely have a committed minor works program that is making a priority of tackling some of this.

Mr DAVID SHOEBRIDGE: We will get the answers on notice about how many cells that has retrofitted, how many will be retrofitted and how many will still be left with ligature points.

Mr COUTTS-TROTTER: Okay

Answer:

The budget and program of works for the minor works program has not yet been finalised. However, as above, subject to Budget outcomes, the Department expects to be able to use some of its FY2021/22 financial year capital budget for a program to reduce the need to use older, higher risk cells in existing correctional facilities. The full extent of the requirements and cost of the program is currently being assessed.

Owing to the age of many correctional centres in NSW, no system-wide work is currently being undertaken as a program to eliminate all hanging points in cells; however, there are various projects underway, or proposed, to remove further hanging points in various centres including Junee and Parklea Correctional Centres.

Where possible, CSNSW refurbishes existing cells to modern standards, which improves the safety of cells. In 2021, 192 cells at Long Bay are being refurbished to reduce ligature points.

The Prison Bed Capacity Program (PBCP) has delivered 2,878 new maximum security beds since 2016. The PBCP implemented safe design principles to minimise ligature points within the new cells.

The Prison Bed Capacity Adjustment Program (PBCAP) is decommissioning 2,500 operationally obsolete prison beds as new fit for purpose infrastructure is commissioned, reducing the reliance on the use of high risk cells.

Question 8 (p.60) - NITV and Tane Chatfield death

Mr DAVID SHOEBRIDGE: Indeed, in the Chatfield case you told NITV in October 2017—again, very soon after Mr Chatfield's death—that Mr Chatfield's death was not:

... contributed to by other humans ...

Do you remember saying that?

Commissioner SEVERIN: Obviously I need to take that on notice. I do not remember saying that. I am not suggesting that I did not say it.

Answer:

Commissioner Severin used this phrase on NITV in October 2017 in relation to Tane Chatfield's death. In context, the Commissioner was explaining that there was no evidence of suspicious circumstances that indicated that the death was a murder or caused by a third party.

As the Commissioner explained to the Select Committee (transcript page 59), CSNSW has moved away from using this phrase.

Question 9 (p.60) - ASPU Aboriginal Death in Custody policy

Mr DAVID SHOEBRIDGE: We will come back to that. I have the Aboriginal Strategy and Policy Unit's Aboriginal deaths in custody policy directive from your organisation. It is the current one. It was put in place on 4 March 2019. It makes no reference at all to there being an invitation for the families to speak with yourself or any senior officers. It is not part of the formal policy, Mr Severin?

Commissioner SEVERIN: Again, I would have to take that on notice. I do not have any reason to dispute what you are saying, but that is not to say that I do not offer families to meet with me. It does not need to be written in policy for me to do that; likewise, Mr Grant as my deputy in my absence has done exactly the same.

Do you accept that there is no policy in place to proactively provide information to families.

Commissioner SEVERIN: I have to take that on notice. I do not have the policy in front of me.

Answer:

The Aboriginal Strategy and Policy Unit's 'Aboriginal Death in Custody' policy outlines the policy and procedures that must be followed by the Principal Manager, Aboriginal Strategy and Policy Unit and all Regional Aboriginal Project Officers when an Aboriginal inmate dies in CSNSW custody.

Part 1.1 of that policy includes a requirement for the Principal Manager to "organise a meeting at the earliest opportunity with family members to allow them to raise any questions or issues they may have". This may include a meeting with the Commissioner, Deputy Commissioner or senior officers of CSNSW.

Question 10 (p.64) - Young People in Youth Justice custody under the age of 14

The Hon. PENNY SHARPE: You might have to take this question on notice. I am trying to understand how many young people under the age of 14 have been detained in recent years and whether they are Aboriginal or non-Aboriginal. If you could point me to where that dataset is kept or if you could provide that for as far back as you can—the past 10 years or so—that would be terrific.

Mr O'REILLY: We can find information over the last period. I can tell you what is happening today, if that is helpful?

The Hon. PENNY SHARPE: Yes, that is good. I am very pleased that the numbers have come down so that is all good but you can see the question we are asking. We have had a lot of evidence around criminal responsibility and raising the age. I know that you do not want to comment on that because that is a Government decision, but I am interested in how many children under 14 have been in detention in previous times and whether they are Aboriginal or not.

Mr O'REILLY: I check that number periodically. I have been in the role for just over a year and a half and it is generally between three and six young people. It is six today and most of those young people are Aboriginal, whenever I check. But we can come back to you on notice with some more concrete data.

The Hon. PENNY SHARPE: Yes, some detail of the ages.

The Hon. TREVOR KHAN: Sorry, in providing that data are you able to separate it out between remand and sentence?

Mr O'REILLY: Yes.

The Hon. PENNY SHARPE: That would be good.

Mr DAVID SHOEBRIDGE: It would be close to 100 per cent remand, though, would it not?

Mr O'REILLY: It would be very high.

The Hon. ROD ROBERTS: Could you also add to that report what offences they are in there for?

Mr O'REILLY: Possibly—if we can, we will, yes.

Answer:

The following data uses unique person count over the 10 year period and admissions. Admissions were used because the request asked for Legal Status and Most Serious Offence and a young person under 14 years admitted to custody can have multiple admissions with different Legal Status and different Most Serious Offence at each admission.

- **Unique Individuals**

There were 1134 individual young people under the age of 14 admitted to YJ custody for the ten financial years (FY) from 1 July 2010 to 30 June 2020. A young person under the age of 14 can be admitted more than once.

Aboriginal status	Number	Percentage
Aboriginal	664	59%
Non Aboriginal	445	39%
Unknown Aboriginal Status	25	2%
Total	1134	100%

- **Admissions**

There were 4821 admissions to YJ custody of young people under the age of 14 in the ten year period.

Aboriginal Status	Number	Percentage
Aboriginal	3115	65%
Non Aboriginal	1638	34%
Unknown Aboriginal Status	68	1%
Grand Total	4821	100%

- **Legal Status at Admission**

Legal Status	Number	Percentage
Sentenced	27	0.6%
Remand	4794	99.4%
Total	4821	100.00%

- **Legal Status by Aboriginal Status at Admission**

Admissions Legal Status	Aboriginal Status			Total
	Aboriginal	Non Aboriginal	Unknown Aboriginal Status	
Control	23	4	0	27
Remand	3092	1634	68	4794
Total	3115	1638	68	4821

- Most Serious Offence at Admission by Aboriginal Status in descending order.

Most Serious Offence	Number Aboriginal	Percentage Aboriginal
Acts intended to cause injury	1185	38.0%
Unlawful entry with intent/burglary, break and enter	507	16.3%
Theft and related offences	363	11.7%
Miscellaneous Offences	265	8.5%
Offences against government procedures, government security and government operations	222	7.1%
Robbery, extortion and related offences	213	6.8%
Property damage and environmental pollution	192	6.2%
Public order offences	66	2.1%
Dangerous or negligent acts endangering persons	46	1.5%
Abduction, harassment and other offences against the person	22	0.7%
Sexual assault and related offences	17	0.5%
Illicit Drug Offences	8	0.3%
Fraud, deception and related offences	6	0.2%
Traffic and vehicle regulatory offences	2	0.1%
Prohibited and regulated weapons and explosives offences	1	0.0%
Total	3115	100.0%

Most Serious Offence	Number Non Aboriginal	Percentage Non Aboriginal
Acts intended to cause injury	778	47.5%
Offences against government procedures, government security and government operations	169	10.3%
Theft and related offences	163	10.0%
Robbery, extortion and related offences	132	8.1%
Miscellaneous Offences	130	7.9%

Unlawful entry with intent/burglary, break and enter	118	7.2%
Property damage and environmental pollution	91	5.6%
Public order offences	22	1.3%
Sexual assault and related offences	10	0.6%
Abduction, harassment and other offences against the person	6	0.4%
Prohibited and regulated weapons and explosives offences	6	0.4%
Illicit Drug Offences	4	0.2%
Dangerous or negligent acts endangering persons	4	0.2%
Homicide and Related Offences	3	0.2%
Fraud, deception and related offences	1	0.1%
Traffic and vehicle regulatory offences	1	0.1%
Total	1638	100.0%

Most Serious Offence	Number	Percentage
	Unknown Aboriginal Status	Unknown Aboriginal Status
Acts intended to cause injury	30	44.1%
Offences against government procedures, government security and government operations	14	20.6%
Robbery, extortion and related offences	7	10.3%
Property damage and environmental pollution	6	8.8%
Theft and related offences	5	7.4%
Miscellaneous Offences	4	5.9%
Sexual assault and related offences	1	1.5%
Dangerous or negligent acts endangering persons	1	1.5%
Total	68	100.0%