

# Smart Justice

“Smart action for a safer community”

## Ending over-representation of Aboriginal and Torres Strait Islander peoples in the criminal justice system

People who are or have been in prison are typically from highly disadvantaged backgrounds. Aboriginal and Torres Strait Islander peoples are the most disadvantaged group in Australia. The key to ending over-representation in the criminal justice system is to end disadvantage.

### The problem

The Royal Commission into Aboriginal Deaths in Custody 1991 report acknowledged the long history of inequality and disadvantage experienced by Aboriginal and Torres Strait Islander peoples. It found that disadvantage in areas such as health, housing, education, employment and income were closely linked to the disproportionate number of Aboriginal and Torres Strait Islander peoples in custody. Recommendations to turn this around included increasing self-determination, better education and economic opportunities as well as improving health and housing.<sup>1</sup> However 20 years later, Aboriginal and Torres Strait Islander peoples are still experiencing dispossession, marginalisation and exclusion<sup>2</sup> and remain the most disadvantaged group in Australia.<sup>3</sup>

Over-representation of Aboriginal and Torres Strait Islander peoples in prison continues to increase. Between 2007 and 2014, the imprisonment rate increased by 85.6 % for Aboriginal and Torres Strait Islander women and by 31.7 % for Aboriginal and Torres Strait Islander men.<sup>4</sup> Aboriginal and Torres Strait Islander peoples in Victoria were 11.1 times as likely as non-Aboriginal and Torres Strait Islander people to be imprisoned in 2014.<sup>5</sup> Over-representation extends to young Aboriginal and Torres Strait Islander peoples with the most recent data indicating that Aboriginal and Torres Strait Islander young persons are 12 times more likely to be under juvenile justice

supervision in Victoria.<sup>6</sup> There is a strong link between juvenile and adult offending with one study finding that nine out of ten Aboriginal and Torres Strait Islander young persons who appeared in a children’s court went on to appear in an adult court within eight years.<sup>7</sup> This rate is nine times higher than those for a non-Aboriginal and Torres Strait Islander person.<sup>8</sup>

### What causes over-representation to continue?

While this is a complex issue it appears that over-representation is influenced by many factors that contribute to offending by Aboriginal and Torres Strait Islander peoples,<sup>9</sup> and by the way the traditional criminal justice system responds to the offending.

### What are the factors that contribute to over-representation?

Aboriginal and Torres Strait Islander disadvantage is one of the main risk factors and remains entrenched across many areas including health, education, housing, income and employment.<sup>10</sup> The 1997 Bringing Them Home report found that the trauma experienced by Aboriginal and Torres Strait Islander children who were removed from their parents resulted in reduced levels of education which lowered employment and income opportunities. This resulted in an ongoing cycle of disadvantage which has been passed on to their children.<sup>11</sup> Research also shows that Aboriginal and Torres Strait Islander peoples who were removed from their parents as part of the Stolen Generations are at significantly higher risk of arrest.<sup>12</sup>

Having a criminal record and being in prison can also result in significant levels of poverty and socio-economic disadvantage.<sup>13</sup> Prison reduces future employment

prospects with the latest data indicating that Aboriginal and Torres Strait Islander people who have been arrested in the past 5 years are more than twice as likely to be unemployed (29 per cent) than employed (11 per cent).<sup>14</sup>

The stigma of a criminal record has a particularly high impact in Victoria. Unlike most other Australian states and territories, Victoria does not have a legislated spent conviction scheme where some criminal convictions do not have to be disclosed after a person has completed a period of crime-free behaviour.<sup>15</sup>

Post prison homelessness is a risk factor for re-offending. A research study found that ex-prisoners were twice as likely to return to prison within nine months if they were homeless.<sup>16</sup> Half of the Aboriginal and Torres Strait Islander people in the study were homeless nine months after their release from prison.<sup>17</sup>

### How the traditional criminal justice system impacts on Aboriginal and Torres Strait Islander over-representation

A starting point to understanding how some Aboriginal and Torres Strait Islander peoples today view the criminal justice system is to appreciate the system's historical role in enforcing colonial authority. Some researchers argue that this legacy has led Aboriginal and Torres Strait Islander peoples to be distrustful of and disconnected from the system.<sup>18</sup>

Aboriginal and Torres Strait Islander peoples are also treated differently by the criminal justice system. For example, a smaller proportion of Aboriginal and Torres Strait Islander than non-Aboriginal and Torres Strait Islander juvenile offenders were diverted by formal cautioning mechanisms or referrals.<sup>19</sup> Some Aboriginal and Torres Strait Islander peoples need interpreter services to understand and be effectively represented in the criminal justice system and this does not always happen.<sup>20</sup>

Some offences, such as public drunkenness, disproportionately affect Aboriginal and Torres Strait Islander peoples, increases the number of people being locked up in police cells and increases the risk of death in custody.<sup>21</sup>

### Ending over-representation

There is a growing recognition of the pressing need to try new initiatives such as justice reinvestment.<sup>22</sup> Justice reinvestment diverts a portion of the funds spent on prisons to local communities where high proportions of people in prison originated. The money is then reinvested in programs and services that address the underlying causes of crime in that community. International research indicates that there is a very strong financial case for investing substantial resources in more preventative work with former prisoners; those with drug and alcohol problems; people with mental illness and young people on the outskirts of the criminal justice system.<sup>23</sup>

There is also recognition that interventions targeted at Aboriginal and Torres Strait Islander youth may be particularly effective given the strong link between juvenile

and adult offending among Aboriginal and Torres Strait Islander people.<sup>24</sup>

Another strategy aimed at addressing problems within the criminal justice system is to create a sense of Aboriginal and Torres Strait Islander ownership of and connection to the justice system.<sup>25</sup> In Victoria, the Koori Court and the Children's Koori Court, a sentencing court for Aboriginal and Torres Strait Islander peoples, is helping reduce the cultural alienation by providing a more culturally sensitive court environment by incorporating Koori culture, Elders and Respected Persons and the community in the justice process.<sup>26</sup>

### Smart Justice solutions are reducing disadvantage to end over-representation by:

- trialling new initiatives such as justice reinvestment.
- setting justice targets in the Federal Government's Closing the Gap agenda.
- greater investment in alternatives to juvenile detention.
- increasing community based sentencing orders with targeted support and supervision.
- abolishing mandatory sentencing policies.
- expanding courts and programs that practice therapeutic jurisprudence and restorative justice.
- decriminalising public drunkenness.
- introducing a national spent convictions scheme.
- establishing Stolen Wages repayment schemes.
- investing in Aboriginal and Torres Strait Islander interpreter services.

*This fact sheet was written with the Victorian Aboriginal Legal Service Co-operative Limited (VALS) on 16 February 2011 and was updated on 1 June 2015.*

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20. Joint Aboriginal and Torres Strait Islander Legal Services Universal Periodic Review Submission to the UN (2010).
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