

Indigenous incarceration: turning the tide on colonisation's cruel third act

In a new Guardian series, we explore what can and is being done to change the statistics that shame Australia



Aboriginal and Torres Strait Islander people are 14 times more likely to be in custody than non-Indigenous Australians. Photograph: Ian Waldie/Getty Images

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The grim statistics are read out in the Australian parliament every February.

Aboriginal and Torres Strait Islander people are 14 times more likely to be in custody than non-Indigenous people. A teenage boy who identifies as Aboriginal and Torres Strait Islander is more likely to go to jail than go to university and, because of the high incarceration rate, is more likely to die in custody than any non-Indigenous person they pass on the street.

It's colonisation's cruel third act; both a product and cause of ongoing intergenerational disadvantage. And it starts in childhood.

In the wake of the Don Dale scandal and the death in custody of Aboriginal woman Ms Dhu, the issue of the over-incarceration of Aboriginal and Torres Strait Islanders has once again brought into sharp contrast more than 25 years after the landmark royal commission into Aboriginal death in custody.

These twin events prompted both national outrage and a reconsideration of what could be done to prevent Indigenous people, especially children and young people, from ending up in the criminal justice system in the first place. Guardian Australia in a series of articles will look at what can and is being done to change the shameful statistics – from cooperation between health and youth workers in Ceduna in South Australia to cultural programs in the Northern Territory and Western Australia, and justice reinvestment in Cowra in New South Wales.

The problem of Indigenous over-incarceration in Australia is at its most severe among children. The age of criminal responsibility in Australia is 10 years old, two years younger than recommended by the UN convention on the rights of the child.

On any given day in 2014-15, 30 children under the age of 12 were either in custody or on a community-based supervision order. Twenty-four of them were Aboriginal or Torres Strait Islander.

In Western Australia, Indigenous children are imprisoned at a rate of 78 for every 10,000, higher than the imprisonment of black people in the US, imprisoned as children at a rate of 52 for every 10,000.

About four in five Indigenous teenage boys and three in five Indigenous teenage girls return to jail within a year of being released from youth detention, according to 2014-15 figures compiled by the Productivity Commission's report on overcoming Indigenous disadvantage.

That trend continues into adulthood. The number of Indigenous men with known prior imprisonment in 2015 was 1.5 times higher than for non-Indigenous men; 78.1% to 51.3%. For women the disparity was even higher; 68.9% of Indigenous women imprisoned in 2015 had a known period of prior imprisonment, 1.8 times higher than non-Indigenous women at 39.3%.

To reverse the trend, criminologists, lawyers, judges and Aboriginal and Torres Strait Islander people argue, Australian governments need to adopt a different approach.

“There's a strong, powerful call for a complete paradigm shift,” Prof Harry

Blagg, associate dean of the University of Western Australia's law school, told Guardian Australia. "Ours is basically a colonial model, a white colonial model. And we need to de-colonise the justice system."

Australia is littered with small, discrete programs run by Aboriginal and Torres Strait Islander people that have had success rehabilitating young people and diverted them away from the justice system, according to Blagg.

"One of the key reasons, criminologists argue, for why we have a high rate of adult over-representation of Indigenous people is that we lack the sophistication to come up with reasonable alternatives when these kids bump into the white criminal justice system," he said. "Whatever we are currently doing isn't working for Aboriginal youth."

Blagg said the success of on-country programs such as the Yiriman project in the Kimberley, which takes at-risk young people on trips into their traditional countries with elders of the Nyikina, Mangala, Karajarri and Walmajarri peoples in the Fitzroy Valley, lay in the cultural healing they provided. This was a difficult concept to explain in non-Indigenous terms but fundamental to Indigenous communities.

"It's not simply a justice issue, it's not simply a law-and-order issue, it's an issue about intergenerational trauma, it's an issue about family violence and these other problems," he said. "And I think we should stop looking at the juvenile justice issue as if it just happened independently of all these other factors."

Blagg said without a fundamental rethink the short-term focus on youth justice wrought by reports of abuse at the Don Dale youth detention centre in the Northern Territory, which prompted a royal commission when footage aired in July, was unlikely to produce lasting change.



Inmates at the Don Dale juvenile detention centre in Darwin.

“It’s systemic across Australia,” he said. “We have quite brutal regimes for children. We get away with it in Australia because they are largely Aboriginal children so we can largely ignore the issue until it becomes something like the Don Dale episode.”

He said solutions such as introducing an independent prisons inspector in the NT, similar to the system in place in Western Australia, would reduce abuse but not incarceration. “You might have a nicer-looking regime but it’s still going to be massively overpopulated with children of an Aboriginal background and that’s the scandal of Australia, really.”

Amnesty International’s Australian Indigenous rights manager, Roxanne Moore, a Noongar woman, said Indigenous children were disadvantaged at every step in the justice system.

“They are more likely to be charged, more likely to be refused bail, more likely to end up with a sentence in the justice system and more likely to end up in detention,” Moore said.

She said the high youth incarceration rate was a product of entrenched disadvantage: Indigenous children are more likely to have a disability, experience family violence, drop out of education, have mental health issues and have thoughts of suicide.

“The justice system at the moment is not set up to rehabilitate and assist these vulnerable people to change their behaviours and a meaningful way and that’s got to change,” she said.

Moore said systems like bail, which require children to be released to the custody of a “responsible adult” and reside at a set address, are prejudiced against Indigenous families.

“There could be 10 or so people living at that house and the way that the justice system is set up it doesn’t recognise that that is the way that many Indigenous families live,” she said.

About 4,000km away from the Yiriman project in the Fitzroy Valley, a program in Queensland called Red Dust Healing focuses on using cultural concepts and knowledge to build resilience in young people.

It was trialled in Townsville’s Cleveland youth detention centre in 2006. Of the 40 young people who completed the program, Juru/Erub and Kanaka man Randal Ross said, none had returned to detention within two years and only eight had reoffended.

“One [of the 32 who did not reoffend] was 15 and had been in Cleveland since he was 10,” Ross told Guardian Australia. “The staff [at Cleveland] believed that he would be the first child back.

“But the young fella realised to himself that Cleveland was actually not the place for him to be.”

The program only ran for three days, at a cost of \$550 a child for each day, plus \$245 for materials. The cost sounds high but not compared with the cost of holding a child in detention, which rose to \$1,500 a child each day in Queensland in 2014-15, according to the report on government services.

The Queensland government has not renewed the program. “If kids are returning to detention [without the program], how much is the government saving?” Ross said.

Megan Williams, a senior research fellow with the University of Western Sydney, said it was difficult to gather robust data from Indigenous-led diversionary programs because they often worked with small groups and did not work closely with researchers. That in turn made it difficult to argue for funding.

At just 3% of the Australian population, Aboriginal and Torres Strait Islander people did not have the political clout to lobby for better solutions, Williams said.

“With Aboriginal people being such a minority of voters, we are very vulnerable to politicisation because we don’t have the representatives in parliament to stand up and provide a different perspective,” she said.

The 2016 election brought the number of Indigenous MPs in the Australian parliament to four, the highest number yet, but there hasn’t been a corresponding shift in Indigenous policy.

In October the WA senator Pat Dodson, a Yawuru man from Broome who served as a commissioner in the royal commission into Aboriginal deaths in custody, lambasted the Indigenous affairs minister, Nigel Scullion, for an “appalling demonstration of ignorance” about the way Indigenous people were treated in the justice system.

The commission’s final report in 1991 found that imprisonment should be an option of last resort and made 339 recommendations. A review by Amnesty International released before the 25th anniversary of the report in April 2016 found implementation had been “patchy”.

Without that follow through, Williams said, royal commissions and other

inquiries served to “reinforce the sense of disempowerment”.

“I think they’re only helpful if as much funding as goes toward holding royal commissions goes toward implementing its recommendations,” she said. “A royal commission is an opportunity to air issues and complexities and to review situations but to not then resource the responses just cries of failure and poor accountability.”

Back in WA, Blagg is anxiously awaiting the final law and order policy announcements of the state election. The Liberal party has so far pledged to introduce mandatory minimum sentences of up to 15 years for dealing methamphetamines, while Labor is campaigning on tougher parole laws and cracking down on “bad behaviour” in Banksia Hill youth detention centre.

After the last election, in 2013, the mandatory minimum sentence faced by people charged under the state’s “three strikes” burglary laws was doubled, despite the Aboriginal Legal Service warning it would put more young Aboriginal and Torres Strait Islander people in prison.

“It always makes me a bit nervous to see who is going to outbid each other,” Blagg said. “Have a bidding war on toughest on crime, that’s the WA way.”

Blagg said the push for change among people who work in the justice system, from police to the judiciary to youth workers, had not spilled into the political system.

“It’s unlikely that we’re going to see the election cycle here saying that they’re going to put more money into diversion programs, because it sounds soft,” he said. “But I think that, for Aboriginal kids, facing up to their elders and facing up to their community is harder than what we do to them.”