



## Aboriginal people & the criminal justice system

There are many Indigenous people in prison in NSW. This fact sheet provides some basic information about why Aboriginal people are imprisoned at such high rates in NSW, and looks also at what this means for both Aboriginal and non-Aboriginal communities.

### Facts and Figures

1. In NSW Indigenous people make up only around 2% of the total population, but they are increasingly over-represented inside prisons. Between 14 and 16% of men, and 21 and 25% of women in prison are Aboriginal or Torres Strait Islander.
2. Indigenous people are nationally 15 times more likely to be imprisoned in adult prisons than non-indigenous people.
3. This number is higher for young Aboriginal people. 35-40% of young people in juvenile detention are Indigenous.
4. In NSW there has been a three-fold increase in the number of Indigenous prisoners over the last twenty years.
5. The number of Indigenous women in NSW prisons increased twenty six fold between 1982 and 2001
6. The number of Aboriginal people dying in custody has more than doubled since the Royal Commission into Aboriginal deaths in custody. In 1999 22% of all deaths in custody were Aboriginal.

### Why are there so many Aboriginal people in prison in NSW?

Aboriginal people are clearly over-represented in NSW prisons. There are a number of possible explanations for this over-representation.

#### Policing, Surveillance, and the Law

One of the reasons for the over-representation in prisons, is that Aboriginal people are over-represented at *every other* stage of the criminal justice system. Some Indigenous communities are clearly 'over-policed' and are subject to a form and level of surveillance that is not replicated in other communities. Differential policing – the targeting of specific areas for crime - ensures that certain 'groups' of offenders are caught, and certain 'types' of crime are targeted.

There is much evidence that there are certain laws that are used much more frequently 'against' Aboriginal than non-Aboriginal communities. The *Summary Offences Act* is one example- especially the 'trifecta'- (offensive behaviour, resist arrest and assault police). These offences are sometimes used together by police to charge people who have not committed any crime *until* they come into contact with the police. The Aboriginal and Torres Strait Islander Commission has noted that there are other specific offence categories in which Aboriginal offenders are dramatically over-represented including theft, driving offences and assault.

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Search and remove powers are also over-used by police in areas where there are high Aboriginal populations.

One study (AJAC 2001) found that in Bourke, police used their powers at a rate 492 times the State average. Aborigines were searched at 30 times the state rate. In Walgett, Moree and Broken Hill, police use their 'move on' powers 321 times, 173 times, and 145 times the State rate respectively.

In 10 police Local Area Commands in NSW with high Indigenous populations, Aboriginal males were refused bail at a rate of 12 times higher than non-Aborigines. Aboriginal females were locked up at a rate 40 times greater than non-Aboriginal females for intoxication. Detention for outstanding warrants was 14.4 times greater for Aboriginal males and 16.5 times greater for Aboriginal females than non-Aboriginal males and females.

### **Other Structural Reasons**

Some would argue that it is very difficult to separate the causes of Aboriginal crime with the history of racism in Australia. The over-representation of Indigenous people in NSW prisons is deeply connected to the general disadvantage of Aboriginal people in NSW, which is in turn connected to the violent colonisation of Australia.

The high levels of poverty, unemployment, and homelessness all impact on the likelihood of people to commit crime. The associated alienation and dislocation of some Aboriginal communities is also an important factor. Drug and alcohol use has also been a very big problem in some Aboriginal communities. It is probably impossible to separate this problematic drug use from the generally high levels of disadvantage experienced by so many Indigenous people.

In this sense, the over-representation of Indigenous people in prisons might be described as a continuation of certain forms of structural racism.

There has been a history in NSW of both explicitly and implicitly racist policies in the areas of both welfare and criminal justice. From the earlier 'assimilation' policies such as the removal of aboriginal children from their families, to the contemporary practice of over-surveillance and policing of particular Aboriginal communities, discrimination by the state against Aboriginal people continues to damage both Aboriginal and non-Aboriginal communities.

### **What About The Royal Commission?**

The Royal Commission into Aboriginal Deaths in Custody, established in 1987 published what was considered by many to be a landmark report in 1991. In examining the deaths of Indigenous persons in custody, the commission found that whilst Aboriginal people were no more likely than non-Aboriginal people to die in custody, the disproportionate numbers of Indigenous people in custody meant that Aboriginality itself was a significant factor in the incarceration, and therefore the deaths in custody.

339 recommendations were handed down by the Commission, and roughly half of these dealt with 'justice' system for Indigenous people. However, a decade on, Aboriginal people are still vastly over-represented in custody, and are still dying in custody at an unacceptably high rate.

### **But shouldn't people who commit crime go to prison?**

The problem with sending alienated, disadvantaged and dislocated communities to prison, is that this experience frequently



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*increases* the alienation, disadvantage and dislocation. This in turn increases the likelihood of people committing crime.

In some Aboriginal communities, there are so many people in custody, that although the experience of imprisonment is still frequently devastating, it also is partially 'normalised'. Because the criminal justice system continues to be seen as such a destructive force, victims of crime in Aboriginal communities are frequently alienated from *using* the police for assistance in the same way as non-Aboriginal communities might.

Many Aboriginal people who are imprisoned come from remote areas in NSW and imprisonment for people from these areas involves a massive dislocation from their families. Often Aboriginal people who go to prison are also very involved in caring for their families and communities. When this is the case, a bout of imprisonment can leave a real gap for those on the outside. Caring roles on the outside can be neglected, or sometimes filled by someone else, thus further alienating the person who has gone to prison from their community.

The other important point is that the majority of Aboriginal people who are sentenced to full time custody are given very short sentences. This means that the majority of Aboriginal people in prison are there for offences that are not considered by the courts to be extremely serious.

*If all the Aboriginal people who are currently sentenced to prison sentences of under six months were to be given a non-custodial sentence, the number of Indigenous people sentenced to prison could be reduced by 54%.*

There have been some moves, initiated mostly by indigenous communities, to incorporate elements of Aboriginal customary law into the

western legal framework. The State Governments trial of 'circle sentencing' also aims to increase the role of Aboriginal communities in sentencing. Such attempts acknowledge- and strive to overcome the alienating process of the adversarial legal system and racist history between the legal system and Aboriginal communities in Australia.

There is clearly a need to look at alternatives to imprisonment for Indigenous communities. There is also a need to better respond to the structural factors which influence the disproportionately high numbers of Aboriginal people coming into contact with the criminal justice system.



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