

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

As the inquest begins into the death in custody of Yorta Yorta woman Tanya Day, who fell asleep on a train in Victoria before she [was arrested](#) for public intoxication, questions are being asked about what it takes to stop Aboriginal people dying in custody.

Earlier this month was the fifth anniversary of the death of Ms Dhu, a young Yamatji woman [who died](#) after four days in South Hedland police lockup. The Western Australian coroner said:

In her final hours she was unable to have the comfort of the presence of her loved ones, and was in the care of a number of police officers who disregarded her welfare and her right to humane and dignified treatment.

And in 2016, Wiradjuri mother Rebecca Maher died in custody after police failed to conduct any physical checks for her safety or take her to hospital, where [expert evidence](#) indicated she could have survived.

Read more: [***Deaths in custody: 25 years after the royal commission, we've gone backwards***](#)

[A recent analysis](#) found Australia's incarceration rate is sitting at 0.22%, the highest it's been since 1899, with Indigenous people [making up 28%](#) of those in prison. Tanya Day, Ms Dhu and Rebecca Maher are among the [400 people](#) who have died in custody, more than 25 years since the Royal Commission into Aboriginal Deaths in Custody.

But how many deaths could have been avoided?

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

In Ms Dhu and Maher's inquests, the families believed access to a custody notification service would have been an important check in the absence of police care.

The custody notification service is a 24/7 "telephone hotline" for Aboriginal people [to receive](#) legal advice and a welfare check. The Royal Commission [recommended](#) it be

mandatory for Aboriginal Legal Services to be notified upon the arrest or detention of any Aboriginal person.

A custody notification service is necessary as a health and legal line, including to alert police when a person needs medical help and make crucial referrals to community-controlled health and legal services.

But custody notification services aren't accessible to people in protective custody, such as for intoxication.

Read more: [***Ms Dhu coronial findings show importance of teaching doctors and nurses about unconscious bias***](#)

And the services operate inconsistently across Australia, on short-term funding arrangements. Often they do not enable a conversation between the person in custody and the person on the line. Generally, the police are the ones who contact the service.

If Aboriginal deaths are to be prevented, the custody notification service needs to be funded nationally and implemented locally. It must encompass a well-being and legal service to

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

Aboriginal people in police custody, a direct line to the Aboriginal person in custody and a mechanism for police accountability.

Northern Territory: too little and too late

In the Northern Territory, protective custody [was introduced](#) to decriminalise intoxication. But it has led to police stations becoming [known as](#) “drunk tanks” exclusively for Aboriginal people.

Between 2003 and 2012, eight Aboriginal men and women died in the Northern Territory while in, or associated with, protective custody.

The Northern Territory government set down [regulations](#) for a custody notification service only last month – the last Australian jurisdiction to commit to such a service.

While the regulations provide little detail, they do have two notable exclusions: protective custody and paperless arrests.

The regime of [paperless arrests](#) allows police to take a person into custody where they would otherwise [receive an](#) on-the-spot fine.

Read more: [***Paperless arrests are a sure-fire trigger for more deaths in custody***](#)

Under these laws, Warlpiri artist and children’s book illustrator Kumunjayi Langdon died on [a concrete bench](#) in police lockup in Darwin in 2015 from treatable heart disease.

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

Both paperless arrests and protective custody already provide fewer procedural protections than arrests for an offence that result in charges. Removing access to the custody notification service for Aboriginal people arrested under these laws is another denial of safeguards.

New South Wales is leading by example

New South Wales led the way with its state-wide custody notification service, implemented [in 2007](#)

. It is set apart from many other custody notification services in Australia by providing direct contact with the person in custody.

Like the NT and most other Australian jurisdictions, NSW police have the power to detain an intoxicated person for their own protection.

Read more: [***Why Aboriginal voices need to be front and centre in the disability Royal Commission***](#)

Maher died in custody in 2016 within five hours of being held in protective custody for intoxication, and wasn't given access to the custody notification service.

She was held under part 16 of the Law Enforcement (Powers and Responsibilities) [Act 2002](#) (LEPRA), which allows for the detention of intoxicated people. It means she didn't receive the benefit of a notification to the Aboriginal Legal Services given to those arrested under part 9 of the same law.

In July 2019, the NSW coroner in the inquest into Maher's death identified the custody notification service was too narrow in its application.

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

[She recommended](#) that an Aboriginal person detained under part 16 of LEPRA is given the same access to the service as an Aboriginal person held under part 9, and that the service should be sufficiently funded to extend to these people.

What's more, the federal government [is working with](#) the NSW government to ensure the custody notification service is funded so it "extends to protective custody".

Read more: [**We need evidence-based law reform to reduce rates of Indigenous incarceration**](#)

The custody notification service needs to be rolled out to protective custody across the nation to enable Aboriginal and Torres Strait Islander people in custody to have a direct line to the service.

For this service to effectively stop deaths in police custody, it must be fully-funded, consistently-funded and available to all Aboriginal and Torres Strait Islander people in custody, not only those arrested.

Thalia Anthony receives funding from the Australian Research Council

Alison Whittaker does not work for, consult, own shares in or receive funding from any company or organisation that would benefit from this article, and has disclosed no relevant affiliations beyond their academic appointment.

Authors: Thalia Anthony, Associate Professor in Law, University of Technology Sydney

Legal and welfare checks should be extended to save Aboriginal lives in custody

Written by Thalia Anthony, Associate Professor in Law, University of Technology Sydney

Read more <http://theconversation.com/legal-and-welfare-checks-should-be-extended-to-save-aboriginal-lives-in-custody-121814>