

Australia's Criminal Justice System



Australian
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Commission

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Key Issue – Over-representation of Aboriginal and Torres Strait Islander people in the criminal justice system

Aboriginal and Torres Strait Islander people continue to be disproportionately represented in prisons, especially children and young people and those with intellectual or psychosocial disabilities. Aboriginal and Torres Strait Islander people are overall 12 times more likely to be in prison than non-Indigenous people. Aboriginal and Torres Strait Islander women are the fastest growing prisoner population and are 19 times more likely to be in prison than non-Indigenous women. In 2018–19, over half (58%) of those aged 10-17 in detention were Aboriginal and Torres Strait Islander children and young people.

The Australian Law Reform Commission's 2018 report [Pathways to Justice](#) identified that Aboriginal and Torres Strait Islander incarceration is often characterised by low-level offending including failure to pay fines.

Once contact has been made with the criminal justice system, including amongst children and young people, many become caught in cycles of incarceration that are extremely difficult to break. A lack of effective programs to support rehabilitation further entrenches inequalities.

The Commission welcomes positive steps that have been taken to address the overincarceration of Aboriginal and Torres Strait Islander peoples since 2015, including the establishment of some justice reinvestment programs across Australia, the introduction of the [Australia New Zealand Police Advisory Agency's Anti-Racism and Cultural Diversity Principles](#) in 2018, and the development of some strategic plans to address overrepresentation.

More must be done to work meaningfully with Aboriginal and Torres Strait Islander communities to devise real and ongoing solutions.

The Commission has called on Australian governments to invest further in diversionary programs for adults, young people and children.



Diversionary programs should be designed to effectively address the causes of offending. They should be used to divert people from further interaction with the criminal justice system in circumstances where sentencing is unlikely to be successful in preventing further offending.

Funding should be available to work with communities to address the key drivers of criminal behaviour before offending occurs. Examples of successful justice reinvestment programs can be seen around the country.¹

Recommendation

Governments ensure the availability of diversionary programs for Indigenous peoples and expand justice reinvestment trials. Government commit adequate, ongoing funding for Indigenous legal assistance programs

Key Issue – Mandatory sentencing laws

Mandatory sentencing laws² that set a mandatory minimum sentence for particular offences,² continue to exist in most Australian jurisdictions. Some of these laws allow judges to make exceptions from the specified sentence, while others are more restrictive in how that can be applied.

These laws undermine rule of law principles, including the separation of the government and judiciary and the ability of judges to impose sentences that are proportionate to the specific circumstances of the crime, and may lead to arbitrary detention. The Commission is also concerned that these laws may disproportionality affect Aboriginal and Torres Strait Islander people.

Recommendation

Governments abolish mandatory sentencing laws and expand the use of non-custodial measures where appropriate



Key Issue – Conditions of detention for children and young people

Despite legislation in most states and territories prohibiting the use of isolation and limiting the use of force to certain circumstances, allegations of mistreatment of children and young people in youth detention have arisen in several jurisdictions over recent years.³

The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory found that children and young people detained in the Northern Territory youth justice system:

- were frequently subjected to verbal abuse and racist remarks
- were deliberately denied access to basic human needs, including water and food
- were restrained in ways that were potentially dangerous
- were subjected to isolation excessively and punitively.

The Commission urges Australian governments to urgently implement OPCAT and explicitly prohibit the use of isolation and force as punishment on children.

Recommendation

Governments prohibit the use of isolation and force as punishment in youth justice facilities



Endnotes

¹ See, for example: KPMG, *Maranguka Justice Reinvestment Project: Impact Assessment* (November 2018).

² See, for example: *Criminal Law (Two Strike Child Sex Offenders) Amendment Act 2012* (Qld); *Criminal Law (Criminal Organisations Disruption) Amendment Act 2013* (Qld); *Criminal Code Act Compilation Act 1913* (WA) s 297, 318; *Crimes Amendment (Murder of Police Officers) Act 2011* (NSW); *Sentencing Amendment (Violent Offences) Act 2008* (NT); *Sentencing Amendment (Mandatory Minimum Sentence) Act 2013* (NT); *Criminal Code Amendment Act (No 2) 1996* (WA); *Criminal Code Amendment Act 2009* (WA); *Sentencing Legislation Amendment Act 2014 No. 6* (WA); *Criminal Organisations Control Act 2012* (WA); *Crimes Amendment (Gross Violence Offences) Act 2013* (VIC).

³ Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, *Findings and Recommendations* (2017); Western Australian Office of the Inspector of Custodial Services, *Behaviour management practices at Banksia Hill Detention Centre* (June 2017); Victorian Commission for Children and Young People, *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (2017); and Law Council of Australia, *The Justice Project Final Report – Part 1 – People with Disability* (August 2018) 24.