Indigenous overrepresentation in prisons

When the Royal Commission into Aboriginal Deaths in Custody delivered its final report in 1991, it concluded that the high rate of Aboriginal deaths in prison stemmed from Aboriginal overrepresentation in prison. The reason for this overrepresentation was a combination of Aboriginal disadvantage, substance abuse and institutional bias in the criminal justice system.

The Royal Commission looked in detail at the issues facing Aboriginal and Torres Strait Islander communities and made recommendations about reducing and eliminating disadvantage. Following the Royal Commission report, Commonwealth, State and Territory Governments made a concerted effort to reduce the rate of Aboriginal and Torres Strait Islander people imprisoned, yet their collective efforts have not met with much success.

The Queensland Government published a response document outlining their intention to tackle each of the recommendations which were obligatory for them to address. The growing police arrests, prison population numbers and lack of application of discretionary powers by police and courts is proof of systemic failures by government agencies. This coupled with a failure to fund sufficient secondary and tertiary service providers to deal with offending behaviours and put in place diversions from custody is proof of little or no regard to not only the Royal Commission’s recommendations but also the Queensland Government’s own response in 1992.

Statistics released in 2012 revealed that despite comprising only 2.5% of the Australian population, Aboriginal and Torres Strait Islanders constitute just over a quarter (27% or 7,982) of the total prison population. Furthermore, Aboriginal and Torres Strait Islander youth account for approximately 50% of incarcerated children.

Factors that contribute to Indigenous Overrepresentation in Prison

Disadvantage

As identified in the Royal Commission report, one of the biggest factors contributing to overrepresentation by Aboriginal and Torres Strait Islander people in prison is disadvantage. People who are or have been in prison are typically from highly disadvantaged backgrounds and Aboriginal and Torres Strait Islander people are the most disadvantaged group in Australia.

As a consequence of years of systemic racism and colonisation, Aboriginal and Torres Strait Islander communities are now plagued with high unemployment, lack of job prospects, lack of economic or business opportunity, low incomes, dependence on government pensions and allowances, low home ownership, inability to accumulate capital, greater school drop-out rates, lower post school qualifications, and lower life expectancy.

To gauge how this has all come about one must look at the detrimental impact laws have had upon Aboriginal and Torres Strait Islander people and what were the requirements for social and economic inclusion in the Australian social landscape under those laws. For want of a better term this country’s legal system has been premised upon White Race Privilege.

Substance abuse

Substance abuse is another key contributing factor, with issues of substance abuse featuring prominently in Aboriginal and Torres Strait Islander communities.
As a response to the devastating effects of colonialism, including dispossession, and illness and death resulting from disease and confrontation, alcohol has become somewhat of a panacea for Aboriginal and Torres Strait Islander people’s pain, with many using it as a means of escape and solace.  

An Aboriginal community worker commenting on the connection between drug and alcohol abuse and the high crimes rates in the Wilcannia community stated:

“Drug and alcohol use is one of the biggest factors. I think there are lots of reasons for that. People drink to forget things, whether it’s sexual assault or domestic violence in their home. The only way they are ever going to change drug and alcohol abuse is to have counsellors living in the community, on the ground, for the people. Mental health is a huge issue.”

The harmful effects of alcohol on the lives of Aboriginal and Torres Strait Islander Australians are readily apparent, with Indigenous Australians experiencing health and social problems resulting from alcohol use at a rate disproportionate to non-Indigenous Australians. The links between substance abuse and Aboriginal and Torres Strait Islander violence, suicide, offending and incarceration are widely recognised. Drug and alcohol abuse has also been shown to increase the risk of child neglect and abuse which in turn increases the risk of juvenile involvement in crime, and a significant increase in the number of Aboriginal and Torres Strait Islander children removed by State authorities from their families.

The Bridges and Barriers report published by the National Indigenous Drug and Alcohol Committee acknowledged the critical need for new strategies to address alcohol and other drug misuse to significantly reduce the overrepresentation of Aboriginal and Torres Strait Islander Australians in the prison system.

### Mental health

Another much overlooked factor is mental health within Aboriginal and Torres Strait Islander communities and the relationship of mental health problems with the social and economic circumstances of Aboriginal and Torres Strait Islander people.

A report published in the Medical Journal of Australia about the mental health of Indigenous Australians in Queensland prisons found that approximately 73% of Aboriginal and Torres Strait Islander men and 86% of Aboriginal and Torres Strait Islander women in prison had a mental disorder (i.e. depressive, anxiety, psychotic or substance misuse disorders). This is compared with 20% of the wider Australian community.

These results highlight the critical mental health needs of Aboriginal and Torres Strait Islander Australians, particularly those who are incarcerated. Unfortunately, the National Indigenous Drug and Alcohol Committee recently reported on the lack of opportunities that exist for Indigenous people to access appropriate treatment for mental disorders in custody. This means that mental health problems are likely to remain untreated and continue to affect the individual on their return back into the community; potentially placing these individuals at greater risk of re-incarceration.

### Racial bias

While the Royal Commission into Aboriginal Deaths in Custody placed most of its emphasis on disadvantage and substance abuse in Aboriginal communities as the principal reasons for Aboriginal overrepresentation in prison, it also highlighted a number of areas where, in its opinion, institutional bias in the criminal justice system also played a role. These areas included bias against Aboriginal offenders in the willingness of police to employ alternatives to arrest, lack of community-based alternatives to prison in rural communities,
inadequate funding of Aboriginal legal aid and excessively punitive sentencing.\textsuperscript{24}

However, there is disagreement as to whether institution bias in the criminal justice system continues to be a factor contributing to overrepresentation by Aboriginal and Torres Strait Islander people in prisons. It has been stated by some that whilst Aboriginal and Torres Strait Islander people were historically subject to discriminatory treatment by police and courts, there is little evidence that racial bias in policing or the courts currently plays a significant role in shaping Aboriginal and Torres Strait Islander overrepresentation in prison.\textsuperscript{25}

A 2007 study on this topic held that racial bias is not the cause of overrepresentation in prison and that Aboriginal and Torres Strait Islander defendants are more often sent to prison because they commit more serious offences, acquire longer criminal records, and more frequently breach non-custodial sanctions.\textsuperscript{26} Consequently, it is suggested that the focus should be on problems of Aboriginal and Torres Strait Islander substance abuse and economic disadvantage, rather than the workings of the criminal justice system.\textsuperscript{27}

While it continues to be debated whether explicit forms of racial bias exist in the criminal justice system, the reality is that the following changes have contributed to the increased use of imprisonment, which has particularly impacted on Aboriginal and Torres Strait Islander people:\textsuperscript{28}

- lack of discretionary powers by police officers;
- reinstatement of the Community Development Employment Programs;
- changes in sentencing law and practice;
- restrictions on judicial discretion;
- changes to bail eligibility;
- changes in administrative procedures and practices;
- changes in parole and post-release surveillance;
- the limited availability of non-custodial sentencing options;
- the limited availability of rehabilitative programs; and
- a judicial and political perception of the need for ‘tougher’ penalties.

What needs to be done?

Although it is important that the criminal justice system does not operate in a manner which is inherently discriminatory towards Aboriginal and Torres Strait Islander people, preventing this alone will not solve the problem of Indigenous overrepresentation in prisons. Underlying factors which result in Aboriginal and Torres Strait Islander people coming into contact with the criminal justice system must also be addressed.

Therefore, while this has been said before, if the overrepresentation of Aboriginal and Torres Strait Islander people in prison is to be reduced, the following must occur:

- the disadvantage experienced by Aboriginal and Torres Strait Islander people needs to end;
- drug and alcohol abuse by Aboriginal and Torres Strait Islander people must be reduced (therefore, the reasons behind substance abuse in Aboriginal and Torres Strait Islander communities must be addressed); and
- the mental health needs of Aboriginal and Torres Strait Islander people must also be addressed (with adequate support being made both within the community and prisons).

Justice Reinvestment

There is a growing recognition of the pressing need to try new initiatives such as justice reinvestment.\textsuperscript{29} Justice reinvestment refers to diverting funds that would ordinarily be spent on keeping individuals in prisons to communities with high rates of offending
and incarceration, giving those communities the capacity to invest in programs and services that address the underlying causes of crime, thereby reducing criminal behaviour and the rate of re-offending.\(^3\) The emphasis of justice reinvestment is on empowering the community, with the idea being that the community dictates how the money should be spent.\(^3\)

Addressing the symptoms of endemic criminal behaviour is a far more suitable approach to dealing with the effect of crime. A youth program in Logan City, Queensland, known as the Friday night Live at Yugambeh (F.L.Y.) program, commenced 6 years ago targeting at risk youth to divert them from criminal behaviour. The result was an approximate drop in Aboriginal and Torres Strait Islander youth crime by 17%. Unfortunately, the F.L.Y. program has been unsuccessful in attracting government funds as the precursor for being eligible for funding was that the program had to be dealing with known offenders.

[For more information on Justice Reinvestment, see the Balanced Justice factsheet “Is Justice Reinvestment a good idea for Australia?”]

The contributing factors identified above need to be tackled at the local community level, with genuine involvement by Aboriginal and Torres Strait Islander community members in key decision making. Adopting the justice reinvestment approach may be a way of ensuring that this occurs.

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