INDIGENOUS JUSTICE CLEARINGHOUSE

A series of papers designed to highlight current initiatives in Indigenous justice

Indigenous Justice Agreements

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Introduction

Over the last two decades, some Australian States and Territories have introduced Indigenous Justice Agreements (IJAs) and related strategic frameworks in the hope of addressing consistently high rates of Indigenous incarceration and improving justice service delivery to Indigenous people. Drawing on earlier research by the authors,[3] this Research Brief provides an overview and analysis of the IJAs, and examines whether strategic planning on Indigenous justice issues is improving Indigenous justice outcomes as intended. We identify four key factors for success of IJAs, along with key challenges likely to impact upon their effectiveness. Despite significant shortcomings, we conclude that IJAs do have a positive impact, in particular by providing Indigenous people with input into strategic planning, and providing government with a systematic and coherent strategy to address Indigenous justice issues, including over-representation and victimisation.

IJAs: Background and Development

Since the Royal Commission into Aboriginal Deaths in Custody (RCADIC) reported in 1991, various whole of government and departmental strategies and policies have been introduced for the purpose of improving criminal justice agency service delivery to Indigenous people and to reduce Indigenous over-representation in the criminal justice system. The most important of these at the State and Territory level has been the development of IJAs negotiated between government and peak Indigenous bodies. We also note more recent changes at the federal level with the introduction of the *National Indigenous Law and Justice Framework 2009-2015*[4] and the current development of justice strategies by the National Congress of Australia's First Peoples (Congress).[5]

The recommendations of the RCADIC have been an important driver in the development of Indigenous strategic policy over the last two decades.[6] Governments in each jurisdiction committed themselves to implementing the majority of the 339 Royal Commission recommendations. Consistent with the need to report on implementation of the recommendations, some justice agencies also developed strategic plans with an aim to improve service delivery and to reduce Indigenous over-representation in the criminal justice system. However, as we discuss further below, the development of Indigenous strategic plans by justice-related government departments and agencies has been highly inconsistent.

The RCADIC had also recommended that independent Aboriginal Justice Advisory Councils (AJACs) be established at the State and Territory level to provide advice to government on justice-related matters, as well as to monitor the implementation of the Royal Commission recommendations. In the period immediately following the RCIADIC, all Australian States and Territories established AJACs. However, in subsequent years, many of the AJACs were either abolished or allowed to collapse by government. The Victorian AJAC (established in 1993 and now decentralised into regional and local AJACs) is the only Advisory Committee structure still in existence from the period immediately following the RCADIC.

As a response to concerns about the outcomes of the RCADIC and the continuing issues of deaths in custody and high incarceration rates, a Summit meeting was held in Canberra in 1997 involving AJACs, the then Aboriginal and Torres Strait Islander Commission (ATSIC), the Aboriginal and Torres Strait Islander Social Justice Commission and Commonwealth, State and Territory ministers responsible for various criminal justice portfolios. The Summit recommended that Commonwealth, State and Territory governments develop bilateral agreements on justice issues (IJAs) as a way of improving the delivery of justice programs, and that governments negotiate with AJACs and other relevant Indigenous organisations in the development of the agreements. All States and Territories (except for the Northern Territory) agreed to develop, in partnership with Indigenous people, strategic agreements relating to the delivery, funding, and coordination of

Indigenous programs and services. These agreements would address social, economic, and cultural issues; justice issues; customary law; law reform; and government funding levels for programs. The agreements would include targets for reducing the rate of Indigenous over-representation in the criminal justice system, planning mechanisms, methods of service delivery, monitoring and evaluation.[7]

IJAs were subsequently developed in five jurisdictions over a ten-year period:

- Queensland (the *Queensland Aboriginal and Torres Strait Islander Justice Agreement* (2000)) (Qld *IJA*);[8]
- Victoria (the Victorian *Aboriginal Justice Agreement* (2000)) (*VAJA*);[9]
- New South Wales (the New South Wales *Aboriginal Justice Agreement* (2003) (NSW *AJA*) and *Aboriginal Justice Plan* (2004) (NSW *AJP*));[10]
- Western Australia (the Western Australian *Aboriginal Justice Agreement 2004-2009* (2004)) (WA *AJA*);[11] and
- the ACT (the ACT *Aboriginal and Torres Strait Islander Agreement* (2010)) (ACT *IJA*).[12]

IJAs in both Western Australia and Queensland have now expired and have not been renewed.[13] Victoria has retained the *VAJA* and is due to release *VAJA3* in early 2013,[14] and the NSW *AJP* and ACT *IJA* remain current.

While these Agreements vary in some important respects, they have attempted at a minimum to address the issue of Indigenous over-representation through one or more overarching goals, a set of key principles, the identification of specific strategic areas (such as juvenile justice diversionary alternatives, the development of non-custodial sentencing options, and so on), plus initiatives to achieve outcomes within each strategic sphere. The differences, whilst without doubt impacting upon the effectiveness of respective Agreements, reflected various factors including the diversity between Indigenous communities residing in each jurisdiction,[15] differences in legislative and/or policy histories between the various jurisdictions,[16] and specific policy imperatives.[17] These IJAs were the product of a negotiation process involving relevant government departments and Indigenous representative/advisory bodies, including ATSIC and AJACs. Indigenous organisations played an important role in negotiating the Agreements, and in this respect at least, the IJAs reflected the importance of principles of negotiation and self-determination emphasised by the RCADIC.[18]

In many States and Territories, criminal justice agencies such as police services, corrections, juvenile justice, and Attorneys-General have also developed their own strategic plans for working with or responding to Indigenous clients. Some have been aimed at reducing over-representation, while others have focussed on more effective service delivery. These should be distinguished from IJAs because they are not negotiated agreements between Indigenous peak bodies and government, although their aims may be similar.

A third tier of recent policy development has been the introduction of overarching government policy frameworks at the State and Territory level which focus upon Indigenous people. These are more general in scope but usually place some emphasis upon Indigenous justice issues. An example of these overarching government policy frameworks is the now-expired New South Wales *Two Ways Together 2003-2012* (TWT) Aboriginal Affairs Plan[19] and the current Queensland *Just Futures Strategy 2012-2015.* [20]

The evaluation of Indigenous Justice Agreements

Although there are differences between the five IJAs in New South Wales, Victoria, Western Australia, ACT and Queensland, all introduced a broad sweep of key strategies, outcomes, and actions generally directed towards reducing the number of Indigenous people in custody. Despite their significance, there has been surprisingly little evaluation undertaken to date at a national or jurisdictional level with respect to either the implementation of IJA strategies or to the overall success of government strategic planning in this area. There is thus no clear picture as to how or whether these policy frameworks are working effectively to either improve service delivery or to reduce Indigenous contact with the justice system.

Given that some time has now passed since both the release of the RCADIC report and the formal commitment provided by governments to develop relevant strategic plans, assessment of the effectiveness of IJAs and related strategic policy is well overdue. The demise of ATSIC and most AJACs, and the relative newness of Congress (incorporated April 2010) make independent assessment particularly urgent. The loss of Indigenous representative bodies has diminished the opportunity for genuine Indigenous participation in policy development, implementation and independent oversight. In this context there has been increasing reliance on departmental or agency self-reporting on progress and effectiveness, which are not always publicly available, rather than independent evaluation or monitoring.

The absence of independent evaluation of policy frameworks necessarily impacts upon the ability to provide either cross-jurisdictional or national analysis of the effectiveness of planning in this area. To date, there have only been independent external evaluations commissioned by government in relation to two IJAs (Queensland[21] and Victoria[22]) and to two agency-specific strategic plans in New South Wales (Juvenile Justice[23] and Police[24]). Beyond this there has been little independent assessment or evaluation of IJA outcomes. We note the planned external evaluation of the National Indigenous Justice Framework is due to be conducted over 2013-2014.

Key factors for success of Indigenous Justice Agreements

In the first instance, a distinction needs to be made between the assessment or evaluation of an Agreement which is a *strategic*

framework for particular policies and initiatives and the evaluation of specific *programs*. Justice programs are far more likely to be evaluated than a broader strategic framework, which is likely to comprise multiple strategic areas and numerous programs. We are interested in this Research Brief in how we assess and evaluate a strategic framework (the IJAs), rather than any specific programs or initiatives (such as, for example, Indigenous sentencing courts, or post-release services).

Inevitably, there will be a range of contingencies impacting upon the ability of IJAs to achieve their intended outcomes, leading to increased complexity in assessing outcomes. We have already noted above, for instance, the relevance that both government dismantling of Indigenous representative bodies and divergent policy imperatives and legislative histories within the different jurisdictions appear to have in terms of the development of IJAs. We also discuss below how diversity between jurisdictions in terms of the geographical location and range of Indigenous communities will influence government capacity to engage with Indigenous people. General changes in law, policy and practice can also negatively or positively impact upon justice outcomes for Indigenous people, regardless of any reform achieved through an IJA.

We suggest four criteria for assessing the effectiveness of IJAs as a strategic framework for responding to Indigenous over-representation in the criminal justice system, and improving justice service delivery:

a. effective levels of Indigenous community engagement in the development, implementation and evaluation of IJAs;

b. effective accountability and evaluation processes, including clarity of stated IJA objectives and outcomes;

c. continuity and whole of government approaches to Indigenous policy development; and

d. effective incorporation into IJAs of the issue of Indigenous criminal victimisation, and recognition of the links with other civil and family law needs.

Effective levels of Indigenous community engagement in the development, implementation and evaluation of IJAs.

A significant finding of our research is that there is a direct relationship between the formulation of an IJA and the existence of an independent, community-based Indigenous representative advisory body. The absence of an independent Indigenous body negatively impacts on strategic policy development and, ultimately, upon the ability of government and communities to work together to address issues relating to Indigenous over-representation.[25]

In four of the five States with IJAs, an Indigenous peak advisory body was instrumental in its conception - the Aboriginal and Torres Strait Islander Board (ATSIAB) in Queensland, the AJAC in New South Wales, the Aboriginal and Torres Strait Islander Elected Body and Aboriginal Justice Centre in the ACT, and the AJAC in Victoria. In Western Australia, the Aboriginal Justice Council assisted with the development of the *Aboriginal Justice Plan* (WA) (2000),[26] which was a precursor to the WA *AJA*. The Western Australian Aboriginal Justice Council was subsequently disbanded and therefore not involved in the formulation of the later *AJA*.[27]

The importance of properly constituted, ongoing Indigenous representative bodies to the development of justice policy was noted by the RCADIC, reiterated by the 1997 Summit and recognised in a number of inquiries and evaluations in the area of Indigenous justice. The influential Western Australian *Mahoney Inquiry* (conducted in relation to community and custodial corrections), for instance, indicated that a representative State Indigenous Advisory Group (and regional counterpart organisations) should be established in that jurisdiction if Indigenous incarceration is to be reduced.[28] Further, the Western Australian Law Reform Commission in its report on Aboriginal customary law published in 2006 also recommended establishing a state-wide AJAC to assist in negotiation around Community Justice Groups (CJGs).[29]

Our research indicates that where Indigenous representative/advisory bodies do not exist there is less chance that an IJA will be developed and also less chance that government justice agencies will develop their own strategic policies and initiatives. It appears that without independent Indigenous representative bodies, it is less likely that there will be sufficient political will to develop and drive an IJA.

IJAs often highlight Indigenous capacity building, participation and self-determination as fundamental principles that are critical to attaining IJA objectives. In this context, self-determination requires that Indigenous communities are endowed with both the capability and authority to develop their own justice solutions to relevant issues, or to participate in key decision-making processes.[30] Certainly, the most effective IJAs provide for inclusive, *ongoing* engagement with Indigenous communities throughout the entire 'life' of any relevant framework; that is, during the initial design, implementation, monitoring, and evaluation.

In order to achieve quality community engagement, an IJA must have relevance at regional and local levels through the development of local justice plans or through the development of localised, community-based services or groups. Indeed, many of the programs identified as constituting best practice in this area, such as Community Justice Groups, incorporate these elements.[31]

The independent evaluations of the Queensland and Victorian IJAs recognised the importance of community engagement in achieving the desired outcomes and for the overall successful implementation of these Agreements.[32] A most important contribution to capacity building in this context is the establishment of Indigenous, community-based, representative/advisory processes to enable quality community participation and leadership to be realised. It is positive that in some States, community justice bodies have been set up at State, regional and local levels as part of implementation of IJAs and justice agency strategic plans – the Victorian process discussed further below is the best example of this strategy.

The *VAJA* has been effective in

providing for ongoing Aboriginal ownership of, and participation in strategic policy development. The creation under the *VAJA* framework of well-coordinated state, regional and local community-based justice structures, involved in the implementation of regional and local justice plans, represents successful application of engagement principles.[33] The *VAJA* emphasised the importance of establishing, as an essential first step, infrastructure that would guarantee ongoing Indigenous input into the Agreement - setting up the state-wide Aboriginal Justice Forum (AJF) and the Regional and Local Aboriginal Justice Advisory Committees (RAJACs and LAJACs) to work alongside relevant government agencies and the Victorian AJAC in progressing the *VAJA*.

Effective accountability and evaluation processes, including clarity of stated IJA objectives and outcomes.

One reason for the absence of independent evaluation and monitoring of IJAs and Indigenous justice strategies is the lack of provision within strategic policy frameworks for ongoing monitoring or evaluation. An example of this is the Western Australian *Strategic Policy on Police and Aboriginal People*, which consists, effectively, of an elaborated set of principles, with no detail provided about procedures for evaluation (or implementation).[34] The absence of clear objectives and outcomes makes evaluation difficult. Another problem is that monitoring and evaluation may be provided for within the relevant Agreement or framework and then not carried out, as has occurred with the New South Wales *Aboriginal Justice Plan*. In addition, the failure to document or make publicly available material pertaining to monitoring or evaluation, as has occurred in relation to the final evaluation of the WA *AJA* post-2008, limits government accountability.

The lack of independent monitoring or evaluation reduces government accountability to Indigenous communities. It also means that relevant frameworks are not informed by or improved through completion of such processes. In the absence of independent monitoring and evaluation, one must depend almost solely upon internally generated sources of information to ascertain the success or failure of strategic policy. The experience of monitoring the implementation of the recommendations from the RCADIC shows that departmental annual reports or similar review material is not the most reliable means of measuring performance given the tendency of departments and agencies to portray their work in the best possible light.[35]

A further failing of particular relevance to Indigenous-focussed strategic policy occurs when monitoring or evaluation is completed without effective Indigenous participation. The *VAJA* provides a good contrasting example of significant contribution from Indigenous communities (through Indigenous parties to the Agreement) in the setting of benchmarks, performance indicators, targets and timelines, and their involvement in specific evaluation processes. There is a direct role played by the Indigenous community-based peak coordinating body established under the *VAJA*, the Aboriginal Justice Forum (AJF), in Department of Justice performance.[36] On the basis of our research we would argue that independent, ongoing monitoring and evaluation at a jurisdictional level, providing for maximum Indigenous input, will enhance the effectiveness of IJAs and strategic plans.

Continuity and whole of government approaches in policy development

Those States and Territories with existing IJAs in place also have the greatest number of agency-specific strategic frameworks dealing with the issue of Indigenous over-representation and seeking to improve service delivery for Indigenous people. IJAs are likely to have also led to increased whole-of-government planning directed towards addressing Indigenous social disadvantage – the latter of relevance to addressing rates of Indigenous incarceration as well as clearly requiring attention from government as a significant issue in its own right. As noted above, to date IJAs have been formulated in five jurisdictions. Three of the five jurisdictions which have developed an IJA since 2000 have also formulated whole-of-government 'overarching' Indigenous strategic policy covering a broader social and economic framework, with some emphasis upon justice issues. Notably, all jurisdictions which have *not* introduced an IJA have also *not* developed overarching Indigenous strategic policy. Relevant policy in NSW, Qld and Victoria is as follows:

- *Two Ways Together 2003-2012* (NSW);
- *Partnerships Queensland: Future Directions Framework for Aboriginal and Torres Strait Islander Policy 2005-2010* (Qld);[37]
- *Just Futures Strategy 2012-2015* (Qld); and
- *Victorian Indigenous Affairs Framework – Improving the Lives of Indigenous Victorians* (2006) (Victoria).[38]

The Victorian Justice Agreement, in particular, specifically emphasised the need for development by government of an overarching integrated strategic framework to tackle the 'whole-of-life' experience of Aboriginal people, in keeping with the RCADIC's dual focus upon both reform of the criminal justice system and underlying factors contributing to Indigenous incarceration rates. This emphasis gave rise to formulation of the *Victorian Indigenous Affairs Framework* (VIAF) in that jurisdiction.

Further, in states that have formulated an IJA, criminal justice agencies are more likely to have in place an Indigenous-specific strategic plan.[39] The development by agencies of their specific strategic framework has particular benefits. For example, the New South Wales Police Force *Aboriginal Strategic Direction 2012-2017* provides for public acknowledgement of the agency's approach to working with Aboriginal people in New South Wales and thus greater transparency in policy. Criminal justice agencies in these jurisdictions are also more likely to have some previous history of Indigenous strategic planning over the last decade or longer.

By way of contrast, Tasmania, the Northern Territory, and South Australia have not developed IJAs, and they are also the jurisdictions where specific justice agencies like police or corrections have been least likely to

develop any form of current strategic framework relating to Indigenous justice issues. Only one of those four jurisdictions, the Northern Territory, has developed a relevant but now expired government overarching strategic policy framework – *Agenda for Action: a whole of government approach to Indigenous affairs in the Northern Territory 2005-2009*.[40]

Our research shows that with respect to criminal justice agencies, police services were the most likely of all justice agencies to have implemented Indigenous-specific strategic plans. Attorneys-General, courts administrations, Offices of the Director of Public Prosecutions (DPPs), and Legal Aid Commissions (LACs) are the least likely to have developed these frameworks. The latter two agencies are also, notably, the least likely to be identified within IJAs as key agencies with specific responsibilities affecting Indigenous outcomes.

It should be noted that most justice agencies are developing and delivering a number of programs directed towards improving Indigenous outcomes in the criminal justice system. Whilst sometimes these initiatives have been informed by or have evolved from a Justice Agreement or state policy framework, at other times they have been developed independently of any strategic framework. In these situations Indigenous programs can appear *ad hoc* and unrelated to any broader policy developments. It may be completely unclear what strategic framework or decision-making, if any, has given rise to a particular initiative.

Without detracting from the success and significance of initiatives and programs created and operating outside formal policy frameworks by justice agencies, our research indicated that all justice agencies ought to be encouraged to develop their own Indigenous strategic plans so as to better focus the work that is already being undertaken in this area. There are obvious and significant advantages to embedding relevant initiatives within transparent policy frameworks. This process, for instance, establishes clear processes of evaluation and implementation to ensure accountability and to also, ultimately, enhance overall performance**.** In addition, agency strategic plans should indicate whether or how they are informed by, or aligned with, an existing IJA.

The importance of continuity in policy development

The lack of continuity in Indigenous strategic policy development also affects the ability of justice agencies to engage with Indigenous people, to achieve desired outcomes, and to ensure better service delivery. There may be policy 'black holes' where for some considerable period of time agencies allow strategic policies to lapse, with no account as to why this has occurred in a particular instance. For example, the New South Wales Department of Corrective Services *Action Plan for the Management of Indigenous Offenders 1996-1998* was followed after a five year gap by the *Aboriginal Offenders Strategic Plan 2003-2005* and then after another two years by a *Aboriginal Strategic Plan 2007-2012.*[41] There are many occasions where a policy implementation or reporting framework disappears (as occurred with 'action plans' under the Qld *IJA* after 2001), with no indication that it has been phased out due to failure.

The issue of continuity in strategic planning is important. After reviewing Indigenous justice strategies across Australia, it is clear that constant change in government policy is a significant barrier to success. Regular change disrupts processes of reform and accountability. For example, there may be two or three significant changes in policy frameworks in five or six years, although there is no indication (through evaluation) that previous strategies failed. It becomes difficult to determine the extent to which central strategic planning through an IJA or a state-wide plan has impacted on departmental or agency policy, or whether existing policies and programs are simply rearranged, recycled, and rebadged to fit a new strategic direction.

The fundamental link between reducing Indigenous over-representation in the criminal justice system and addressing underlying contributory factors (such as low employment rates, alcohol and drug misuse, poor health, and poor educational attainment within Indigenous communities) is acknowledged in all IJAs. IJAs have largely delegated any action to be taken in relation to the underlying causes of over-representation in the criminal justice system to government overarching strategic frameworks.

Whilst the essential link between justice and broader socio-economic factors must be understood, there needs to be firm lines drawn between planning areas if Indigenous justice is to maintain its status as an important issue in its own right. For example, the *VAJA1*, whilst referring to findings of the RCADIC linking Indigenous over-representation and the 'whole-of-life' experience of Aboriginal people, delegated to the Victorian government responsibility for developing a whole-of-government Indigenous strategic framework dealing with Indigenous structural disadvantage.[42] In this way, the Victorian IJA could focus on Indigenous justice issues almost exclusively and this approach has contributed to the overall effectiveness of the *VAJA*. Thus it is those IJAs that manage to maintain a specific focus upon justice issues that appear more likely to deliver genuinely positive justice outcomes to Indigenous people.

Effective incorporation into IJAs of the important issue of Indigenous victimisation and recognition of the links with other civil and family law needs

Indigenous people are over-represented in the criminal justice system as both offenders *and* victims, and any strategic policy framework seeking to reduce offending rates of Indigenous people must focus to an appropriate extent upon the high rates of Indigenous victimisation – the latter underpinned by similar factors that lead to Indigenous offending. Generally speaking, IJAs have not done enough to address the issue of Indigenous victimisation (including issues of family violence and child protection), despite its close connection with Indigenous incarceration. Justice agencies such as police already have responsibility and capacity to respond to Indigenous family violence and sexual assault, in contrast to broader social disadvantage. Their capacity and responsibilities in this context needs to be clarified and developed within IJAs, including in the development of specific policies and practices for working with Indigenous victims of crime.

The approach taken to date in relation to this issue in IJAs is, in some respects, piecemeal and inconsistent between jurisdictions. There is some recognition of the connection between family violence and offending in some IJAs. For instance, the NSW *AJP* committed to developing statewide strategies to reduce family violence in Aboriginal communities, and it includes in its Strategic Directions actions such as providing sexual assault counselling to Aboriginal prisoners.[43] The WA *AJA* also incorporated as one of its three principal outcomes a reduction in the rate of Indigenous victimisation and made further reference to this issue by, for example, calling for better protection for victims and their families.[44]

In our view, negotiated IJAs can take the lead on the subject of Indigenous victimisation. The issue is fundamental to any attempt to reduce Indigenous over-representation and improving justice outcomes, so cannot be conceived of separately from over-representation. Secondly, a negotiated response through a Justice Agreement is more likely to lead to policies that respect Indigenous views.

A further point to emphasise is that in order to be effective, IJAs should identify the link between enhanced Indigenous access to family and civil law justice and improved criminal justice outcomes for Indigenous people.[45] The interconnectedness of criminal with civil and family law justice has been drawn out in existing policy to some extent, but there is scope for greater acknowledgement if IJAs are to be as effective as possible. By way of illustration, the *VAJA2* included as one of its two main aims the need to ensure that the Koori community has 'the same access to human, civil and legal rights, living free from racism and discrimination and experiencing the same justice outcomes (as the broader community) through the elimination of inequities in the justice system'. Congress has noted the high levels of unmet need in civil and family law areas, and in its justice policy targets include the goal of doubling the number of Indigenous people accessing legal assistance in family and civil law matters. Congress views access to civil and family law as part of a holistic approach to 'justice'.

The importance of effective Indigenous Justice Agreements

Having discussed the development of Indigenous-specific criminal justice strategic planning, particularly IJAs, it is important to take a step back and consider whether these policy frameworks are working effectively and to the benefit of Indigenous people throughout Australia. If we consider current imprisonment rates for Indigenous people nationally and the levels of over-representation, perhaps there is little cause for optimism. Western Australia (which had an IJA) has the highest Indigenous imprisonment rate in Australia. However, states with current IJAs (NSW and Victoria) are below the national average rate of Indigenous imprisonment. Queensland, which had an IJA in place for a decade, also has below average Indigenous imprisonment rates. Indeed Victoria, which has an IJA that meets the highest standards in terms of Indigenous participation, implementation, monitoring, and independent evaluation, until recently had one of the lowest Indigenous imprisonment rates in Australia: at almost half the national figure. Recent changes to law and order in that State have seen significant increases in adult imprisonment for both indigenous and non-Indigenous people.[46]

We have argued in this brief that a broader examination of the effectiveness of relevant strategic planning is necessary. We also note a key limitation in considering effectiveness: the lack of independent monitoring and evaluation. Despite this, it is possible to conclude that IJAs have contributed to a more coherent government focus upon Indigenous justice issues and, in those jurisdictions where they exist, they have been associated with criminal justice agencies developing Indigenous-specific frameworks. As we have outlined previously, they have also led to development of a number of effective initiatives and programs in the justice area. An IJA can also advance principles of government accountability with independent monitoring and evaluation, with maximum Indigenous input into those processes. IJAs have effectively progressed Indigenous community engagement, self-management, and ownership where they have set up effective and well-coordinated community-based justice structures and/or led to the development of localised strategic planning, as well as through encouraging initiatives that embody such ideals. For reasons noted above, the *VAJA* is the best example of these outcomes.

There are a number of lessons which can be learnt from the experiences of developing IJAs over recent years. Firstly, it is only in those jurisdictions with an IJA which contains monitoring and evaluative components (in particular, Victoria and Queensland) that we have any overall picture of the various justice programs and initiatives that are in operation. We argue that IJAs need to be developed in those jurisdictions where they remain outstanding, as do justice agency strategic plans. These developments are imperative, given the national approach through the *National Indigenous Law and Justice Framework 2009-2015*.

Secondly, there needs to be greater continuity in strategic policy development within jurisdictions, and within and between agencies. Our research showed that policy frameworks are formulated and then disappear with little attention to whether they were effective in meeting outcomes. Thirdly, and as part of the commitment by government to deal with Indigenous over-representation, IJAs also must address Indigenous victimisation and broader access to civil and family law. Fourthly, the fact that the development of IJAs has been set back by the dismantling of independent Indigenous representative/advisory bodies, particularly at the State and Territory level, should also cause some concern. Independent representation for Indigenous communities is a crucial component of any further development of strategic policy. Finally it must be recognised that broader changes in criminal justice law, policy and practice impact significantly on Indigenous people. In this context, we would argue for the introduction of legislation mandating that Aboriginal impact statements must be considered as part of any development of or amendments to relevant criminal-justice focussed law in each jurisdiction.[47]

References

Please note that Indigenous Justice Clearinghouse publications normally use in-text citations. However, at the request of the authors endnotes were used on this current initiatives paper.

All URLs were correct in June 2013.

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[3] Chris Cunneen and Fiona Allison, 'Indigenous Justice Strategies — Analysis and Findings of Current Policy Framework' (Report to the Indigenous Law and Justice Branch, Attorney General's Department (Cth), unpublished, 2008) and Allison, F and Cunneen, C (2010), 'The role of Indigenous justice agreements in improving legal and social outcomes for Indigenous people' 32 *Sydney Law Review* 645.

[4] Standing Committee of Attorneys – General, *National Indigenous Law and Justice Framework 2009-2015*, (Canberra: Commonwealth of Australia, 2010).

[5] National Congress of Australia's First People, *National Justice Policy* (Sydney 2013)

[6] Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (Canberra: Commonwealth of Australia, 1991).

[7] Mick Dodson, *Aboriginal and Torres Strait Islander Social Justice Commissioner Fifth Annual Report* (Sydney: Human Rights and Equal Opportunity Commission, 1993) at 157.

[8] Queensland Government, *Queensland Aboriginal and Torres Strait Islander Justice Agreement* (2000).

[9] Department of Justice (Victoria), *Victorian Aboriginal Justice Agreement* (2000).

[10] Aboriginal Justice Advisory Council (NSW), *Aboriginal Justice Agreement* (2003); Aboriginal Justice Advisory Council (NSW) *NSW Aboriginal Justice Plan: Beyond Justice 2004-2014* (2004).

[11] Government of Western Australia, *Western Australian Aboriginal Justice Agreement 2004-2009* (2004).

[12] ACT Government, *Aboriginal and Torres Strait Islander Agreement 2010-2013* (2010).

[13] The WA *AJA* expired in 2009 and the Qld *IJA* in 2010. From February 2011, the Department of the Attorney General in WA commenced oversight of the Aboriginal Justice Program, signalling a change of direction from the WA *AJA*. The Queensland Government introduced the whole-of-government, Indigenous-focussed policy *Just Futures Strategy 2012-2017*, which references the Qld *IJA* but has a broader focus than the latter upon social issues underpinning offending: Queensland Government, *Just Futures Strategy 2012-2015* (Queensland Government: 2012).

[14] *VAJA2* was released in 2006, following review and evaluation of the initial *VAJA* introduced in 2000. Similarly, *VAJA3* follows review and evaluation of *VAJA2.*

[15] For instance, the Western Australian *AJA* necessarily needed to reflect the divergent perspectives of a large number of communities spread out across a single State covering a third of the Australian landmass.

[16] For instance, the Queensland *AJA* may not have dealt with broader, underlying social issues as much as the New South Wales *AJA* because the Queensland Agreement was the first part in a set of proposed agreements to be developed under that jurisdiction's *Ten Year Partnership* framework.

[17] For instance, the Western Australian *AJA* incorporated the findings of the government response to the *Gordon Inquiry*. Sue Gordon, Kay Hallahan, K & Darrell Henry, Department of Premier and Cabinet (WA), *Putting the picture together, Inquiry into Response by Government Agencies to Complaints of Family Violence and Child Abuse in Aboriginal Communities* (Perth: Department of Premier and Cabinet, 2006).

[18] Recommendation 188 required that 'Governments negotiate with appropriate Aboriginal organisations and communities to determine guidelines as to the procedures and processes which should be followed to ensure that the self-determination principle is applied in the design and implementation of any policy or program or the substantial modification of any policy or program which will particularly affect Aboriginal people'. Commonwealth of Australia, Royal Commission into Aboriginal Deaths in Custody, *National Report* (1991) at 73.

[19] Department of Aboriginal Affairs (NSW), *Two Ways Together 2003-2012* (2003).

[20] Queensland Government, n10.

[21] Chris Cunneen, Neva Collings, and Nina Ralph, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, (Sydney: Institute of Criminology, 2005).

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[24] NSW Ombudsman, *Working with Aboriginal communities: Audit of the implementation of the NSW Police Aboriginal Strategic Direction (2003-2006)* (Sydney: NSW Ombudsman, 2005).

[25] For discussion on the Indigenous right to participate in decision-making through representative bodies see: Human Rights and Equal Opportunity Commission (HREOC), *Building a Sustainable National Indigenous Representative Body – Issues for Consideration*, (Sydney: HREOC, 2008): <https://www.humanrights.gov.au/sites/default/files/content/social_justice/repbody/repbody_paper2008.pdf > (28 August 2010); Mick Gooda, *Statement to the Expert Mechanism on the rights of Indigenous peoples – Item 3: The right to participate in decision-making* (Sydney: Australian Human Rights Commission, 2010): <https://www.humanrights.gov.au/expert-mechanism-rights-indigenous-peoples-item-3-right-participate-decision-making-2010> (28 August 2010).

[26] Aboriginal Affairs Department (WA), *Aboriginal Justice Plan 2000: a partnership between the Aboriginal Justice Council and the Justice Coordinating Council* (2000).

[27] After the Council was disbanded in 2002, the IJA was formulated with representation from the Aboriginal Legal Service, ATSIC and Aboriginal and Torres Strait Islander Services. In the NT, a draft Justice Agreement was formulated in the Northern Territory in 2003, but this was never ratified by government (see Northern Territory Government, *Aboriginal Justice*

Agreement (Working Draft) (2003)). The NT AJAC was instrumental in development of this draft, but after their disbanding the IJA was not finalised.

[28] Dennis Mahoney, Department of Premier and Cabinet (WA), *Inquiry into the Management of Offenders in Custody and the Community* (2005) ('*Mahoney Inquiry*') Recommendations 81 and 82.

[29] Law Reform Commission of Western Australia, *Aboriginal Customary Laws: the Interaction of Western Australian Law with Aboriginal Law and Culture – Final Report,* Project 94 (Perth, Law Reform Commission of Western Australia, 2006) at 98. The independent evaluation of the Qld *IJA* also recommended the re-establishment of an Indigenous justice advisory group in that State; Cunneen n19, Recommendation 3. In August 2008 the Bligh government announced the formation of the Queensland Aboriginal and Torres Strait Islander Advisory Council (which focuses on the 'Closing the Gap' targets).

[30] See Larissa Behrendt, Chris Cunneen and Terri Libesman, *Indigenous Legal Relations in Australia* (Oxford University Press, 2009) 298–301, 311–14. A useful discussion on how self-determination might be operationalised in criminal justice can be found in the National Inquiry into the Removal of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing Them Home*, (Canberra: Human Rights and Equal Opportunity Commission, 1997).

[31] See further discussion on Community Justice Groups and their contribution to improving justice outcomes in Cunneen, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, n19; Rosemary Grey & Rhys Gardiner (2007) 'Community Justice Groups: Bridging the gap between Indigenous communities and the law', (2007) 6(29) *Indigenous Law Bulletin* at 22-23; and M Limerick, 'Indigenous community justice groups: the Queensland experience', (2002) 80 *Reform* 15.

[32] Cunneen, *Evaluation of the Queensland Aboriginal and Torres Strait Islander Justice Agreement*, n19, Part 6; Atkinson, Kerr & Associates, n20.

[33] Atkinson, Kerr & Associates, n20; Nous Group, n20

[34] Western Australian Police Service, *Strategic Policy on Police and Aboriginal People*, As another example, the NSW Department of Juvenile Justice's *Aboriginal Strategic Plan 2007-2011* (2008) set out four outcome areas and related strategies but no overall objective(s) and no information about implementation, monitoring, or evaluation procedures.

[35] See Chris Cunneen and David McDonald, *Keeping Aboriginal and Torres Strait Islander People Out Of Custody: An Evaluation of the Implementation of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody* (Aboriginal and Torres Strait Islander Commission, 1997).

[36] The Victorian *Implementation Review of Recommendations from RCIADIC* provides an example of how Indigenous input might be constituted. The review process relating to this report involved release of a discussion paper in 2004, a free-call number and other strategies to encourage maximum Indigenous participation. See Department of Justice (Victoria), *Victorian Implementation Review of Recommendations from Royal Commission into Aboriginal Deaths in Custody* (Melbourne: Department of Justice, 2005).

[37] Department of Aboriginal and Torres Strait Islander Policy (DATSIP) (Qld), *Partnerships Queensland: Future directions framework for Aboriginal and Torres Strait Islander policy 2005-2010* (2005).

[38] Aboriginal Affairs Victoria (Department for Victorian Communities), *Victorian Indigenous Affairs Framework - Improving the Lives of Indigenous Victorians* (2006).

[39] New South Wales Police Force, *Aboriginal Strategic Direction 2012-2017 (*2012), Department of Juvenile Justice (NSW) *Aboriginal and Torres Strait Islander Strategic Plan 2011-2013 (*2011), Western Australian Police Service, *Strategic Policy on Police and Aboriginal People* (n.d.), Queensland Police Service, Aboriginal and Torres Strait Islander Strategic Directions 2012-2016 (2012) (currently re-drafting).

[40] Office of Indigenous Policy (Department of the Chief Minister) (NT), *Agenda for Action: a whole of government approach to Indigenous affairs in the Northern Territory 2005-2009* (2005).

[41] As at August 2009 the *Aboriginal Strategic Plan 2007-2012* was still in draft form, but this Department's *Aboriginal Offender Strategic Plan* 2010-2012 is current policy: Department of Corrective Services (NSW), *Aboriginal Offender Strategic Plan* 2010-2012 (2012).

[42] Department of Justice (Victoria), n7, at 19.

[43] Aboriginal Justice Advisory Council, *Aboriginal Justice Plan*, n8, Strategic Directions 2 and 5.

[44] Government of Western Australia, n9.

[45] See discussion in Cunneen, C and Schwartz, (2009) M, The escalation of civil and family law issues to criminal law matters Aboriginal communities in NSW', 7 (15) *Indigenous Law Bulletin* 18.

[46] ABS (2012) *Prisoners in Australia*, Canberra: ABS.

[47] Aboriginal impact statements have been used in NSW and South Australia in relation to development, implementation and evaluation of health initiatives and in NSW in relation to child protection decision - making (see Government of South Australia, *SA Health, Preparing an Aboriginal Health Impact Statement* (2007), for instance and NSW Government, *Keep them Safe* Aboriginal Impact Statement and Guidelines (n.d.)).

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