Factsheet: Criminal Justice System

Background Information

Aboriginal and Torres Strait Islander adults and juveniles, as well as people with disabilities, are disproportionately represented in the Australian criminal justice system. This issue continues to present significant challenges including ensuring adequate funding of the Indigenous legal aid program.

Key Issue – Aboriginal and Torres Strait Islander adults and juveniles

Aboriginal and Torres Strait Islander adults and juveniles, are significantly over-represented in Australia’s prison population.¹ The overrepresentation of Aboriginal and Torres Strait Islander Australians as both victims and offenders remains one of the most glaring disparities between Aboriginal and Torres Strait Islander Australians and non-Indigenous Australians.

It has been recommended that justice targets be set to halve the gap in rates of incarceration for Aboriginal and Torres Strait Islander people. The justice targets could be included in the existing Close the Gap framework.² Justice reinvestment strategies have also been recommended by the Senate Legal and Constitutional Affairs Committee and successive Social Justice Commissioners.³ Justice reinvestment involves diverting and reinvesting funds used for imprisonment to services that address underlying causes of crime in communities with high rates of offending.

The Australian Government has announced a $13.4 million reduction in funding of the Indigenous Legal Aid and Policy Reform Program. The cuts will take effect from 1 July 2015. The reduction in funding may affect various services provided by the community controlled not-for-profits funded out of this program, including legal assistance, community legal education, prison, law reform and advocacy activities.⁴

Recommendation

*The Commission recommends that Australian Governments adopt justice targets and introduce justice reinvestment trials to reduce Indigenous incarceration rates.*

*The Commission recommends that adequate funding be provided for Indigenous legal aid.*

Key Issue – People with disabilities

Access to justice for people with disabilities continues to present significant challenges.
The Commission’s report, *Equal Before the Law*, concluded that people with disabilities have higher rates of interaction with the criminal justice system than other Australians. The Report cited 2012 statistics, which indicate that 38% of prison entrants reported they have ever been told by a doctor, psychiatrist, psychologist or nurse that they have a mental health disorder and 46% of prison discharges reported that they have ever been told they have a health condition – mental health, including drug and alcohol abuse. The report found that necessary supports and adjustments for people with disabilities were frequently not provided in the criminal justice system.

The indefinite detention of people with a cognitive impairment is also of concern. In 2014 the Commission inquired into complaints by four Aboriginal men with intellectual and cognitive disabilities who had been incarcerated for a number of years despite being found unfit to stand trial or not guilty by reason of insanity. The Aboriginal Disability Justice Campaign advocates for progress in relation to the indefinite incarceration of Aboriginal people with intellectual and cognitive disabilities.

**Recommendation**

*The Commission recommends that Government adopt measures to improve access to justice for people with disabilities, develop alternative care arrangements where people are found unfit to plead for reasons including cognitive impairment or acquired brain injury.*

**Key Issue – Mandatory sentencing**

Several Australian jurisdictions have expanded or introduced mandatory sentencing laws, which prevent appropriate non-custodial measures for certain offences and may lead to disproportionate and arbitrary detention. Victoria has phased out the use of suspended sentences. There is overcrowding in some prisons.

**Recommendation**

*The Commission recommends that Australian governments review mandatory sentencing and laws that limit judicial discretion, and expand the use of non-custodial measures where appropriate.*

**Key Issue – Child offenders in adult prisons**

Child offenders have sometimes been held in the same correctional centres as adults. In particular, children have been held in adult detention facilities in Western Australia and Victoria. These transfers have been examined through litigation in which the Commission intervened. The National Children Commissioner raised this concern in her inaugural Children’s Rights Report 2013. The Commission notes that some jurisdictions have progressed the use of non-custodial measures and strengthened diversionary programs.

**Recommendation**

*The Commission recommends that Australian governments expand the use of diversionary programs for juveniles, raise the minimum age of criminal responsibility and cease detention of children in adult facilities.*


9 Suspended sentences were abolished in the state of Victoria for offences committed on or after 1 September 2014 by the Sentencing Amendment (Abolition of Suspended Sentences and Other Matters) Act 2013 (Vic).


13 The Australian Human Rights Commission’s consultations in the lead up to the UPR identified successful diversionary initiatives in Victoria, the ACT and Tasmania.