



**No. 47**

# **The Over-Representation of Indigenous People in Custody in Australia**

**John Walker and David McDonald**

*Over 14 per cent of Australia's prison population are of Indigenous origin. Nationally, Aboriginal people are in prison at 13 times the rate of non-Aboriginal people. The degree of over-representation varies around the different jurisdictions with South Australia and Western Australia standing out. The Aboriginal community and others are understandably concerned about the lack of real progress in reducing the level of Aboriginal imprisonment and are beginning to look outside Australia for support.*

*Projections of the Indigenous prison population over the next decade or so which are forecast in this Trends and Issues paper are ominous. They can be reduced in part by reducing the levels of social and economic disadvantage experienced by Aboriginal people. There must also be renewed efforts by every jurisdiction in Australia to implement improvements in the ways the criminal justice system treats Indigenous people as recommended by the Royal Commission into Aboriginal Deaths in Custody.*

*If we do not make progress in the immediate future, attention on Australia in the year 2000 may not be focussed on the Olympics alone.*

**Adam Graycar**  
**Director**

This Trends and Issues presents some of the key facts about the high levels of imprisonment of Indigenous people in Australia and explores some of the principal reasons behind the statistics. The rates of Aboriginal and Torres Strait Islander incarceration are compared with those of non-Indigenous people in juvenile institutions, in police lockups, and in adult prisons, linking them with data on other relevant issues such as education and employment, and so mirroring a process which appears to be all too familiar to members of the Indigenous community.

---

## **Juvenile Detention**

---

There is considerable evidence to show that Indigenous prisoners are more likely to have prior records than non-Indigenous prisoners (e.g. Broadhurst 1987). Although the courts appear to be comparatively tolerant of this, it is clear that prior records influence more than just the sentencing processes. The more

August 1995

ISSN 0817-8542

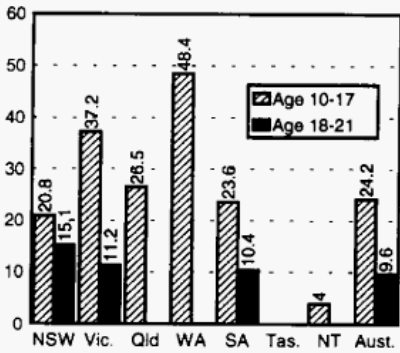
ISBN 0 642 23323 3



Australian Institute  
of Criminology  
GPO Box 2944  
Canberra ACT 2601  
Australia

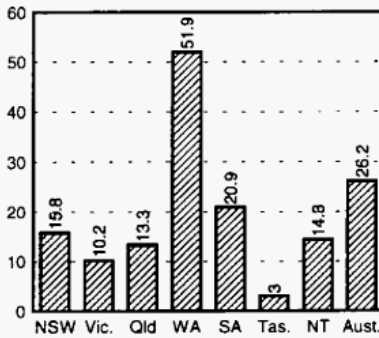
<http://www.aic.gov.au>

Figure 1. Indigenous Over-representation in Juvenile Custody



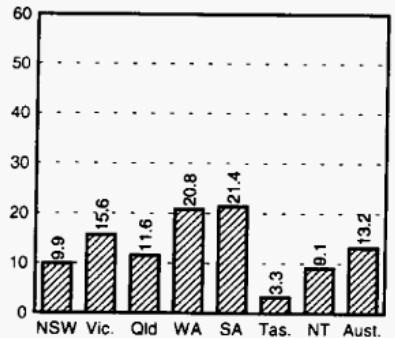
Source: Dagger 1993

Figure 2. Indigenous Over-representation in Police Custody



Source: McDonald 1993

Figure 3. Indigenous Over-representation in Adult Prisons



Source: Walker & Salloom 1993

\* Notes: 1. These data show the extent of over-representation, e.g. in Figure 1, NSW Indigenous juveniles aged 10-17 are 20.8 times more likely to be in juvenile corrective institutions than non-Indigenous juveniles. 2. It should be noted that ACT detainees are excluded from all these figures as their small numbers mean that calculated over-representation rates are highly unreliable. 3. The levels of over-representation are the ratios of the Indigenous and non-Indigenous custody rates.

repeat offending takes place, the more such behaviour is seen to deserve greater attention by police and heavier punishment by the courts. There is evidence to suggest that this process often begins as a result of childhood experiences with the justice system (Gale, Bailey-Harris & Wundersitz 1990).

Anything which indicates prior involvement with the criminal justice system, or symptoms of "rootlessness" as demonstrated by unemployment or a dysfunctional family situation, can lead to police adopting arrest and detention procedures rather than proceeding by summons or caution. While this policy is applied to all offenders, and may generally be applied with the utmost care to avoid racial bias, such processes inevitably fall harder on Indigenous offenders because of their disadvantaged backgrounds, and tend to influence the outcomes for persons appearing before the courts. Successive appearances before the courts then tend to compound the impression of serial offending, which may have commenced with a minor misdemeanour or simply with a welfare placement in a juvenile institution.

Detailed information is not available on the characteristics of young people detained in juvenile detention centres around Australia,

but recent data at least make it possible to calculate current over-representation ratios for Indigenous people aged under 21 years held in such centres. Figure 1 shows that over-representation in these age ranges is even higher than the more familiar rates of over-representation in adult prisons, and confirms that the basis of adult over-representation in prison is indeed established early in life.

### Police Custody

Another factor which may help to explain Indigenous over-representation in custody was identified in a 1972 report of the Vera Institute of Justice:

*Judges consistently behave as though someone who comes to court from a jail cell is more apt to be guilty, and to deserve harsher treatment, than is a comparable defendant who walks into court off the street because he has been free on bail.*

This is likely to be in part the result of the distressed appearance of the defendant, without access to clean attire or the reassurance of friends and relatives prior to the court hearing, and possibly in part the result of court

officials' assumptions of guilt induced by the fact of police custody itself.

In 1991, the Royal Commission into Aboriginal Deaths in Custody found that some two-thirds of the Indigenous deaths occurred in police custody (in direct contrast to the position with non-Indigenous deaths, two-thirds of which, over the same period, occurred in prison custody), and as a result the National Police Custody Survey program was established to gather information on the number and characteristics of people in police custody (the program is now conducted by the Australian Institute of Criminology, see McDonald 1993).

Although these surveys reveal that the numbers of people in police custody have dropped, over-representation of Indigenous people has remained fairly constant. The 1988 level of Indigenous over-representation was 27.0 times; in 1992 it was 26.2 times. In other words, Indigenous people were held in police cells at a rate over 26 times that of non-Indigenous people (see Figure 2). It should also be noted that Indigenous women were especially heavily over-represented, comprising 44 per cent of the female cases but only 1.1 per cent of the national female population aged 15 and above.

Where suspected offenders appear to lack community ties, such as

home ownership or a regular job, police custody is more likely to ensue. At the 1991 Census, Indigenous people in Australia were 2.5 times more likely to live in rented accommodation than non-Indigenous people, fourteen times more likely to live in "improvised dwellings", and almost three times more likely to be unemployed. In addition, linguistic difficulties in some parts of Australia would make it difficult for Indigenous suspects to communicate their situation to police who do not speak the local Indigenous language. Lack of reliable data makes it impossible to determine the extent to which these and other factors affect rates of police custody for Indigenous people. The most likely explanation for the high rates of Indigenous incarceration in police cells is a combination of all of these factors.

### Adult Prisons

According to the 1992 National Prison Census—the latest figures available from this source—there were 2223 persons of known Indigenous origin in a total of 15 559 prisoners (14.3%). Of these, 2086 were male (93.8%) and 137 female. No breakdown was available between Aboriginal and Torres Strait Islander prisoners. Figure 3 shows the level of Indigenous over-representation in adult prisons.

There are very high numbers of Indigenous prisoners relative to their proportion of the adult population in every jurisdiction. The ratios for female prisoners are higher than for male prisoners in most jurisdictions, indicating that, although less likely to be in prison than Indigenous males, Indigenous women are far more at risk of imprisonment than non-Indigenous women.

At 30 June 1992, the national level of Aboriginal over-representation was 13.2. Considerable differences existed, however, between the States and Territories: NSW 9.9; Vic. 15.6; Qld 11.6; WA 20.8; SA

**Table 1. Indigenous Over-representation Ratios, by Most Serious Offence/Charge, Australia, 30 June 1988-92**

Offence/Charge	1988	1989	1990	1991	1992
Homicide	12.0	10.9	11.5	12.1	11.7
Assaults	38.7	34.3	29.4	31.2	29.0
Sexual offences	21.3	19.8	19.6	18.4	17.9
Against person	6.0	16.5	13.5	14.4	15.8
Robbery	7.2	6.7	7.1	6.7	6.9
Break and enter	15.4	17.6	15.7	17.3	16.1
Fraud & misappropriation	2.7	3.2	3.9	2.0	2.7
Other against property	14.6	14.1	13.5	13.1	12.3
Justice procedures	28.4	15.5	20.3	19.1	19.1
*Offensive behaviour	30.0	32.1	n/a	n/a	n/a
Other against good order	29.9	28.8	21.6	11.5	12.7
Drug offences	1.4	1.6	1.6	1.4	2.3
Driving offences	22.9	19.2	26.1	20.7	22.6
Other Offences/Unknown	16.2	9.8	8.8	9.2	11.0
<b>Total</b>	<b>14.2</b>	<b>13.4</b>	<b>13.5</b>	<b>13.2</b>	<b>13.2</b>

\*Unavailable separately for all years. Post-1989 incl. in "Other against Good Order".  
 Note: The Indigenous populations for 1988 to 1991 are based on ABS intercensal estimates: ABS, June 1986 to June 1991, *Experimental Estimates of the Aboriginal and Torres Strait Islander Population*, Catalogue No. 3230.0, Canberra, 1994. 1992 population data, received from ABS, are derived by applying State/Territory specific estimates of: (i) Indigenous age specific fertility rates, based on 1988 to 1991 data; and (ii) projected age specific mortality rates, based on Indigenous life tables for 1981-86 and 1986-91. All estimates and projections for the ACT exclude Jervis Bay Territory. All estimates and projections for Australia exclude the external Territories of Christmas Island and the Cocos (Keeling) Islands.

21.4; Tas. 3.3; and NT 9.1 (the ACT figure is not given as it is based on only three Indigenous prisoners).

### Offence Type

An important factor in determining rates of imprisonment is the nature of offences committed. The National Prison Census cannot provide details of all offences committed, or alleged to have been committed, by persons who are currently in prison, but does provide data on the "most serious offence", or charge, for which the person is, at the time, in prison. For offenders with multiple offences/charges, this is generally defined as the offence which will, or could, determine the maximum time the offender spends in prison in this episode. Table 1 shows that Indigenous people are over-represented in virtually every category, but are most over-represented in offence types involving violence, breaking and entering, breaches of justice procedures and driving offences, and are very much less over-represented in fraud and drug offence categories.

The concept of offence-specific rate-ratios can also be tracked over time and reveals some interesting changes. Table 1 shows that over-representation of Indigenous people in prison has reduced since 1988 for "Other against good order", which includes street disorder and offences related to drunkenness, and "justice procedures", which includes breaches of court orders such as probation, community service orders or maintenance orders.

The main conclusion to be drawn from these data is that Indigenous people are not only over-represented in minor offences as is often suggested, they are over-represented in almost all offences, though the level of over-representation has fallen since 1988 in most offence categories.

### Sentencing Issues

To assist an examination of why Indigenous Australians are so over-represented in prison populations, the National Prison Census can also be used to calculate average sentences by offence type and Aboriginality. A

**Table 2.** Average Aggregate Sentences, by Most Serious Offence and Aboriginality, Australia, 30 June 1992

Offence/Charge	Aboriginal & Torres St Is.		Other	
	Sentenced prisoners	Sentence (months)	Sentenced prisoners	Sentence (months)
Homicide	161	154.7	1130	182.2
Assault	354	26.2	913	33.9
Sex offences	279	77.7	1269	74.4
Other against person	25	55.2	122	56.7
Robbery	130	60.0	1433	80.0
Break and enter	355	27.7	1720	31.6
Fraud & misappropriation	15	14.9	472	25.5
Other against property	226	17.4	1411	21.1
Justice procedures	180	16.8	740	21.5
Other against good order	19	10.9	103	28.1
Drug offences	34	28.1	1226	51.9
Driving offences	183	9.6	777	5.5
<b>*Total</b>	<b>1981</b>	<b>43.0</b>	<b>11621</b>	<b>56.5</b>

\* Total includes offence categories in which there were too few prisoners to tabulate separately.

theoretical possibility is that sentencing biases against Indigenous people convicted of crimes and sentenced to terms of imprisonment are responsible for their over-representation. Table 2 addresses this question and shows that, generally, Indigenous offenders serve *shorter* terms of imprisonment than non-Indigenous offenders for virtually the whole range of different offences. On average, sentences imposed on Indigenous offenders were almost a quarter shorter than those imposed on non-Indigenous offenders.

These data therefore suggest that courts may have a lenient view of Indigenous offenders, biasing sentence lengths in their favour to avoid accusations of racial biases in sentencing.

### Employment and Educational Background

As at 30 June 1992, there were around 2200 Indigenous people in prisons around Australia along with 13 000 other prisoners. Considering the fact that the 1991 Census counted only 159 705 people of Indigenous descent in the total Australian population aged 15 years and over (13 084 365), this makes them around

fourteen times more likely to be in prison than non-Indigenous people.<sup>1</sup>

Disparities of this order have been known to exist for some time and numerous inquiries have been set up to investigate the extent to which the legal system is biased against Indigenous people. These inquiries have led, for example, to the decriminalisation of drunkenness, changes in police procedures and a greater awareness of the need for cultural awareness training for police and prison officers. But they have not succeeded at all in reducing the over-representation of Indigenous people in prisons (*see* McDonald & Walker 1995).

Various studies have shown that much crime in Indigenous communities is serious enough to justify prison sentences, so it would be remiss to overlook the possibility that Indigenous rates of imprisonment partially reflect real differences in rates of offending. Broadhurst, for example, said in 1987 that

*continued characterising of, and over-emphasis on, Aboriginal offending as minor, trivial and a social nuisance masks the very*

<sup>1</sup> The age group fifteen and over is used here instead of the more usual seventeen and over. This slightly alters the rate of over-representation from that published in AIC correctional statistics reports, but it is necessary in order to make the comparisons with population census data later on in this paper.

*serious rates of aggressive and harmful crime among Aborigines and the need to assist Aboriginal communities to protect themselves.*

If this is so, changes to the criminal justice system will only succeed in reducing Indigenous imprisonment rates if all but the most serious of crimes committed by Indigenous people are ignored. Considering that in most cases the victims of crimes committed by Indigenous people are other Indigenous people, this would involve leaving these communities to an intolerable fate. The fundamental questions then must include not only "Why are so many Indigenous people in prison?" but also "Why is crime so bad amongst Indigenous Australians?" In looking overseas, for example in the USA, the UK or the former soviet bloc, it is striking that serious problems of violence and petty crime are often associated with serious social problems, particularly unemployment and income inequalities. Similar findings have also re-sulted from research in Australia, and, for example, it has been publicly acknowledged that unemployment amongst young people may lead to increased rates of crime. Could this also be true of the Indigenous population?

The links between unemployment and crime are complex. Latest figures suggest that two-thirds of all people in prison were unemployed at the time of arrest (Walker & Salloom 1993). An obviously related statistic is that only one in eight prisoners had completed secondary school (Walker & Salloom 1993). Indigenous percentages for both unemployment and school completions are far worse than those of non-Indigenous people (ABS 1993), so to what extent do these features of the Indigenous community contribute to the disparities in imprisonment, rather than their Aboriginality per se? One possibility that has been suggested by John Cove (1992) and others is that Indigenous rates of imprisonment are not any

**Table 3. Prior Employment Status of Prisoners, by Aboriginality, Australia, 30 June 1992**

	Prisoners at 30.6.92	Prison rate per 100 000 persons aged 15+	Relative over-representation ratios
Indigenous people			
Unemployed	1143	6495	259
Other	328	332	13
Non-Indigenous people			
Unemployed	4163	720	29
Other	1923	25	1

Sources: Walker & Salloom 1993; ABS 1992.

Notes: "Other" includes employed, running a business, in full or part-time education, occupied with "home duties", or retired. Table excludes NSW as no data were available on employment status of prisoners.

higher than those applying to other people with similarly low socioeconomic status in the community. The over-representation of Indigenous people in prison should then properly be addressed by helping them to raise their general economic well-being to that of other Australians, rather than by solely seeking changes from within the criminal justice system itself. If this theory is correct, then the pursuit of economic self-determination for Indigenous people will greatly assist in solving the crime problems in Indigenous communities and the palpable inequities in rates of imprisonment.

It is useful to consider some simple calculations. Following a very similar line of logic to Cove (1992), if the rates of imprisonment are calculated, depending firstly on whether the prisoners are Indigenous people and secondly whether they were unemployed at the time of arrest, the results, summarised in Table 3, emerge. On 30 June 1992, 25 out of every 100000 non-Indigenous people who were not "unemployed" were in prison. If those people had been unemployed, their chances of being in prison would have increased 29 times. If they had been Indigenous and not "unemployed", however, their chances would have increased by only around thirteen times. The effect of being unemployed is over *twice* the effect of being Indigenous. As Indigenous people have a much greater chance of being unemployed, the potential for reducing Indigenous imprisonment by

addressing unemployment and its causes is considerable.

Another substantial effect is shown if education is analysed in the same way (*see* Table 4). Non-Indigenous people who did not complete secondary school are ten times more likely to be in prison than their more educated peers. Indigenous people, even where they have completed secondary school, have ten times the chances of being in prison compared to non-Indigenous people who completed school, and are roughly on a par with the non-Indigenous early school leavers. Those who are both Indigenous and early school leavers are 130 times more likely to be in prison than those without these characteristics. The poorly educated Indigenous person has over thirteen times greater chance of imprisonment than has her or his better educated cousin. Again, the potential for improving employment prospects through improved educational attainment could also have a significant impact on

imprisonment rates.

The disadvantages faced by the Indigenous community obviously go far beyond lack of educational and employment opportunities, but there is an overwhelming argument in support of current efforts by the Federal Government and some State Governments, and by Indigenous communities themselves, to improve the self-esteem, cultural identity, educational opportunities, economic potential and job prospects of Indigenous people. Although there is undoubtedly scope for major improvements in the way the criminal justice system treats Indigenous people, it is social and economic policies such as these which are far more likely to be effective in reducing disparities in rates of imprisonment. More fundamentally, however, they are likely to have a dramatic effect in reducing levels of victimisation in Indigenous communities.

### Towards 2011

What does the future hold? The Indigenous population of Australia has been increasing at a faster than expected rate in recent years, according to the 1991 Census of Population. Gray and Tesfaghiorghis have ascribed this to an unexpected fertility increase in the second half of the 1980s as they had already accounted for the known increases in self-identification as Aboriginal or as Torres Strait Islander. Rapid changes in the age structure of the Indigenous population over the next two decades

**Table 4. Educational Attainment of Prisoners, by Aboriginality, Australia, 30 June 1992**

	Prisoners at 30.6.92	Prison rate per 100000 persons aged 15+	Relative over-representation ratios
Indigenous people			
Completed school	88	164	10
Not completed	1394	2217	130
Non-Indigenous people			
Completed school	918	17	1
Not completed	5229	176	10

Sources: Walker & Salloom 1993; ABS 1992.

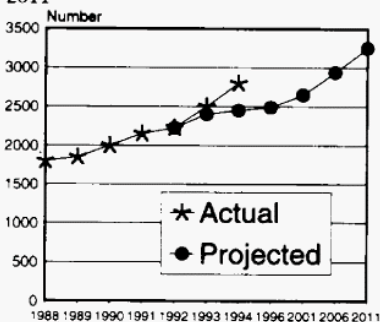
Note: Table excludes NSW as no data were available on educational status of prisoners.

will result. The Indigenous population of imprisonable age (17 and over) is projected to rise by almost a third by the year 2001 and by over two-thirds by the year 2011, compared with its 1991 figures.

Such demographic projections can be used to forecast the possible numbers of Indigenous people in prison. If it were assumed that imprisonment rates remain at 1992 levels—the most recently available figures—the number of Indigenous people in prison can be projected to increase by almost 50 per cent by the year 2011, compared with 1992 figures (see Figure 4). Unfortunately, this projection line already appears to be on the conservative side. Age-specific rates of imprisonment have actually increased since 1992, mainly in New South Wales, and the most recently published figures for Australia in 1994 outstrip the projected figure for the year 2001. As the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs said in its recent report (1994), this trend is of grave concern.

One cannot help but conclude that the principal causal factor of Indigenous over-representation in prison is the generally low status of the Indigenous community in Australia, both in socioeconomic terms and in terms of patterns of discrimination. This is gradually being addressed, but it cannot be said that the beneficial effects are yet visible in terms of lower Aboriginal and Torres Strait Islander imprisonment rates.

Figure 4: Trends and Projections of Indigenous Prisoners, Australia 1988-2011



## References

- Australian Bureau of Statistics 1992, *Census of Population and Housing 1991*, ABS, Canberra.
- 1993, *Australia's Aboriginal and Torres Strait Islander Population*, ABS, Canberra.
- Broadhurst, R.G. 1987, "Imprisonment of the Aborigine in Western Australia 1957-85", in *Ivory Scales: Black Australia and the Law*, ed. K.M. Hazlehurst, New South Wales University Press and Australian Institute of Criminology.
- Cove, J. 1992, "Aboriginal over-representation in prisons: what can be learned from Tasmania", *ANZ Journal of Crim.*, vol.25, no.2, Jul., pp.156-68.
- Dagger, D. 1993, *Persons in Juvenile Corrective Institutions*, No. 62. Australian Institute of Criminology, Canberra.
- Gale, F., Bailey-Harris, R. & Wundersitz, J. 1990, *Aboriginal Youth and the Criminal Justice System*, Cambridge University Press, Melbourne.
- Gray, A. & Tesfaghiorghis, H. 1991, *Social Indicators of the Aboriginal Population of Australia*, CAEPR Discussion Paper No 18, Centre for Aboriginal Economic Policy Research, Australian National University, Canberra.
- House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 1994, *Justice under Scrutiny - Report of the Inquiry into the Implementation by Governments of the Recommendations of the Royal Commission into Aboriginal Deaths in Custody*, AGPS, Canberra.
- McDonald, D. 1993, *National Police Custody Survey 1992: Preliminary Report*, Deaths in Custody, Australia, No. 2, Australian Institute of Criminology, Canberra.
- McDonald, D. & Walker, J. 1995, "Trends in Aboriginal and Torres Strait Islander Deaths in Custody and Incarceration", *Three Years on: Implementation of Commonwealth Government Responses to the Recommendations of the Royal Commission into Aboriginal Deaths in Custody, Annual Report 1993-94*, vol. 1, AGPS, Canberra, pp. 39-80.
- Vera Institute of Justice 1972, *Programs in Criminal Justice Reform*, New York.
- Walker, J. & Salloom, S. 1993, *Australian Prisoners 1992*, Australian Institute of Criminology, Canberra.

John Walker was, until November 1994, Senior Criminologist, and David McDonald is Senior Criminologist, Australian Institute of Criminology



Inquiries about the Trends and Issues series should be forwarded to:  
The Director  
Australian Institute of Criminology  
GPO Box 2944  
Canberra ACT 2601 Australia