Indigenous Justice Agreements: the current policy framework

By Professor Chris Cunneen and Melanie Schwartz

The purpose of this article is to provide an understanding of the broad policy framework affecting Indigenous people and their relationship with the Australian criminal justice system. It is imperative, now more than ever, to consider the question of the over-representation of Indigenous people in the processes of criminalisation.

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The recent *Overcoming Indigenous Disadvantage Report* noted that 'Indigenous people's involvement with the criminal justice system continued to deteriorate'.[1] At 30 June 2006, Indigenous prisoners represented 24% of the total national prisoner population, the highest proportion since 1996. Between 2002 and 2006, the imprisonment rate for Indigenous women increased by 34% and for Indigenous men by 22%.[2] The last national police custody survey (2002) showed that Indigenous people comprised 26% of all people in police custody in Australia and were 17 times more likely to be held in police custody than non-Indigenous people.[3] Deaths in custody still occur at unacceptably high levels. Of the 54 deaths in custody in 2005, 15 were Indigenous detainees.[4]

On the surface at least, the Royal Commission into Aboriginal Deaths in Custody (RCADIC) has been a driving force in reforming the relationship between Indigenous people and the criminal justice system. The RCADIC found that there were two ways to tackle the problem of the disproportionate number of Aboriginal people in custody. The first was to reform the criminal justice system; the second was to address the more fundamental factors that bring Indigenous people into contact with it – the underlying issues relating to their over-representation. The RCADIC argued that the principle of Indigenous self-determination must underpin both areas of reform. The RCADIC made 339 recommendations to reduce custody levels, remedy social disadvantage and assure self-determination. All Australian governments committed themselves to implementing the majority of the recommendations.

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One consequence of the RCADIC's recommended approach has been the proliferation of strategies designed to reduce Indigenous over-representation in the criminal justice system and to improve criminal justice agency responses to Indigenous people. The most important of these have been the development of state-wide Indigenous Justice Agreements (IJAs), negotiated between governments and peak Indigenous bodies.

BACKGROUND TO INDIGENOUS JUSTICE AGREEMENTS

To date, IJAs have been broad plans that cover the whole of a state or territory's criminal justice system. IJAs derive from Indigenous and ministerial summits on deaths in custody held in 1997.

Following the recommendations of the RCADIC, Aboriginal Justice Advisory Councils (AJACs) were established in all states and territories of Australia. The AJACs were instrumental in organising the two national meetings held in 1997 to address the ongoing problem of high Indigenous incarceration rates and subsequent deaths in custody. The first was an Indigenous Summit, attended by representatives of Indigenous communities from across Australia. The second was a National Ministerial Summit, where community representatives met Commonwealth and state ministers for justice, police, corrective services and Aboriginal affairs.

The Indigenous Summit recommended the development of IJAs for each state and territory as a way of improving the delivery of justice programs. It recommended that Australian governments should negotiate with AJACs and other relevant Indigenous organisations to develop bilateral agreements on justice issues. It stressed that policy frameworks should respect Indigenous self-determination, an emphasis that should also lie at the heart of IJAs. The need to negotiate with and maximise participation by Indigenous people through their representative bodies in the formulation of justice policies that affect them was held to be a central requirement. The main outcome of the Ministerial Summit was that the states and territories (except the Northern Territory) agreed to develop strategic plans for the co-ordination, funding and delivery of Indigenous programs and services.

CURRENT INDIGENOUS JUSTICE AGREEMENTS

Queensland, Western Australia, Victoria and NSW have negotiated and signed IJAs with Indigenous people.

- The Queensland Aboriginal and Torres Strait Islander Justice Agreement was developed by the Aboriginal and Torres Strait Islander Advisory Board (ATSIAB) and the Queensland Government. It was signed by the premier, four ministers and the chair and members of ATSIAB on 19 December 2000. The Agreement lasts until 2011.
- The Victorian Aboriginal Justice Agreement was jointly developed by Victorian AJAC, ATSIC and the Victorian government. It was launched in June 2000. The Victorian Aboriginal Justice Agreement (Phase 2) was released in 2005.
- An Aboriginal Justice Agreement was signed by the NSW Attorney-General and the NSW AJAC in June 2002. The Aboriginal Justice Plan, finalised in 2004, followed on from the Agreement and community consultations and is the key component in achieving ongoing policy and structural change aimed at reducing Aboriginal contact with the criminal justice system.
- The Western Australian Aboriginal Justice Agreement was signed in 2004 as a partnership between government and Aboriginal people (through ATSIC). The Agreement contains a set of principles that underpins the relationship between government and Aboriginal people and provides government with a framework for improving justice-related outcomes for Aboriginal people in WA.

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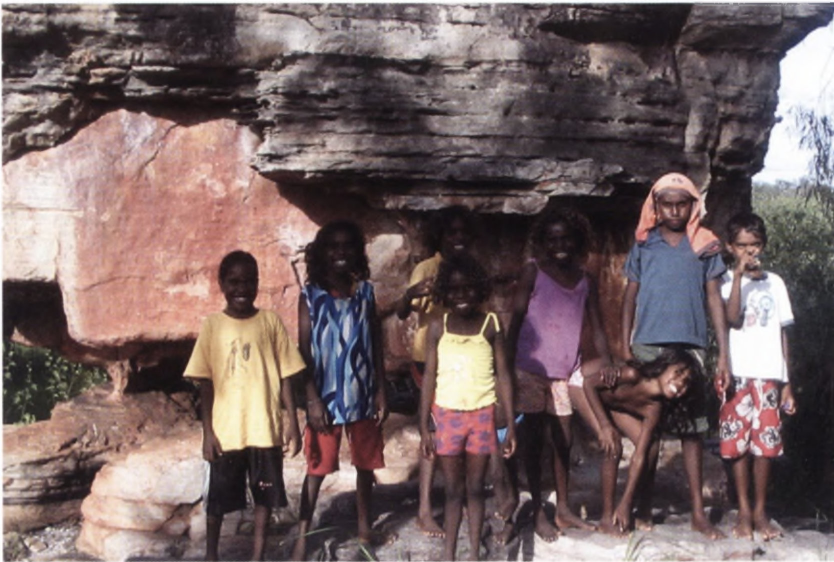

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The details of the agreements vary between jurisdictions but they contain common elements. They undoubtedly influence the policy framework in each state on Indigenous criminal justice issues. The Queensland Justice Agreement can be used as a general example. Its long-term aim is to reduce the rate of Indigenous contact with the criminal justice system to the non-Indigenous rate. A specific goal is to reduce by 50% the rate of Aboriginal and Torres Strait Islander peoples incarcerated in the Queensland criminal justice system by 2011. It aims to achieve this goal through a range of 20 supporting outcomes and initiatives. Justice agencies have been required to report against these initiatives and outcomes.

It is also worth noting the situation in South Australia and the Northern Territory, which do not currently have IJAs in place. In South Australia, a Partnering Agreement was signed in December 2001 between the government and ATSIC, setting out agreed initiatives and commitments designed to improve conditions for the Aboriginal and Torres Strait Islander peoples of South Australia. One of the identified areas is law and justice. As noted above, the Northern Territory government was the only government to abstain from signing the communiqué arising out of the 1997 ministerial summit. After a change of government in 2001, the NT signed a copy of the communiqué, committing the government to work in partnership with peak Indigenous organisations and communities to develop an Aboriginal justice plan to reduce over-representation in the criminal justice system.

CRIMINAL JUSTICE AGENCIES AND INDIGENOUS STRATEGIC PLANS

In addition to IJAs, in many states and territories, departments of justice, corrective services, police services, offices of juvenile justice and other justice-related agencies have developed their own strategic plans for addressing Indigenous issues. Some strategies have been aimed at reducing over-representation, while others have focused on more effective service-delivery. Unlike IJAs, they are not negotiated agreements, although their aims may be similar. They are also by their nature more specifically related to the work of the particular agency that developed the strategic document.

An example of this type of plan is the *New South Wales Police Service Aboriginal Strategic Direction 2003-2006*. The plan sets out objectives and then details a range of strategies designed to meet them. The objectives include strengthening communication and understanding between police and Aboriginal people; improving community safety by reducing crime and violence within the Aboriginal community; reducing Aboriginal people's contact with the criminal justice system; increasing Aboriginal cultural awareness in NSW police; diverting Aboriginal youth from crime and anti-social behaviour; and targeting Aboriginal family violence and sexual abuse.

DO JUSTICE AGREEMENTS MAKE A DIFFERENCE?

Despite the existence of a number of IJAs, there appears to have been no overall significant impact on Indigenous over-representation in the criminal justice system. In fact, the problem of over-representation appears to be deepening.

There has been surprisingly little research on the implementation or impact of IJAs. A lone independent evaluation of an IJA was conducted for the Queensland government in 2005. Victoria has also conducted a recent evaluation of the implementation of the RCADIC recommendations.[5]

To date, there has also been no comprehensive analysis of justice agency strategic plans for Indigenous people. The limited evaluative research on Indigenous strategic plans has been specific to particular justice agencies in individual jurisdictions.[6] Other research has tended to focus on specific programs that have been developed because of various agreements and strategies. For example, the Koori Court, a program derived from the Victorian Justice Agreement, has recently been evaluated.[7]

The evaluation of the Queensland IJA highlights the importance of assessing the impact of these strategies against their own aims. One of the primary findings of the Queensland evaluation was that:

> 'Perhaps the greatest failure of implementation in relation to the Justice Agreement is the least tangible: there appears to be little sense of urgency in meeting the primary goal set by the Justice Agreement.
>
> The failure to resource justice initiatives means that it is unlikely that the target of reducing Indigenous incarceration rates will be met by 2011.'[8]

Clearly, where there is a paucity of resources to implement the intended outcomes of an IJA, its success will be limited at best. The Queensland evaluation provided a framework to increase the likelihood that the IJA would meet its goals: it identified key strategies that had been implemented across government agencies to reduce over-representation, and also assessed what the greatest failings of government departments had been during the life of the Agreement. These included:

- the failure by the Department of Communities and Department of Corrective Services to ensure the availability of supervision for non-custodial sentencing options in Indigenous communities;
- the failure of the Queensland Police Service to ensure that alternatives to arrest are used for Indigenous juveniles and adults and the failure to develop the Queensland Aboriginal and Torres Strait Islander Police program beyond the pilot communities;
- the failure of the Department of Aboriginal and Torres Strait Islander Policy to properly train and resource the Community Justice Groups; and
- the failure of the Department of Justice and Attorney-General to resource and support the Murri Courts.

Wide-ranging recommendations included a reconsideration of some of the aims of the Agreement; changes in strategic plans of specific agencies, such as the Queensland police, in relation to cautioning and issuing of court attendance notices rather than arresting offenders; the development of research agendas in areas needing further exploration; funding and support of particular initiatives, such as Community Justice Groups; and changes to existing legislation.[9]

CONCLUSION

The critical issue, 15 years after the RCADIC and the subsequent development of IJAs and strategic plans, is the lack of any clear evidence as to what criminal justice policies actually work. The policy-making and representative functions that were performed on the national stage by ATSIC no longer exist. Policy-making is taking place in a vacuum caused by the lack of independent critical analysis and avenues for Indigenous oversight, particularly in those jurisdictions where AJACs have been left to flounder or disappear (such as in Queensland, Western Australia and the Northern Territory).

IJAs remain a key vehicle for Indigenous policy development, yet they do not appear to be having the desired impact. This may be because they are flawed in their approach. However, it is more likely that they are ineffective due to inadequate resourcing and implementation. Against the backdrop of the lack of evaluation of IJAs is an environment of increasingly punitive approaches to law and order: the expansion of police powers, particularly in relation to public order offences; changes in bail legislation, which have increasingly removed presumptions in favour of bail and dramatically increased the remand populations of both juveniles and adults; and an increasing reliance on prison as a sentencing option. Given these broader changes, it is perhaps not surprising that Indigenous over-representation continues unabated. ■

Notes: **1** Steering Committee for the Review of Government Service Provision, *Overcoming Indigenous Disadvantage: Key Indicators* (2007) p4. **2** *Ibid*, at 3.129. **3** Taylor, N, Bareja, M, *2002 National Police Custody Survey*, Australian Institute of Criminology, Canberra (2005) pp22-3. **4** Joudo, J, *Deaths in Custody in Australia. National Deaths in Custody Program. Annual Report 2005*, Australian Institute of Criminology, Canberra (2006) p8. **5** Victorian Implementation Review Team, *Review Report*, (2 vols), Victorian Implementation Review of the Recommendations from the Royal Commission into Aboriginal Deaths in Custody, Melbourne (2005). **6** Cunneen, C, *Evaluation of the Aboriginal Over- Representation Strategic Plan*, NSW Department of Juvenile Justice, Sydney (2006) available at http://www.djj.nsw.gov.au/pdf_htm/publications/research/AORSP_Final_Report.pdf. **7** Harris, M, *A Sentencing Conversation. Evaluation of the Koori Courts Pilot Program*, Department of Justice, Melbourne (2006). **8** Cunneen, C, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, Report to the Justice Agencies CEOs, Brisbane (2005) piv, available at http://www.cjrn.unsw.edu.au/news_&_events/documents/qatsija.pdf. **9** See the Queensland government response: http://www.cjrn.unsw.edu.au/news_&_events/documents/justiceagreementevaluation.pdf.

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