



No.13

# Aboriginal criminal justice

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with Albert T. Dunn

*Early and repeated encounters with a white dominated criminal justice system are a fact of life for many young Aboriginals. As this report shows, these encounters lead with remorseless frequency to later adulthood experiences with imprisonment.*

*Breaking the cycle of despair and degradation represents one of the most pressing tasks confronting our nation. At present the structure and stability of Aboriginal families and communities is being devastated by violence, much of it involving alcohol. So great is the mistrust and hostility felt by Aboriginal people towards the symbols of white justice that redress for injuries resulting from this violence is often sought through vengeance crime.*

*It is suggested that a fundamental prerequisite for changing this situation is the enhancement of the quality of Aboriginal life. As a complement and support for major economic, social and legal advancement for Aboriginal people the report recommends the re-empowerment of Aboriginals in numerous areas of crime prevention and the administration of justice.*

**Duncan Chappell**  
Director

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## Aboriginals in Prison

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*Public perceptions of Aboriginal crime are shaped by media reports of chronic alcoholism, interracial unrest, and severe over-representation in Australian prisons. How accurate is this image?*

Although Aboriginal and Torres Strait Island populations comprised only 1.4 per cent of the general Australian population, at the time of the 30 June 1986 National Prison Census they represented 14.5 per cent of the national prison population, with a rate ratio of 10.1. That is, in proportion to their population, Aboriginals are ten times over-represented in the prison population (Table 1).<sup>1</sup>

A comparison of prison populations between 1981 and 1986 reveals a general trend towards a decline in the ratio of Aboriginal prisoners, with slight fluctuations within this period. Aboriginals have comprised between an average of 17 per cent and 13 per cent of the total prison population in Australia over this five year period. Female rates, which have usually been higher among Aboriginal prisoners, have declined more dramatically than male rates (Figure 1).

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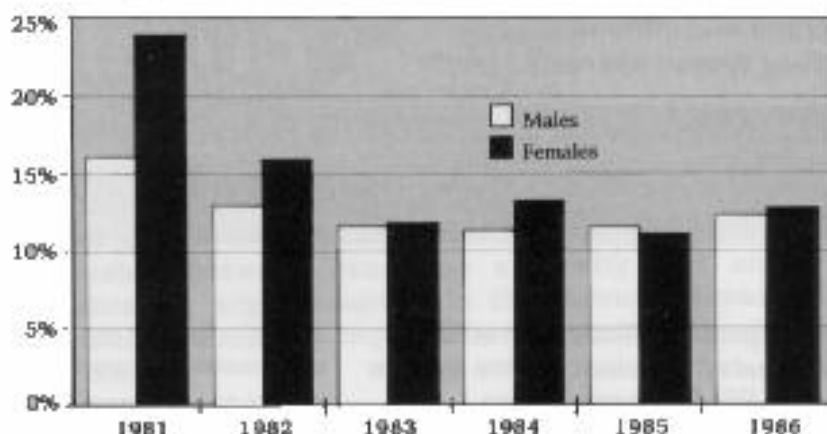
Table 1: Aboriginals by percentage of state population and prison population 1986

State	Aboriginals by % of state population <sup>1</sup>	Aboriginals by % of state prison population <sup>2</sup>	Rate Ratio
New South Wales	1.1	8.2	7.4
Victoria	0.3	2.1	6.8
Western Australia	2.7	32.0	11.7
South Australia	1.0	14.9	13.8
Tasmania	1.0	14.9	13.8
Northern Territory	23.2	67.3	2.9
Australian Capital Territory	0.4	0.0	0.0
Australia <sup>3</sup>	1.4	14.5	10.1

1. From the 1986 National Population Census. 2. From the 1986 National Prison Census.

3. Reliable Queensland data not available.

Figure 1: Aboriginal prisoners as percentages of prisoners of known status 1981-1986



1. The 1981 data was taken from the 1981 Census of Population and Housing and should be used with caution when comparing with 1982-1986 data, which was taken from the National Prisons Census. Queensland is excluded as reliable data is not available.

Table 2: Percentage of prisoners by Most Serious Offence and Aboriginality - Australia 1986

Offence/Charge	Aboriginals			Total
	Torres Strait / Islanders	Other	Unknown	
	%	%	%	%
Homicide	9.3	67.6	22.9	100.0
Assault	24.4	55.8	19.8	100.0
Sex Offences	12.0	57.4	30.6	100.0
Other Against Person	22.0	65.3	12.7	100.0
Robbery	6.5	78.7	14.8	100.0
Extortion	3.2	74.2	22.6	100.0
Break and Enter	13.0	69.6	17.4	100.0
Fraud and Misappropriation	2.0	67.5	30.5	100.0
Receiving	4.0	76.3	19.8	100.0
Other Theft	10.9	68.2	20.8	100.0
Property Damage	12.7	61.8	25.5	100.0
Environment	-	100.0	-	100.0
Government Security	10.0	90.0	-	100.0
Justice Procedure	19.9	70.3	9.8	100.0
Prostitution	-	100.0	-	100.0
Offensive Behaviour	25.0	63.9	11.1	100.0
Unlawful Possession of Weapon	17.8	64.4	17.8	100.0
Other Offences Against Good Order	21.5	72.0	6.5	100.0
Possession, Use Drugs	1.4	59.4	39.2	100.0
Trafficking Drugs	1.0	86.6	12.4	100.0
Manufacture Drugs	3.2	69.8	27.0	100.0
Driving Offences	21.8	49.9	28.3	100.0
Administrative Offences	20.9	48.5	30.7	100.0
Other Traffic Offences	41.7	16.7	41.7	100.0
Other Offences	3.3	60.0	36.7	100.0
Unknown	2.8	18.1	79.2	100.0
Total Persons	11.4	67.4	21.2	100.0

Prison census figures need to be interpreted carefully. Recent studies have demonstrated that a greater proportion of Aboriginal appearances before courts involve younger children and that, by the time they reach adulthood, most Aboriginal offenders are receiving harsher sentences as a consequence of their prior convictions. Over-representation often results from an accumulation of conspicuous street offences and fine default, over-zealous policing, and disadvantage throughout the juvenile, and later judicial, processes. The National Prison Census shows that 77.3 per cent of Aboriginal, compared to 53.2 per cent of non-Aboriginal, remandees had previous prison records.

Early and repeated encounters with the law are seen to blight the life of young Aboriginals, and determine how they will be treated by the justice system in the future.<sup>2</sup>

## Nature of Aboriginal Crime

Aboriginals comprise a low proportion of prisoners convicted of white-collar offences, and other premeditated forms of crime, including murder. The 1986 National Prison Census showed that they were relatively under-represented in fraud and misappropriation, drug-related offences, and extortion. No Aboriginals were in prison for prostitution or environmental offences at the time of the census. The offences for which Aboriginals were most likely to be in prison were: offensive behaviour and against good order offences; assault; driving and property-related offences. Justice procedures offences, such as contempt of court and breach of bonds, were also a problem (Table 2).

A comparison of generalised categories of offences by prisoner population,<sup>3</sup> shows that in both populations offences against property and offences against the person represented the major offending categories. Aboriginals, however, were imprisoned more frequently for

offences against the person (33.0% for Aboriginals and 24.2% for non-Aboriginals); and non-Aboriginals more frequently for offences against property (29.8% for Aboriginals and 33.1% for non-Aboriginals). For Aboriginals, against good order (11.8%) and traffic/vehicle-related offences (16.0%) were relatively high compared to non-Aboriginals (7.0% and 6.16% respectively). On the other hand, robbery/extortion (7.6%) and drug-related offences (1.5%) were relatively low in comparison to non-Aboriginals (15.8% and 13.6% respectively) (Figure 2).

*Alcohol-related violence is the most significant feature of serious crime committed by Aboriginal and Torres Strait Islanders.*

Researchers have found that well over half of the incidents of homicide and serious assault involve alcohol. Homicides and violent assault are usually committed by males, and often within the family or community structure. Violence is frequently random and seldom premeditated. A tragic consequence of rape, assault, or homicide in Aboriginal communities is the participation of the victim's family in vengeance crime following the initial assault.<sup>4</sup>

Aboriginal females the system is particularly lenient: 84.1 per cent of the latter are likely to appear before Aid Panels, compared to 44.8 per cent of Aboriginal females.

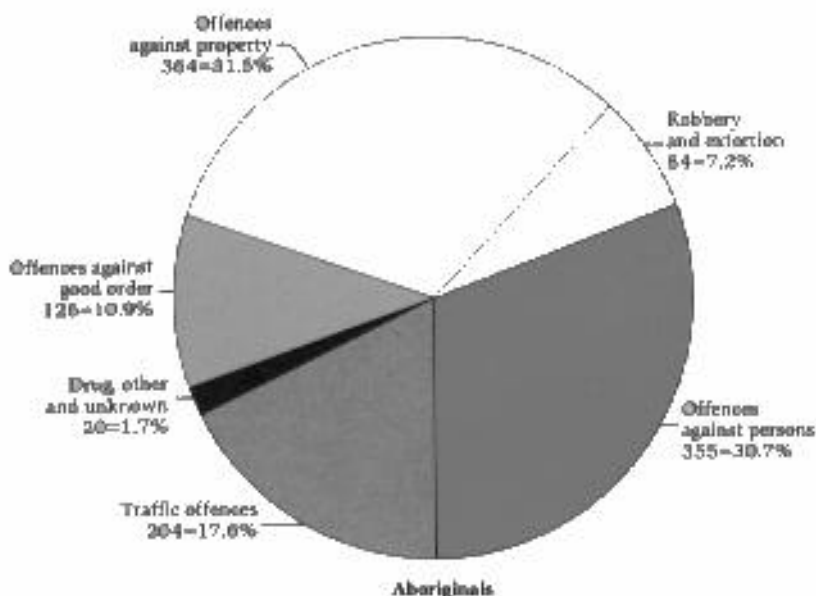
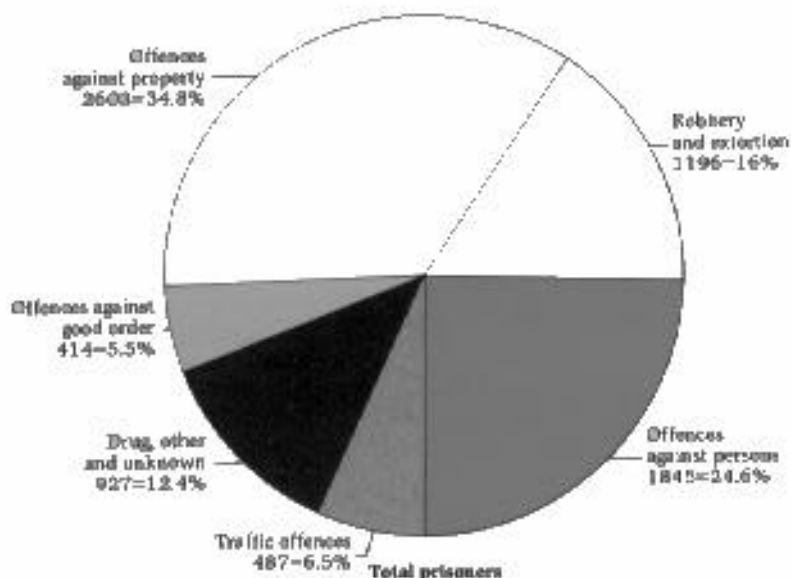
In fact, Aboriginals are over-represented at every level in the juvenile justice system. More are arrested than summonsed, more are handled by the courts, more charges are laid against them in comparison to non-Aboriginals who have committed similar offences, and this over-representation actually increases as they move through the system.

While these figures demonstrate

disparities in the treatment of Aboriginals in general, and of Aboriginal males in particular, they also highlight a significant difference in treatment between Aboriginal and non-Aboriginal females.

This trend to differential treatment is displayed in Figure 3. At the extreme ends of the spectrum, juvenile Aboriginal male offenders are two and a half times more likely to appear before the court than an Aid Panel whereas juvenile non-Aboriginal female offenders are five times more likely to be handled by an Aid Panel than a court. Some researchers have observed that Aboriginal appearances

Figure 2: Number and percentages of Australian Prisoners by Most Serious Offence — 30 June 1985



## Children and Juveniles

The South Australian Office of Crime Statistics provides some of the most comprehensive state statistics on crime and sentencing. Not only are young Aboriginals significantly over-represented in their contact with the criminal justice system, but in relation to non-Aboriginal offenders, they are more likely candidates for appearances before South Australian Children's Courts than before Children's Aid Panels. The South Australian data (July 1981 to June 1985) show that 58.3 per cent of non-Aboriginal juvenile males, as opposed to only 27.8 per cent of Aboriginal males, are likely to appear before Aid Panels. While Aboriginal males are the most disadvantaged, for non-

by arrest are disproportionately higher than non-Aboriginal appearances by arrest, and this systematically influences decisions to try at the screening level. One might question whether the crimes committed by Aboriginal juveniles are consistently of a more serious nature, thus warranting apprehension and appearance before the courts, or whether police practices may be responsible for some of this disparity.<sup>5</sup>

There may, however, be other explanations. Expectations, held by justice administrators, that girls will show more deference and remorse than boys, could lead to relatively harsher responses to Aboriginal females who do not display the appropriate demeanour.

In posturing hostility towards the 'white system' black juveniles confront not only the law but also the cultural norms and social values of the authorities and, with few exceptions, become worse off under that system.

As the juvenile process performs such a critical role in the future of the Aboriginal offender a greater understanding of the idiosyncrasies of this system is warranted.

## The Search for Effective Options

Researchers and administrators have critically analysed judicial and policing practices, community expectations, and the underlying political, socio-economic, and legal aspects of high Aboriginal incarceration rates. States and territorial governments have been urged to seek ways of addressing the situation: of upgrading legal and rehabilitative services; of conducting inquiries into areas where justice fails to be impartial; and in implementing programs which are designed to encourage Aboriginals input into justice administrations and post-release schemes.

In its national inquiry into Aboriginal customary law, the Australian Law Reform Commission

specifically urged state governments to consider ways in which community justice options could be employed to bridge the gap between the two systems of law.<sup>6</sup>

It has been proposed that community service orders and other community-based corrections, particularly for Aboriginals convicted for minor offences and fine default, be introduced as a formal alternative to the usual sentences of imprisonment.

Police relations with Aboriginal communities and police interrogation and prosecution of Aboriginal suspects remain issues of concern. The Special Cabinet Committee on Aboriginal Police and Community Relations noted in its study conducted in the north-west of Western Australia that these relations were frequently characterised by tensions, misinterpretations, and failure of communication.<sup>7</sup>

The South Australian Aboriginal Customary Law Committee proposed that a 'Community Resources Task Force' be established to work with the Pitjantjatjara to help 'provide cross-cultural support' in ameliorating problems with children, police, and the community.<sup>8</sup> In recent years as a result of increasing awareness of these needs, some states and territories have introduced special training for police

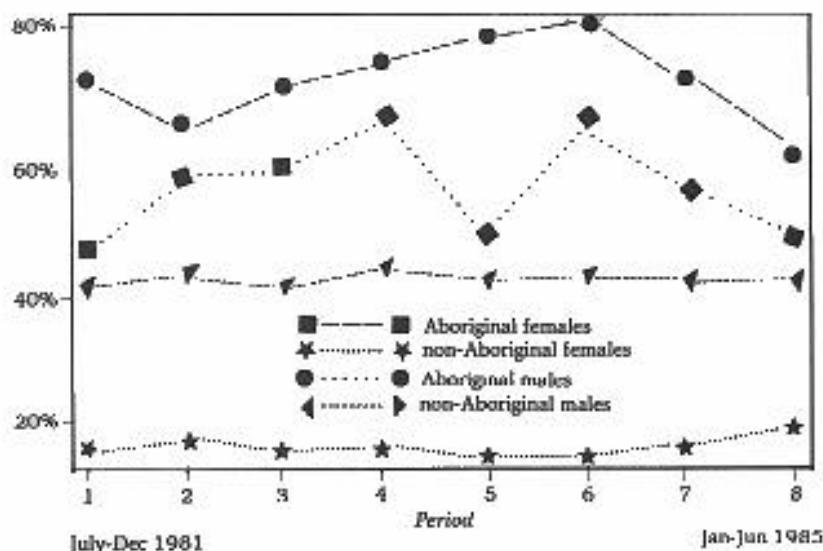
recruits, liaison units, and the direct or indirect employment of Aboriginals in community policing work.

Questions about the effectiveness of the Aboriginal Legal Aid Services have frequently been raised since their introduction in the 1970s. In 1986 the entire service was subjected to scrutiny by the Federal Government. In the resultant *Harkins Report* it was recommended that the Aboriginal legal services be restructured to achieve greater involvement of Aboriginal communities in the day-to-day delivery of these services. It was also suggested that certain disputes could be more simply resolved by means of community meetings with the assistance of appropriate counsellors. A number of ways in which the quality and professionalism of these services could be raised were proposed.<sup>9</sup>

It is a tragic irony that retaliatory crime in Aboriginal communities is a symptom of the deep mistrust which Aboriginal and Torres Strait Islander people feel towards the Australian criminal justice system. A lack of identification with western justice explains why they have little confidence in obtaining retribution through such an impersonal justice system

In recent years the distressing

Figure 3: Appearances in Court of Juvenile Offenders by Aboriginality/non-Aboriginality and Sex in South Australia



development of substance abuse among Aboriginal children and youth has aroused interest in primary programs which divert the younger generation from addiction and alcoholism before they become a part of their lifestyle. Community recreational and self-discovery programs for children and youth form part of this new movement.

Healthy mechanisms of communication and dispute resolution, both within Aboriginal communities and between Aboriginal and white communities, may be the most effective means of countering mutual alienation and improving race relations.

Recent studies and reviews of the Aboriginal criminal justice system have certainly been valuable in highlighting structural and administrative weaknesses. But without accelerated implementation and evaluation of recommended reforms, Aboriginal incarceration will continue at its unacceptable, excessive rate.

A fundamental prerequisite for the lowering of the rates of Aboriginal imprisonment is the enhancement of the quality of Aboriginal life. The re-empowerment of the Aboriginal people in areas of community regulation, crime prevention, and alcohol and offender rehabilitation on the other hand, and in the Aboriginalisation of criminal justice administration on the other, are two practical approaches which would complement and support economic and social advancement, and law reform.

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## Notes

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1. The Queensland State Government does not publish prison statistics by Aboriginality. Queensland has not been included in these estimates.
2. John Walker, 'Prison Cells with Revolving Doors: A Judicial or Societal Problem?', in *Ivory Scales*, ed. Kayleen M. Hazlehurst (Sydney: NSW University Press, Canberra: Australian Institute of Criminology, 1987);

- Fay Gale and Joy Wundersitz, 'Variations in the Over-Representation of Aboriginal Young Offenders', *Australian Journal of Social Issues* 20, no 3 (August 1985); Rebecca Bailey-Harris and Joy Wundersitz, 'Over-Representation of Aboriginal Children in Care Proceedings Before the Children's Court of South Australia', *Australian Journal of Law and Society* 2, no. 2 (1985).
3. The format for grouping offences classifications in Figure 2 can be seen in John Walker and David Biles, *Australian Prisoners 1985: Results of the National Prison Census 30 June 1985* (Canberra: Australian Institute of Criminology, 1986), pp. 4, 44.
4. John McCorquodale, 'Alcohol and Anomie: The Nature of Aboriginal Crime', in *Aborigines and Criminal Justice*, ed. Bruce Swanton, Canberra: Australian Institute of Criminology, 1984); Paul Wilson, *Black Death White Hands* (Sydney: George Allen and Unwin, 1982)
5. Rebecca Bailey, 'A Comparison of Appearances by Aboriginal and Non-Aboriginal Children before the Children's Court and Children's Aid Panels in South Australia', in *Aborigines and Criminal Justice*; Gale and Wundersitz, 'Variations'; Fay Gale and Joy Wundersitz, 'Rural and Urban Crime Rates Amongst Aboriginal Youth: Patterns of Different Locational Opportunity', *Australian Geographical Studies* 24, no. 2 (October 1986); Fay Gale and Joy Wundersitz, 'Aboriginal Youth and the Criminal Justice System in South Australia', in *Ivory Scales*; Bailey-Harris and Wundersitz, 'Over-Representation of Aboriginal Children'. Readers should also be reminded that the juvenile justice system varies from state to state. Caution should be used in concluding that the findings in South Australia apply throughout Australia.
6. The Australian Law Reform Commission, *The Recognition of Aboriginal Customary Laws*, (Canberra: AGPS, 1986), Report No. 31, vols 1 and 2; Kayleen M. Hazlehurst, ed., *Justice Programs for Aboriginal and Other Indigenous Communities: Australia, New Zealand, Canada, Fiji and Papua New Guinea* (Canberra: Australia Institute of Criminology, 1985).
7. Lynn Roberts, Ron Chadbourne and Rose Murray, *Aboriginal/Police Relations in the Pilbara: A study of perceptions* (Perth: Special Cabinet Committee on Aboriginal/Police and Community Relations, 1986).

8. South Australian Aboriginal Customary Law Committee, *Children and Authority in the North-West* (Adelaide, 1984).
9. J.P. Harkins, *Inquiry into Aboriginal Legal Aid: Report for the Department of Aboriginal Affairs* (Canberra: AGPS, 1986), vol. 1 'Recommendations'.

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