

Submission
No 6

INQUIRY INTO OVERCOMING INDIGENOUS DISADVANTAGE

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Dear Ian,

Inquiry into Closing the Gap

Thank you for the opportunity and invitation (5/10/07) to contribute to this important review. While my submission will not address many of the issues raised in the terms of reference, I will:

1. make a personal declaration;
2. overview health fields as a context for some evidence of the gap between Indigenous and non-Indigenous Australians;
3. make two comments upon the Federal Government response to the *Little Children are Sacred Report*;
4. make comment upon the Murdi Paaki COAG trail;
5. highlight some work done for the former Binaal Billa Regional Council of ATSIC on local/Regional Agreements;
6. make some comment on incarceration and the criminal justice system; and
7. suggest some possible ways forward.

1. Personal Declaration

1. I am a Senior Lecturer at Charles Sturt University based at Wagga Wagga with responsibilities in Social Work, Corrections and Child Protection. I have been at the University for 15 years.
2. I have had nearly 20 years experience in the NSW Department of Corrective Services in the Probation and Parole Service where I have worked as a Probation and Parole Officer, a Resident Probation and Parole Officer (Inverell), a District Manager (A/Bathurst, Wagga Wagga), a Regional Operations Manager (A/Dubbo and Wagga Wagga) and A/Regional Director (Southern Region).
3. I had occupied a joint appointment with the University and the NSW Department of Community Services for almost 5 years.
4. I have been the Director of Child and Family Services (Western) within the Department of Community Services for 2001 and had responsibility for an area that was 72% of NSW geographically and an operational staff of about 160 people spread over 25 rural and remote centres.
5. I have been the initiator and Course co-ordinator of an Indigenous Social Work programme run from the University at Dubbo. It attempts to consider the demographics which sees a number of Western communities becoming increasingly "indigenised".
6. I have been an active developer of programmes including a large pilot projects that looked at the relationship of Local Government and their Indigenous communities and subsequently the development of Indigenous Housing organizations. Both these were auspiced by the former ATSIC Regional Council of Binaal Billa. I have also been the evaluator for the Commonwealth funded Illicit Drug Strategy at Bourke, Walgett and Brewarrina. Many years ago, I worked with traditional Aboriginal people in Tennant Creek and I have more recently undertaken some field work on Groote Eylandt.
7. Until August 2007, I was a member of the Department of Community Services Research Advisory Council.
8. I have been a key researcher at the Centre for Rural Social Research at Wagga Wagga.
9. I am not, and have never been, a member of any political party.

2. An overview related to Health fields and the Disadvantage Gap

The 1981 Canadian Lalonde Report is largely credited with introducing the concept of Health fields and dividing Health into Human Biology, Environment, Lifestyle and Health Care Organization. Within each health field there are sub-categories. The report argued that human biology, environment and lifestyle were the more significant contributors to health and longevity.

The World Health Organization defines health as "a state of complete physical, mental and social well-being and not merely the absence of disease and infirmity" (WHO 1946). Indigenous Australians have a physical, mental and social legacy that manifests itself in current health and longevity disadvantage. Redressing the effects of the physical, mental, social and economic legacy in a just and reconciliatory way is essential to closing the gap.

Commissioner Johnston in the final report of the Royal Commission into Deaths in Custody says: "*the principal thrust of the recommendations, as of the report, is directed towards the prime objectives - historically linked - of the elimination of disadvantage and the growth of empowerment and self determination of Aboriginal society*" (pg27).

This disadvantage manifests itself in many areas which will be well known to the Standing Committee. For example in access to health care, the Australian Institute of Health and Welfare (AIHW) website says of health services:

"Overall, Indigenous Australians experience lower levels of access to health services than the general population, attributed to factors such as proximity, availability and cultural appropriateness of health services, transport availability, health insurance and health services affordability and proficiency in English....."

"Overall, Indigenous Australians experience lower levels of access to health services than the general population, are more likely than non-Indigenous people to be hospitalised for most diseases and conditions, and are more likely to experience disability and reduced quality of life due to ill health, and to die at younger ages, than other Australians." Indigenous Australians also suffer a higher burden of emotional distress and possible mental illness than that experienced by the wider community."

In relation to Health expenditure, the AIHW says:

The life circumstances of Aboriginal and Torres Strait Islander people differ from the general Australian population in a number of important respects that significantly affect their general health status and consequent health care needs. Despite Indigenous Australians' much poorer health status, total expenditures per person for health services for Aboriginal and Torres Strait Islander people are not much higher than for the rest of the population....Indigenous Australians have a significantly poorer health status (measured in terms of life expectancy, mortality and morbidity) than non-Indigenous Australians. It should therefore be expected that per capita investment of health resources to achieve quality for Aboriginal and Torres Strait Islander peoples should be much higher than for other Australians. In this context it is noteworthy that on a per person basis, estimated expenditure on health for Aboriginal and Torres Strait Islander peoples averaged \$3,901, compared with \$3,308 for non-Indigenous people - a ratio of 1.18:1.

Of alcohol, cigarettes and other drug consumption the AIHW again says:

While several surveys have shown that Indigenous Australians are less likely than other Australians to drink alcohol (ABS 2002; AIHW 2003), those who do so are more likely to consume it at hazardous levels.

While the effects of excess alcohol consumption on individuals, families and communities can be clearly identified, the effects of smoking, a major cause of preventable ill health and death, may take many years to appear (Unwin et al. 1994). As a single risk factor, smoking causes the greatest burden of disease (approximately 10%) for the total Australian population (Mathers et al. 1999). Cigarette smoking is associated with the increased incidence of, and mortality from, various types of cancer, including lung, cervical, bladder and pancreatic cancers, coronary heart disease, stroke, chronic respiratory tract diseases, and pregnancy-related conditions (English et al. 1995). The effects of passive smoking are also associated with higher rates of lung cancer and heart disease in adults, asthma and lower respiratory

tract illness such as bronchitis and pneumonia in children (NHMRC 1997), and higher rates of sudden infant death syndrome (Scragg et al. 1993, Mitchell et al. 1997). In addition, smoking is a risk factor for low birthweight (Sayers & Powers 1997), which, as noted above, is a risk factor for both childhood and long-term diseases.

Surveys have revealed a high prevalence of smoking among Aboriginal and Torres Strait Islander people. The 2004-05 NATSIHS found that 51% of Indigenous males and 49% of Indigenous females were current smokers. After adjusting for differences in age structure, Indigenous Australians were more than twice as likely to be current daily smokers as non-Indigenous Australians.

Indigenous Australians are also at risk of ill health through the use of substances such as marijuana, heroin, amphetamines and inhalants (e.g. petrol, glue, aerosols). The 2001 National Drug Strategy and Household Survey (NDSHS) indicates that illicit drug use among Aboriginal and Torres Strait Islander peoples was higher than that for non-Indigenous Australians. Over half (57%) of Indigenous respondents aged 14 years and over indicated that they had tried an illicit drug compared to 37% of non-Indigenous respondents.

Petrol sniffing continues to be a major problem in some Indigenous communities, and particularly affects young people. Petrol sniffing can cause confusion, aggression, lack of coordination, hallucinations, respiratory problems, and chronic disability including mental impairment (see D'Abbs & MacLean 2000).

With regards to Mental Health

Traditionally, Aboriginal and Torres Strait Islander people perceive their health not only in terms of the physical health of the individual, but rather in regard to the social, emotional and cultural wellbeing of the whole community (National Aboriginal Health Strategy 1989).

The relationship between socio-economic status and health is well known.

The relationship between socio-economic status and health is well established, with people at the lowest socio-economic levels experiencing the highest rates of illnesses and death (Lynch & Kaplan in Berkman and Kawachi [eds], 2000). As socio-economic position improves, health status also improves. This gradient from poorest to wealthiest has been observed for most of the major causes of death (Turrell et al. 1999).

Compared with other Australians, Aboriginal and Torres Strait Islander people are disadvantaged with regard to a range of socio-economic indicators, including education, employment, income and housing, and are therefore at greater risk of ill health.

Education

There is overwhelming evidence of the social exclusion of Indigenous people from the mainstream of society. For example the Australian Bureau of Statistics (ABS 4221.0) in describing schools in Australia indicated that the apparent retention rate in 2002 of full time students from year 7 to year 12 is 75% whilst for those full time Indigenous students it is 38%. The Indigenous population is much younger (median age 20 years) than the total Australian population (median age 34). The Indigenous population is predicted to grow at the rate of 5.3% per year which is much faster than the total Australian population with a growth rate of approximately 1.0% in the 2003-04 financial year.

Of persons aged 15 years and over, 3% of Indigenous people compared with 5% of non-Indigenous were at university. However in the age range 18-24 years 5% of indigenous people were at university compared to 23% of non Indigenous people.

Employment

In the 2001 census, 59% of non-Indigenous people aged 15 years and over were employed compared to 42% of Indigenous people. 32,000 Indigenous people were recorded for administrative purposes by the Aboriginal and Torres Strait Islander Services as CDEP participants. Significantly 55% of Indigenous people are employed by the private sector compared to 82% of non-Indigenous people.

Income

At the 2001 census, the mean (average) gross household income for Indigenous persons was \$364 per week, corresponding to 62% of the income for non-Indigenous persons (\$585 per week). The ABS indicates this disparity reflects lower household incomes received by households with Indigenous people. The tendency is for those households to have more inhabitants than non-Indigenous households. In the five years between the 1996 and the 2001 Census the average equivalised gross household income for Indigenous persons rose by approximately 11% compared with a 13% rise for non-Indigenous persons after making adjustments for inflation and using the consumer price index. In terms of income distribution, 40% of the total Australian population was in the lowest or second lowest income quintiles. Among Indigenous persons this figure was 72%. Only 5% of Indigenous people were in the top one fifth (20%) of the income distribution.

Home Ownership

Indigenous people are much more likely to be renting homes (63%) than purchasing (19%) or owning their homes outright (13%). The Australian Housing Survey, reported in Edwards and Madden (2001) found that one third of community owned or managed permanent housing in discrete locations were found to be in need of major repair or demolition. 15% of households with indigenous persons were considered overcrowded compared to 4% of non indigenous households.

Child Protection

Aboriginal and Torres Strait Islander children are over represented in child protections systems an overall ratio of 3.2 to 1 (ABS4704.0). The incidence of Indigenous children coming into the care and protection of the State in out of home care is about six times that of the non indigenous Australian children.

Aggregated data for 2000 and 2001 in relation to juvenile detention centres for Australians shows that 43% of detainees (aged 10 to 17 years) were Indigenous.

Regional Variations

These tragic national figures can often mask very real regional differences. According to data given to the Wilcannia Health Service Development Transitional Plan in 2000, the average life expectancy for an Aboriginal man living in Wilcannia was 36.7 years and for an Aboriginal woman 42.5 years. The estimates show the life expectancy in that particular location to be far lower than people living in NSW generally.

In the 5th December 2004 issue, The Sun Herald reported that in Far Western NSW, the average age of death for an Aboriginal man was 33 years; alcohol-related deaths for Aboriginal men are 8 times the national average; tobacco related deaths for Indigenous women are 64 times the national average; blindness among Aboriginal people is 10 times the national average; teenage pregnancy is 16 times the State average; the region has the highest death toll from heart disease, diabetes, injury, suicide and homicide; the highest incidence of lung cancer, premature births and sexually transmitted diseases; and the State's highest rate of nose and throat complaints.

Given the demographic distribution of indigenous people with a far heavier concentration in rural and remote areas, it would be significant to consider regional variations and regional figures as well as national statistics.

Summary

Health and life expectancy are a function of Human Biology, lifestyle, environment and the organization of Health care. Socio-economic factors are highly relevant to health outcomes and life expectancy. Indigenous people in Australia (and some rural people) are demonstrably economically poorer, have poorer access to health care organization, have poorer environmental factors and have poorer lifestyle factors. According to Noel Pearson: *"Ours is one of the most dysfunctional societies on the planet: surely the fact that the per capita consumption of alcohol in Cape York is the highest in the world says something about our dysfunction."* (cited in Robertson 2000:71)

3. The Little Children are Sacred Report -Terms of Reference (d)

The Federal Government intervention into the Northern Territory may have been well-intentioned but has some very serious limitations. Many of the limitations have been well covered previously. The only two contributions that I can make are:

Sacredness

The Report that directly led to the intervention was entitled "Little Children are Sacred". A senior Yolngu lawman provided the quote "In our law children are very sacred because they carry the two spring wells of water from our country within them". The intervention was a military intervention from a paternalistic approach and did not include any actions that related to the spiritual and in fact negated the notion of "country" by removing the Indigenous right to determine who would or would not be allowed into country. The report highlights (pg 21) "we have specifically referred to the critical importance of Governments committing to genuine consultation with Aboriginal people in designing initiatives for Aboriginal communities". A lengthy quote from former Federal Aboriginal Affairs Minister Fred Chaney follows to re-enforce the need for genuine consultation. The Federal intervention failed the first recommendation of the report.

None of the 97 recommendations relate specifically to either the "sacred" or to the notion of "country". The recommendations acknowledge the interconnectedness of poverty, disadvantage, lack of education etc but do not seem to acknowledge the legacy of dispossession, the lack of economic progress and the continuing alienation from many of the services and attributes (eg education) that would be available in other communities. It is to be noted that Health screenings were not part of the recommendations. It is to be noted that much of the report refers to the actions of non-Indigenous men. For example, comments in relation to the "sex-trade" of young Indigenous girls need to be viewed in the context of non-Indigenous male perpetrators and the lack of access to economic and socially acceptable ways for the young women (and in some cases their families) to share the normal benefits of Australian life obtained through acceptable means.

Sacredness, whether defined in religious or identity terms, are important considerations with all people and especially with Indigenous people. For many Indigenous people, their identity is bound up with country and the notion of belonging. It is a concept that is under challenge among some younger Indigenous people. In a recent project that I undertook, the intent was to have Indigenous young people understand their traditional culture. Evidence suggested that that traditional culture had been overlaid by a white materialist culture which in itself had been overlaid by a black American "rap" culture. Identity was mixed. The existential issues of Spirituality and Identity have recently been considered in Loos (2007) *White Christ Black Cross* and Nakata's (2007) *Disciplining the Savages: Savaging the Disciplines* and previously in Trudgett's *Why Warriors Lay Down and Die*. The recognition of Spirituality is increasingly part of the academic world with books like Gale et al *Spirituality and the Helping Profession* (2007) and the eighth edition of Zastrow's *The Practice of Social Work* (2006). Indigenous writers have long recognised the importance of Spirituality. Any solutions that do not recognise this fundamental part of closing the gap will fall short of being complete solutions.

The Nature of community

The "Little Children are Sacred" report has a focus on community. Community is a concept that can be constructed in different ways. Some writers use the term to mean a geographic entity defined by physical boundaries such as a neighbourhood or locality (eg Umbakumba, Murrin Bridge, Alinyingula). Others use the term to refer to common attributes which are used to identify membership (eg Christian community, gay and lesbian community, Aboriginal community etc). The term is sometimes used to define both attributes and locality (Umbakumba Men's House; Turvey Park Parents and Citizens Association).

Clarke (1981) highlights that community can be locality, social activity, social structure and/or a community of sentiment (eg shared beliefs). Whatever the definition, the two fundamental communal elements of any community are a **sense of solidarity** and a **sense of significance**. These two elements of community are closely linked. An underlying theme is the question of what constitutes a community that can care effectively for its members.

Warren (1963) writes about communities, as historically having five functions; production, socialization, social control, social participation and mutual support. Kenny (1995) makes the point that community is essentially a subjective notion, and we define community as what we experience as community.

Communities can best be understood as organic rather than mechanistic; dynamic and interrelated with environment, rather than constant in structure and form. Each community has its own attributes, depending on the local social, economic, political, cultural, environmental and person/spiritual characteristics.

The challenge facing many Aboriginal communities both in the Northern Territory and in NSW is both the loss of the sense of solidarity and significance. Many are economically poor, socially dependant and with a declining leadership base and increasingly disconnected from traditional supports.

4. The COAG Trails – Term of Reference 1f

In November 2000, the Council of Australian Governments (COAG) agreed that all governments would work together to improve the social and economic well-being of Indigenous people and communities.

It agreed on a Reconciliation framework based on three priority areas for government action:

- investing in community leadership initiatives
- reviewing and re-engineering programs and services to ensure they deliver practical measures that support families, children and young people. COAG also agreed that governments should look at measures for tackling family violence, drug and alcohol dependency and symptoms of community dysfunction
- forging greater links between the business sector and Indigenous communities to help promote economic independence.

A “formative” Evaluation of the COAG trial of Murdi Paaki was completed by Urbis Keys Young on the 26th October 2006. A Shared Responsibility Agreement 22/8/03 established 4 goals which the Urbis Keys Young report states as: improving the health and well-being of young people; improving educational attainment and school retention; helping families to raise healthy children; and strengthening community and regional governance strategies. A further evaluation is scheduled for 2007/08 which is to have a comprehensive assessment of the **outcomes and achievements** of each trial. The formative evaluation however states:

“While substantial improvements were noted in communication/collaboration between governments, government stakeholders acknowledged that these gains were yet to translate into more sustained, flexible, whole of government approaches leading to improved service delivery, of the type envisaged by the COAG mandate in the establishment of the trials (pg 16).

My own assessment is that the trial has delivered to the Murdi Paaki area some \$4.817m in Shared Responsibility Agreements (16 agreements) for an Indigenous population of 7542 people (population figure used from the Two Ways Together Report). The large SRA items are community facilitators (\$2.02m); Engaging with Government (\$0.7); and air-conditioning (\$1m). Over half of the funding (\$2.505m) has been provided by the Office of Indigenous Policy Co-ordination. By contrast, the former Binaal Billa Region has received just \$0.826m (11 agreements – two of which the details are not available) in Shared Responsibility Agreements for an Indigenous population of 21463 (population figure used from the Two Ways Together Report). The OIPC contribution has been \$0.252m or approximately 30% of the total known SRA figures.

The “formative” evaluation of the Murdi Paarki COAG trial contained some concerning features including the lack of involvement from Local Government (pg16); the “grafting on” of SRAs to processes that were well under way (pg 17); that only 6 of 16 communities in Murdi Paake had been party to SRAs (pg 18); that only an intuitive connection in most programmes

between community/family/individual commitments and the issue that is the subject of the SRA exists (pg19); the "fine-grained" rather than comprehensive nature of signed SRAs (pg 20); the volume of SRAs as a measure (pg20); and recognition that progress has not "kept pace" with community expectations (pg 31).

5. Local/Regional Agreement Study – Binaal Billa ATSIC Regional Council 1996

This outlines some of the significant outcomes from a pilot evaluation of the relationship between Local Government and Aboriginal communities in selected parts of western and south-western NSW. Within the context of negotiating local/regional agreements between Aboriginal communities and Local Government, the pilot evaluation sought to establish the current situation and propose practical and implementable strategies for the development of communities and constructive, enhanced relationships. The study was built on the social work principles of Social Justice, community participation and empowerment.

In May 1996, the Binaal-Billa Regional Council of the Aboriginal and Torres Strait Islander Commission (ATSIC), called for tenders to undertake a project related to regional agreements. The purpose of the evaluation project was:

"to examine and develop strategies, processes and models for developing protocol regional agreements between the Binaal Billa ATSIC Regional Council, Local Government Regional Groups and other agencies. These agreements should facilitate effective service delivery coordination in a context of support for self-determination of local Aboriginal communities and reconciliation in local communities".

In announcing the project, Binaal Billa Regional Chairperson, Hewitt Wyman, said:
Aboriginal people have the potential to play a more significant role at the local level to the benefit of all local Government's constituents through the development of a range of agreements relating to local government issues. Local and regional agreements offer a positive and constructive approach at the local level for the development of economic, social and community goals to the benefit of both Aboriginal and non-Aboriginal residents."

This innovative project was initiated by the Binaal Billa Regional Council with a primary focus on ten Aboriginal communities, ten Local Government areas and the relationship between those Aboriginal communities and their Local Government. The pilot study was to broadly review Local Government and Aboriginal communities particularly as they related in respect of coordination and planning, service delivery and community relations

In the literature, the term regional agreement is used without clear definition. In Canada it is used for large areas involving significant first nation lands. Agreements between Canadian Provincial Government and First Nation peoples use the terminology Municipal Type Agreements (MTA).

Throughout this study, the term regional agreement was used to encompass broad land-based agreements between Aboriginal and Torres Strait Islanders and others. Given that the focus was upon local government and local communities and given that many indigenous people were concerned with rates, services, consultation, employment and local issues, the term used here is 'local agreement' and is to be considered as a smaller unit than regional agreements. The definitional issue of regional and local was secondary to the need for information and action. In any event, the parameters of the study were Local Government boundaries. The concept of a local agreement is that it is narrower in its geographic span, but broader in the issues encompassed. Its use is confined to current local government boundaries, spanning issues such as local consultation, local development, local housing and local employment. While disputed land title does not have to be an issue, provision of service by local government, recognition of indigenous people, access to local government employment, industry development, negotiation processes, dog control and a host of other locally significant issues may be negotiated.

In essence a local/regional agreement is an agreement between Aboriginal people and other groups of people about the use of land and/or resources.

The land area concerned or resources can vary in size from relatively small to large portions. A local/regional agreement might be concerned with one aspect of the land or its resources, or it may cover a large number of land and resource issues. Where both sides agree on the

outcome, regional agreements are a way of settling land claims and land and resource development proposals by discussion. Local/regional agreements are contracts which increase efficiency and reduce risks involved in economic development. Local/Regional agreements can give Indigenous interests greater control over services and development.

Methodology

The project was initially undertaken through a legal and library search in relation to Local Government agreements, regional agreements and the law as it impacts on Local Government. International comparisons were made with Canadian Regional agreements and a body of literature was reviewed in respect of existing regional agreements both in Australia, Canada and New Zealand. A thorough knowledge and reading of Local Government Legislation, Grants Commission requirements and Federal State fiscal relations was undertaken.

The consultations themselves were undertaken around two consultation designs. The designs had much in common in terms of the information being sought. One design was specifically for Aboriginal communities and adopted a Participatory Rural Appraisal approach (PRA) and very broadly utilised the NSW Department of Community Services protocol in respect of consultation with Aboriginal communities. The other design was for Local Government where the key persons in Local Government at the various councils were identified and interviewed.

The objective was to give both the community and Local Government representatives the opportunity to express, not only the current existing relationship, but also to express areas that they felt could be developed for the mutual benefit of both the Aboriginal community and Local Government. At the conclusion of the consultations (which were undertaken separately), there was no attempt to reconcile the sometimes differing views of the Aboriginal community and Local Government over either local issues or macro issues. It was considered that that difference of opinion itself indicated a lack of understanding or consultation between Aboriginal communities and Local Government. At the conclusions of the consultations, some cost benefit analysis on some issues were undertaken. A "blueprint" for the development of the local relationship between the 10 Local Governments and their 10 Aboriginal communities was developed for each of the studied areas. The aim was to ensure that the local Indigenous community had a voice in the local Government area.

The selection of the ten Aboriginal communities was undertaken by the Binala Billa Regional Council Steering Committee on Local Government issues. The nominations of the Local Government areas to be consulted was a consequence of the location of the Aboriginal communities nominated. The communities nominated were:

Balranald	(Balranald Shire Council)
Condobolin/Willow Bend	(Lachlan Shire Council)
Coonabarabran	(Coonabarabran Shire Council)
Cummeragunja	(Murray Shire Council)
Darlington Point	(Murrumbidgee Shire Council)
Dubbo	(Dubbo City Council)
Griffith/Three Ways	(Griffith City Council)
Murrin Bridge	(Cobar Shire Council)
Nanima/Wellington	(Wellington Shire Council)
Wagga Wagga	(Wagga Wagga City Council)

The Indigenous communities were selected by the Steering Committee to represent a cross section of relationships. It was expected that some had close and beneficial relationship between local Government and the Indigenous community while others had problematic relationships. The Indigenous communities represented those that were urbo-rural based (Wagga Wagga, Dubbo), others that were small rural (Coonabarabran, Darlington Point) and others that were former Aboriginal reserves (Cummeragunja, Murrin Bridge). Some were resettlement communities (Wagga Wagga, Dubbo) while others were traditional land areas controlled by a particular clan group (Cummeragunja by the Yorta Yorta, Balranald by the Wamba Wamba, Darlington Point by the Waradjuri) and others were areas of mixed background (Coonabarabran was Waradjuri and Kamillaroi).

General Outcomes

The relationships with individual local Aboriginal communities and local government varied along a continuum. At one end of the continuum were communities and local government where a consultative, co-operative and constructive relationship existed to the benefit of all local government constituents, including Indigenous people. At the opposite end of the continuum there was hostility, antagonism, lack of consultation and lack of constructive interaction between local government and Aboriginal communities.

Some local government bodies ignored the presence of Aboriginal communities within their boundaries citing as their rationale that no rates were charged and therefore no services were provided. These shires overlooked their responsibilities towards Aboriginal members of the public within their boundaries. The funding apportioned to the shire on a population and disadvantage basis by the New South Wales Local Government Grants Commission was not considered by these Shires.

With notable exceptions, Aboriginal people are marginalised from many local government services. Local government bodies fail to consult (or consult in inappropriate ways), and fail to account for their expenditures in respect of Aboriginal communities. They had failed to develop means by which to include Aboriginal people as full participants in local government and, in some instances, fail to adequately discharge responsibilities in relation to employment obligations to Aboriginal people.

Rates, land acquisition, heritage protection, services, housing and employment were the dominant concerns of the Aboriginal communities.

There was a willingness by Aboriginal people and of many within local government to acknowledge the need for improvements and to be looking constructively for ways and means to forge and further better relationships between local government and Aboriginal communities.

Taking a broad view of regional/local agreements, within the ten communities consulted, there was much potential to develop relationships that would advance both Aboriginal people and whole local government areas. This includes closer consultation and the reduction of litigation by negotiating local agreements. It would also be possible to increase the number of Aboriginal employees in local government and enhance the representation of Aboriginal people elected to local government councils through use of the Department of Local Government's Aboriginal Mentoring Program. Commercial development in areas such as tourism, housing, environmental protection, small business development, heritage and cultural protection could take place.

For each of the ten local government areas and communities, the pilot developed a tentative strategic plan for furthering appropriate arrangements and issues on which negotiations may be undertaken.

The Case Study noted that in more isolated communities (Murrin Bridge, Cummergunja) much of the infrastructure (water, sewerage, roads) that would normally be expected to be provided by local government had been provided by the Aboriginal and Torres Strait Island Commission (ATSIC). Funds that could have been usefully employed in the training and development of Aboriginal people or placed in business enterprises controlled by Aboriginal people have been used to provide basic services that could reasonably have been expected to have been provided by local government. Aboriginal local communities' justifications in seeking ATSIC funding rather than obtaining funding from local government was related to alienation from local government and greater accessibility to and success in obtaining funding from ATSIC. Current structural arrangements in some communities mean that Aboriginal people continue to be disadvantaged in health, housing, economic independence and service provisions. Possible ways to address some of the structural disadvantages were suggested.

i. Empowerment through knowledge

The study identified the key factors from the Australian and international literature for the purpose of achieving satisfactory agreements with varying levels of government as:

willingness
 bargaining power
 unity
 information and research
 timing
 communication
 geo-politics realities (claimants are less likely to receive a favourable settlement when there are competing non-indigenous developmental interests at stake)

A subset of other relevant factors included:
 experience in settlement development (the degree of existing poverty and despair among claimants and the urgency of development pressures will shape outcomes)
 knowledge of existing models and (the demonstration effect of other local agreements can influence negotiating positions) and
 public attitudes (public support for claims either locally or nationally can lead to significant alliances)

This knowledge has been used, subsequent to the project, as a checklist in negotiating with Local Governments with respect to a variety of local issues.

ii. Consultation between Aboriginal Communities and Local Government

The study revealed a wide spectrum of relationships between Local Government and Aboriginal communities. Some Local Government areas (for example Dubbo City Council) had a consultation process and model in place to ensure that Aboriginal people were included in Local Government and had a say in important issues that affected them either specifically or the community more generally. Other Local Government areas were marked by a lack of involvement with the Aboriginal community and in some instances a disregard for their involvement in, or contribution to, Local Government. In one community, Aboriginal consultation was said to occur on Indigenous matters, but the person who was consulted on all occasions is not accepted by the Indigenous community as being Aboriginal and certainly not as representing the community views. The community saw the person as enabling the Local Government to say they had consulted with the Indigenous community. In general, there was a distinct feeling that relationships between Aboriginal communities and Local Government can be improved and there was an acknowledgment of a willingness to improve the relationship.

iii. Local Government Employment

Aboriginal people were under represented as employees in Local Government in the areas reviewed by this pilot study. The Mainly Urban Report (1992) recommended that Local Government employ Aboriginal and Torres Strait Islanders in at least the same proportion as they occur in the workforce at the Local Government area (recommendation 30). The outcomes of this case study were :

Shire	Total Pop (Grants Commission figure)	Aboriginal Pop (% Grants Commission)	Shire workforce as stated in consultation	Aboriginal Employees as stated in consultation	% of Shire workforce Aboriginal
	2,950	3.98	45	2	4.4%
	7,270	6.14	80	6	7.5%
	5,240	7.14	120	20	16.6%
	36,430	5.64 (NB council est 10%)	258	5	1.9%
					10 additional jobs
	21,860	2.61% (council est 7%)	180	3 or 4	1.6%
					2 additional jobs
	7,720	8.26	180 (include	2 (include 1	1.1%

	5,290	2.98	retirement village 85)	at retirement village)	up to 12 additional jobs
	2,450	5.50	60	nil	Nil additional 2...
	57,310	1.82	35	2 (Abor commun)	5.7%
	9,520	8.17	495	5 (council)	14%
			120	12	2.42%
				5 (all labouring)	4.16%
					additional 5 jobs

There is a clear need for Aboriginal people to occupy management, technical and professional positions in local government. The study noted that where Aboriginal people were currently employed by Local Government, they tended to be in labouring and/or lower paid and lower skilled employment. The consultations also revealed that in some locations the Aboriginal community did not apply for Local Government positions as they perceived (whether correctly or incorrectly) that their opportunity to obtain employment in Local Government was negligible. The view was expressed by some Aboriginal people that Local Government was prepared to employ Aboriginal people on short term programmes funded by other sources but would not employ Aboriginal people as part of their mainstream full-time workforce. Some comments by Local Government authorities tended to confirm the views as held by the Aboriginal community.

An outcome of this study has been that the Binaal Billa Regional Council has, over 6 years, engaged Local Government in a voluntary Equal Employment Opportunity Monitor, so that the employment of Aboriginal people in Local Government is monitored on an annual basis. The intent was to develop an awareness (Freirian "conscientization") and assist in the obtaining and retaining of employment in Local Government for and by Aboriginal people. Significant improvement in levels of Indigenous employment in Local Government has occurred and the process was controlled within the ATSIC Regional Council.

iv. Elected Representation

Aboriginal people in the Binaal Billa region were significantly under represented as elected representatives in Local Government. The study highlighted the lack of representation in both the elected councillors and the administrative levels and reported upon an initiative of the Department of Local Government who auspice an Aboriginal Mentoring Practice Program which has the potential to significantly raise the level of elected representation.

v. Commitment to Aboriginal People

The study noted the City of Greater Lithgow and its commitment to Indigenous Australians. In part that commitment recognised that Indigenous Australians were the first people of the land and "acknowledges and grieves for the loss by indigenous people of their land, their children, their health and their lives". The Council "supports Indigenous and non-Indigenous people working together for a treaty or other instrument of reconciliation" and "recognises the valuable contributionmade by indigenous people and look forward to a future of mutual respect and harmony".

In the ten communities visited, no such commitment existed. Six years later, this symbolic but important recognition has been implemented in at least three Local Government areas of the Binaal Billa Region and variations of the commitment in two others Local Government areas.

vi. Rates

The Local Government rating structure within NSW Local Government is complex. However some anomalies which particularly mitigated against Aboriginal organisations and individuals were noted. However the detail is now 10 years old and I have not kept up with the changes.

In 1996, where an Aboriginal Lands Council makes a claim on unclaimed Crown Land, some Local Government authorities are charging rates (both land and service rates) from the day on which the property passes to the possession of the local Aboriginal Lands Council. No rates are paid on the unclaimed Crown Land while it remains the property of the Crown, but as soon as ownership is established by the local Aboriginal Lands Council, rates are charged notwithstanding that there is no development and few (if any) services to that land. Local Aboriginal Lands Councils had a financial disincentive to claim land as when Crown Land is claimed by an Aboriginal group, the land becomes rateable. In some situations, Local Government fully rates land. In some situations, service rates (water, sewerage, garbage collection) are charged but no services are provided by Local Government as there is no development.

The majority of Indigenous housing is owned, maintained and/or managed by either Aboriginal Housing Corporations, or the Local Aboriginal Land Council. This is an historic legacy of dispossession and is mirrored in the lack of private home ownership. The majority of the Aboriginal people in the housing were in some way or other dependent upon Centrelink benefits and were on low incomes. However, in the general community where housing was owned by an eligible pensioner the rates are generally charged at half the land rates (by the Local Government), the State Government pays one quarter of the rates and the other quarter was effectively subsidised by local Government. However, where a house was owned by an Aboriginal Housing Corporation or a Local Aboriginal Lands Council and was rented by an eligible pensioner, in general, full rates were charged to the Aboriginal Housing Corporation or the Local Aboriginal Lands Council by the Local Government. The tenant may be an eligible pensioner but this anomaly means that to a significant extent the Aboriginal Housing Corporation or the local Aboriginal Lands Council is subsidising the pensioner in their housing rather than the subsidy being from the State Government and local Government. Where a Local Aboriginal Land Council could not (or would not) pay the rates to local Government, at the expiry of 12 months, the Local Government could claim the arrears from the State Land Council who reduces the allocation to the Local Aboriginal Land Council by the amount of the arrears (and the Local Government claimed amount).

Supreme Court cases involving the Nungara Co-Operative Society Ltd and the Maclean Shire Council (1991) and the Toomelah Co-operative Ltd and the Moree Plains Shire Council (1996) suggest that Cooperative Societies may be considered as public benevolent institutions and could be exempt from rate payments. These legal precedents were largely unknown to Aboriginal communities and provided a powerful bargaining point for Aboriginal communities with Local Government.

In 1996, in one Local Government area alone, Aboriginal Housing organizations paid \$52,000 per year. Were these organizations able to obtain a general rate exemption the total savings would have been \$14,000. Were 50 per cent of the homes owned by eligible pensioners rather than rented, the savings to Aboriginal communities would have been in the order of \$26,000.

A specific outcome of this pilot project was that the Binaal Billa Regional Council sponsored a legal project that drafted a set of model rules that would enable Aboriginal Housing Organizations and other Indigenous organizations to have objectives that complied with the terms and conditions required to satisfy the requirements for Charitable and Benevolence Organizations Act. The outcome is that Indigenous renters will be treated in the same way as other citizens and their organizations will not continue to incur on-going institutional race-based financial hardship.

The situation on former Aboriginal Reserves varied. In some instances, Local Government indicated that as Aboriginal Reserves paid no land rates or were rated as one property. Often no services were provided, or charges were made to that community as if that community was a private individual landholder. The significance of this is that (in some instances) Local Government perceives its responsibility as stopping at the gates of the former Aboriginal Reserve and that the provision of infrastructure and / or services is the responsibility of other organisations (principally ATSIC).

Rate revenue was a significant, but not exclusive, part of most Local Governments' budgets. Local Government budgets in rural inland NSW involve a Local Government equalisation component whereby funds are distributed on the basis of "horizontal equalisation" to ensure that there is recognition of the differential capabilities of Local Governments in raising revenue and the cost differentials in the delivery of services including the needy and socially disadvantaged. Two of the factors in the equalisation component involve a weighting for the provision of services for Aboriginal people. The second component of the Commonwealth Grants Commission funding to Local Government is a road component which is based on road and bridge length and the Local Government area's population. Thus it can be argued that Councils are receiving a revenue stream via the Grants Commission for Aboriginal people who live within their boundaries and that the "no rates, no services" approach negates recognition of this income stream. In one former Aboriginal reserve using the most conservative of parameters, the existence of that Reserve in the Local Government area added approximately \$110,000 in funding via the Commonwealth Grants Commission. It is certainly the case that roads, noxious weeds services, library services and other services are available to the Aboriginal communities and that they share in the general benefits of the Shire, but is nevertheless an important recognition of Aboriginal people's financial contribution to Shire budgets simply by virtue of living within the boundaries of the Shire.

vii. Housing

Aboriginal housing was a significant concern in that some Housing Corporations were lacking in financial viability. The issue of unpaid rates could have had a detrimental effect on local relationships. However the study had concern in respect of the ideology of Aboriginal housing which often represented good people acting with admirable intention, but a paucity of training and theory. Understanding the difficulties of Aboriginal Housing Corporations requires an understanding of the relationship between capital and community. The relationship is potentially contradictory as the community's tendency to preserve housing as a "use value" for the services of community members, while capital's tendency is to convert housing into "exchange values" for the services of community members that can be speculated upon for profit and income stream. Capital and economically driven Local Government is less willing to invest in Aboriginal housing which maintains housing as a "use value" because this would prevent either speculation, profit accumulation or income streams.

The ideology of housing corporations as community based can lead to a belief that housing corporations of Indigenous people are alternatives to mainstream government programs. The concept of user pays has also meant that there is a belief that significant contributions should be made by the Aboriginal community to housing. Given the levels of poverty, unemployment and other social problems, the impossibility of this is less frequently recognised. Aboriginal housing corporations are struggling with the contradiction between affordability (to individual Indigenous members) and viability (the continued maintenance and enhancement of the properties). It must be recognised that in many Aboriginal communities, as in many rural communities, there are no market forces or competition to build affordable and appropriate housing. The opportunity for profit on Aboriginal owned land is limited where speculative investment is risky, and the income stream is likely to be so small as to not warrant investment. For its part Local Government is also caught between adopting a "social housing" approach and the dictates of "affordability" and return on rate payer investments.

An outcome of this project was an investigation and formation of a Regional Housing Organization that provided infrastructure, support, philosophical underpinnings, capital, economy of scale, management and expertise in Aboriginal Housing while maintaining local self-determination and local control of housing assets.

6. Incarceration and the Criminal Justice systems - Terms of Reference 1bvi.

With regard to Corrections, in 2004, 20% of the Australian prison population was indigenous while the 2001 ABS Census Reports indicate that the Aboriginal population was 2.4% of the Australian nation.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC), handed down its findings on April 15, 1991 with the following comments:

"On an Australia-wide basis an Aboriginal was 27 times more likely to be in police custody than a non-Aboriginal, and the figure was 15 times in New South Wales, 13 times in Victoria and three times in Tasmania. Australia wide an Aboriginal was 11 times more likely to be in prison than a non-Aboriginal, and in New South Wales eight times and in Tasmania three times." (Wooten, 1991:21-2, in White and Perrone, 1997)

In the years since the publication of the RCIADIC, the situation has deteriorated in terms of over representation of Aboriginal people in custody rather than ameliorated.

The causes of Indigenous over representation in prisons are matters highlighted by the RCIADIC and include socioeconomic disadvantage, chronic unemployment, substantial substance abuse, family dissolution and alienation from economic, social and political structures. These have been most recently highlighted in the Indigenous section of the Australian Bureau of Statistics Year book.

NSW is dominated by a conservative view of corrections and wed to a casework model. Its ideology is to locate individual responsibility for offending and decontextualize the criminal act from the, often disadvantaged, community. Community development, restitution, and structural approaches to corrections are rare or non-existent in NSW. Corrections has experimented with methods such as groupwork – but these have been educational rather than therapeutic. The dominant model of intervention is casework - of a crisis intervention nature built on a poorly considered risk management approach.

Scientific research conducted over decades suggests that criminal justice approaches that emphasise increasing policing and increasing severity of punishment in most cases fail to effect significant reductions in crime. Homel (1994) indicates that such approaches are enormously costly and that they may even indicate an increase in crime rate.

In 1988, a Conservative Government was elected in NSW on a Law and Order platform. Over a three year period the prison population increased from 4003 (a rate of 70.7 per one hundred thousand) to 5919 (with a rate of 100.2 per one hundred thousand). This rate was the highest rate since 1907. Under the Carr Labour Government, the number of prisoners in NSW has risen to 9000 – up by 3000 since 1995. Auditor General, Bob Sendt notes that the cost of keeping a prisoner in NSW is \$68547 per year or \$187.80/day (Auditor General's report to Parliament 2004). The costs vary according to classification with maximum security prisoners costing \$79829/year, medium security prisoners cost \$63016 per year and minimum security prisoners cost \$61813/ year.

Sullivan (1997) analysed Australian crime rates. She claimed to document increasing community lawlessness which she attributed to cultural and social change especially in family life and child rearing practices. The risk of crime seems to be exacerbated by creating communities that are not inclusive of diversity among families and youth. Communities need to provide many social pathways for their members. King (1998) indicates that in the past 25 year the percentage of dependent children living below the poverty line has almost doubled. The Submission of the NSW Department of Community Services to the Legislative Council enquiry very adequately details the changes in the State of NSW in relation to families and these are often compounded in rural and remotes areas.

Approaches to crime prevention may be divided into four groups following the distinctions made by Farrington (1996).

The criminal justice prevention approach refers to "traditional deterrents, incapacitation and rehabilitation strategies, operated by law enforcement and the criminal justice systems" (Farrington 1996, p 18).

Situational prevention "comprises of opportunity-reducing measures that are directed at highly specific forms of crime; involve the management, design or manipulation of the immediate environment in a systemic and permanent way; make crime more difficult and risky or less rewarding and excusable as judged by a wide range of offenders" (Clarke 1997, p 4).

Community (social) prevention "refers to interventions designed to change the social conditions or institutions that influence offending (Farrington 1996, p 18). Developmental prevention which refers to interventions designed to inhibit the development of criminal potential in individuals (Farrington 1996, p 18).

Wetherburn and Lynd (1997) record that poverty, unemployment, sole parent families, lack of residential stability and crowded living conditions were all related to measures of abuse and neglect on the one hand and to juvenile crime on the other. The strongest predictor of juvenile crime of all the factors measured was neglect and abuse.

Sherman (1997 b, p 1) says "family factors have a major effect on crime. Family-based prevention can directly address those risk factors with substantial success". The more, and earlier, the risk factors that are addressed, it seems, the better. Programmes for infants and young children may be most cost-effective in the long term, even if they are expensive in the short term. Combining home visiting with pre-school education reduces crime committed by children when they grow up. Rigorously evaluated pilot projects with tightly controlled prevention services are consistently effective. Most of the conclusions have been independently reached by diverse scholars and discipline groups (Yoshikawa 1994; Tremblay and Craig 1995; Hawkins, Arthur and Catalano 1995; Crowell and Burgess 1996). Given the normal disagreement among social scientists, the level of consensus about their conclusions is striking".

Greenwood et al (1996) in a sophisticated approach to estimating the cost effectiveness of approaches to crime preventions indicated that "California's three strike law is estimated at achieving a 21% reduction in crimes (crimes that cannot occur while people are in gaol) at a cost of \$US5.5 billion per year. For less than an additional billion dollars, graduation incentives and parent training could roughly double that crime reduction, if they are as effective as our analysis suggests." (Greenwood et al 1996, p 5).

Wetherburn and Lynd (1997 p viii), state "assuming other factors remain unchanged, an increase of one thousand additional neglected children would result in an additional 256 juveniles involved in crime. Alternatively, and again assuming other factors remain unchanged, an increase of 1000 additional poor families will result in an additional 141 juveniles involved in crime".

The National Crime Prevention papers highlight the factors that have been linked to anti-social or criminal behaviour.

It can be argued that conceivably many of those members of the society that are most disadvantaged find their ultimate exclusion from society in the cells of the nation's prisons.

While the evidence mounts for a different approach to corrections that involves prevention, the way a particular problem is defined in a social realm strongly influences approaches to remediation (Callaghan 1988, Caplan and Nelson 1975, Kilman and Warwick 1978). Furthermore the definition can determine both the focus of intervention and the techniques employed, resulting in the dismissal of alternatives. The identification of the problem is a value judgement that identifies perspectives - social work, sociological, political, economic. The dominance of economic rationalism and a political concern to be seen to be "firm but fair" has dominated the correctional sphere.

The explanation of causes of rising imprisonment has concentrated on the individual. The interventions proposed have focussed on a limited range of options arising from a retributive philosophy of justice and corrections. The need for professionals and governments to locate the causes within an individual accounted for the rejection of a structural approach to managing rising prison populations. An individual retributive model which is person-centred upon blame and institutional-solutions has dominated Australian thinking.

The solution is not that difficult. In many areas of rural NSW, there is a very significant over-representation of police. The last time (some time ago) that I looked at the community of Walgett, there were 27 police for a population of less than 3000 people. This is much higher

than the State policing rate. While no members of the community would like to see the "investment" of the State to disadvantaged areas decreased (27 police at say \$35000/ year – very very conservative parameters – is an investment by the State of \$945000/year - a very large investment in the area), the outcomes for the community may be more effective if there were less police enforcement and more drug and alcohol counsellors, more DV workers, more teachers, life-coaches, educational opportunities, functional job network providers etc – that actually addressed the individual and community deficiencies in a way that was creative and functional.

7. Possible Future Directions

Tomison and Wise (1999) have shown the association between stressful, negative community conditions and maladaptive coping behaviours and social dysfunction. Memmott et al (2001) describe the pattern of some Indigenous communities as "dysfunctional community syndrome".

In this authors view, the future approach needs a framework that takes account of multiple societal, family, community and individual factors in an holistic way. Understandings of oppression (possibly based on the work of Friere), passive welfare, racism, silence and denial (both within and outside of the community), distorted development and a commitment to economic and social empowerment will be necessary pre-conditions for changing Communities. Models of intervention may have the following characteristics (modified from Blagg 2000 – in relation to family violence):

- Programs that are customised to meet the needs of specific locations;
- Programs based on community development principles and models of empowerment rather than on casework alone;
- Programs that are linked to health, housing, education etc in an holistic way;
- Programs (where possible) that employ and up-skill local people;
- Programs that are linked to progressive education;
- Programs that employ a multi-disciplinary approach;
- Programs that emphasise partnerships between communities and other services;
- Programs that focus upon working with men;
- Programs that emphasise healing and reconciliation rather than adversarial programmes;
- Programs that promote positive pro-social role models and whole family models;
- Programs that enhance existing functional community structures and groups and challenge dysfunctional communities;
- Services that are advocates for community change;
- Services that are involved in whole community change in alliance with the communities; and
- Empowering correctional and justice programs that restrict and reverse the debilitating effect of crime and disadvantage within communities.

Conclusion

I have attached a copy of a chapter (Appendix 1) that I was invited to write and that has been published (January 2005). This book has been edited by Sean O'Toole and Simon Eyland (both NSW Department of Corrective Services employees). My chapter relates to the over-representation of Indigenous persons in Custody. In the first half of 2008, I have some study leave and, among other matters, I wish to look at what programmes are working for Indigenous people in relation to Corrections. This Chapter may be of assistance in respect of Terms of Reference 1f.

There are differing paradigms of health and understandings of Indigenous people. There are differing paradigms of intervention. In my view, until the social and structural disadvantages of Indigenous communities are addressed from a basis justice and recognition of history and the adoption of community empowerment and creative approaches that are locality specific, and until the social conditions that promote crime and disadvantage are addressed in a cooperative, reconciliatory and just way, then the future may be "more of the same". An "whole of Government - whole of community" approach is required – but the outcomes must

be tangible and beneficial and the programmes must make real differences at the local community and individual level.

Again, I appreciate the opportunity of submitting and wish you well in your deliberations.

AW (Bill) Anscombe
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The over-representation of Indigenous persons in custody

Bill Anscombe Charles Sturt University

Foley (2003) is critical of the academic discourse in Australia which constructs a Western perspective of Indigenous reality and which presents racially biased constructions of the "truth". It needs to be acknowledged that this chapter has been written by a non-Indigenous person and the chapter needs to be viewed with that "bias" taken into account. Professor Mick Dodson (2003: 8) says that he is "unable to give comfort to the view that a non-Indigenous person should leave public statements on these questions to Indigenous people alone. The tragic circumstances ... are not alone the business of those who suffer them."

A prominent historian considers the history of Indigenous people's relationship with Europeans as being the transition from "tribesman to prisoner". Whatever view one may take of the "history wars", colonisation or invasion and a host of other issues related to the relationship between Indigenous and non-Indigenous Australians, the fact is that many Indigenous Australians' lives are significantly impacted upon by crime, policing and corrections. Information, narratives and analysis emerging from the Gordon Inquiry, the *Bringing Them Home Report* ("Stolen Generations" Report), the Royal Commission into Aboriginal Deaths in Custody, and numerous coronial inquiries are evidence that Indigenous people are affected by criminal behaviour, welfare approaches, correctional organisations and law enforcement programs.

The facts

In 2004, 20 per cent of the Australian prison population was Indigenous. The 2001 ABS Census Reports indicated that the Aboriginal population was about 2 per cent of the Australian nation.

Nearly 55 per cent of all prisoners in 2004 were males aged between 20 and 34 years. The 25 to 29 year age group had the highest imprisonment rates for both males and females, with 659 male prisoners per 100,000 adult males (a 3% increase on the 2002 rate) and 53 female prisoners per 100,000 adult females (a 5% increase on the 2002 rate). Between 1993 and 2003 the female prisoner population has increased by 110 per cent, in comparison to a 45 per cent increase in the male prisoner population.

The Royal Commission into Aboriginal Deaths in Custody (RCIADIC), headed by Commissioner Elliott Johnson, handed down its findings on 15 April 1991. According to the Royal Commission:

On an Australia-wide basis an Aboriginal was 27 times more likely to be in police custody than a non-Aboriginal, and the figure was 15 times in New South Wales, 13 times in Victoria and three times in Tasmania. Australia wide an Aboriginal was 11 times more likely to be in prison than a non-Aboriginal, and in New South Wales eight times and in Tasmania three times " (Wooten 1991: 21-22, cited in White and Perrone 1997)

While it is recognised that prisoners in general tend to come from the young adult range, this tendency seems to be even more marked for Aboriginal prisoners" (Johnston 1991: 168)

The Royal Commission into Aboriginal Deaths in Custody was established in October 1987 and reported on 99 deaths of Indigenous people between the 1 January 1980 and 1 May 1989. The RCIADIC was a response to growing public concern that deaths in custody of Aboriginal and Torres Islander peoples were too common and public explanations were too evasive. There was an underlying theme that foul play may have been a factor. The conclusions reached in RCIADIC final report did not support the expectations of systemic and deliberate foul play. The Commissioners, however, did find that there appeared to be little appreciation of, and less dedication to, the duty of care by custodial authorities and their officers and found system defects, failure to exercise proper care and in general a poor standard of care.

The RCIADIC established that Aboriginal people in custody do *not* die at a greater rate than non-Aboriginal people in custody. However, the Commission concluded, "*what is overwhelmingly different is the rate of which Aboriginal people come into custody, compared to the rate of the general community*". The report stated:

[T]he conclusions are clear. Aboriginal people die in custody at a rate relative to the proportion of the whole population which is totally unacceptable and which would not be tolerated if it occurred in the non-Aboriginal community. But this occurs not because Aboriginal people in custody are more likely to die than other in custody but because the Aboriginal is grossly over represented in custody. Too many Aboriginal people are in custody too often.

Commissioner Johnson, in the overview of the National Report, highlights the importance of history and the consequences of that history. The clear tone of the report is upon reducing the number of Aboriginal people in custody with a focus upon Aboriginal empowerment and self-determination. The final National Report (p 27) says:

[T]he principal thrust of the recommendations, as of the report, is directed towards the prime objectives – historically linked – of the elimination of disadvantage and the growth of empowerment and self-determination of Aboriginal society.

In the years since the publication of the RCIADIC, the situation has deteriorated in terms of over-representation of Aboriginal people in custody, rather than ameliorated.

Theoretical perspectives

1. Criminological perspectives

Criminologists from differing paradigms may have differing explanations for the over-representation of Indigenous people in correctional settings. Some criminologists, for example, will locate criminal behaviour from the structural criminology approach seeing the over-representation as a response to social injustice and inequalities. Those operating from a volitional perspective may well see the over-representation as a result of individual choice and individual behaviour.

2. Welfare perspectives

In explaining social phenomena, a wide range of perspectives can be used. Some will see the explanation of the existence of social welfare from a purely individual perspective while others will adopt a political or communitarian approach.

3. Discussion

Weatherburn et al (2003), in explaining the over-representation of Indigenous peoples in prisons and criminology, state:

[T]he simplest explanation for the state of affairs is Aboriginal over representation in crime. The dominant focus of scholarly attention in relation to Aboriginal over representation in the criminal justice system, however, has been upon systemic bias of the law, the exercise of police discretion and operation of the criminal justice system.

This article highlights the contribution that Aboriginal offending makes to Aboriginal over-representation. The authors do not dispute the contribution of the history of colonisation and concede that prejudice and discrimination of Indigenous people at the hands of police and the criminal justice system has been substantial, but they underline that focusing on crime will highlight the limited value of diversionary policies as a way of reducing Aboriginal over-representation. The critical issue is to significantly impact on the underlying causes of high crime rates in Aboriginal communities.

The causes of Indigenous over-representation in prisons are matters highlighted by the RCIADIC and include socioeconomic disadvantage, chronic unemployment, substantial substance abuse, family dissolution and alienation from economic, social and political structures. These have been most recently highlighted in the Indigenous section of the Australian Bureau of Statistics Year Book.

A second group of factors influencing over-representation is systemic biases at varying points of the criminal justice system. An analysis of police cautioning, police utilisation of summonses, Court Attendance Notices and court appearance rates for Aboriginal juveniles, for example, show that Aboriginal young people receive fewer cautions, fewer summonses and Court Attendance Notices but have higher rates of arrests and are significantly over-represented in the Juvenile Justice Centres when compared with non-Indigenous young people.

Weatherburn et al (2003) assert that:

[A]ll discriminatory treatment of Aboriginal people by prison, police and the court system is an historical fact, the leading current cause of Aboriginal over representation in prison is not systemic bias but high rates of Aboriginal involvement in serious crime.

They conclude that the primary focus in reducing Indigenous over-representation must be upon reducing Indigenous crime – not changing the response of the criminal justice system. Significantly, much of the violent crime committed by Aboriginal offenders is committed against other Aboriginal people – often women and children (Harding et al 1995: 36-44). Logically, both perpetrators and victims are over-represented in the Indigenous community.

To sustain this view, systemic bias needs to be limited in definition to systemic bias of the justice and correctional authorities. There is overwhelming evidence of the social exclusion of Indigenous people from the mainstream of society. For example, the Australian Bureau of Statistics (ABS 4221.0) in describing schools in Australia indicated that the apparent retention rate in 2002 of full-time students from year 7 to year 12 is 75 per cent while for those full-time Indigenous students it is 38 per cent. The Indigenous population is much younger (median age 20 years) than the total

Australian population (median age 34). The Indigenous population is predicted to grow at the rate of 5.3 per cent per year, which is much faster than the total Australian population with a growth rate of approximately 1.0 per cent in the 2003-04 financial year.

Of persons aged 15 years and over, 3 per cent of Indigenous people – compared with 5 per cent of non-Indigenous people – were at university. However, in the age range 18-24 years, 5 per cent of Indigenous people were at university compared to 23 per cent of non-Indigenous people.

The unemployment rate is higher for Indigenous people, being 17.6 per cent compared with 7.3 per cent for all Australians as at February 2000 (ABS 2000). This figure excludes the 26 per cent of “employed” Indigenous people in the Community Development Employment Program (CDEP) which is a “work for the dole” scheme operated through the Aboriginal and Torres Strait Islander Services (ATSIS). In the 2001 census, Indigenous people of labour force age were three times more likely than non-Indigenous people to be unemployed (20% compared with 7%).

In the 2001 census, 59 per cent of non-Indigenous people aged 15 years and over were employed compared to 42 per cent of Indigenous people; 32,000 Indigenous people are recorded for administrative purposes by the Aboriginal and Torres Strait Islander Services as CDEP participants. Significantly 55 per cent of Indigenous people are employed by the private sector compared to 82 per cent of non-Indigenous people.

At the 2001 census, the mean (average) gross household income for Indigenous persons was \$364 per week, corresponding to 62 per cent of the income for non-Indigenous persons (\$585 per week). The ABS indicates this disparity reflects lower household incomes received by households with Indigenous people. The tendency is for those households to have more inhabitants than non-Indigenous households. In the five years between the 1996 and the 2001 Census the average equivalised gross household income for Indigenous persons rose by approximately 11 per cent compared with a 13 per cent rise for non-Indigenous persons after making adjustments for inflation and using the consumer price index. In terms of income distribution, 40 per cent of the total Australian population was in the lowest or second lowest income quintiles. Among Indigenous persons this figure was 72 per cent. Only 5 per cent of Indigenous people were in the top one-fifth (20%) of income distribution.

Indigenous people are much more likely to be renting homes (63%) than purchasing (19%) or owning their homes outright (13%). The Australian Housing Survey, reported in Edwards and Madden (2001) found that one-third of community-owned or managed permanent housing in discrete locations were found to be in need of major repair or demolition. Fifteen per cent of households with Indigenous persons were considered overcrowded, compared to 4 per cent of non-Indigenous households.

Aboriginal and Torres Strait Islander children are over-represented in child protections systems by an overall rate ratio of 3.2 to 1 (ABS 4704.0). The incidence of Indigenous children coming into the care and protection of the State is about six times of that of non-Indigenous children.

Aggregated data for 2000 and 2001 in relation to juvenile detention centres for Australian shows that 43 per cent of detainees (aged 10 to 17 years) were Indigenous.

The average age of an Indigenous mother in the two-year period prior to 2000 was 24.7 years compared with an average age for of 29.2 years for non-Indigenous mothers. Indigenous mothers were twice as likely to have children of low birth weight (13%) than non-Indigenous mothers (6%). The comparative rates of perinatal death in 1998-2000 indicated 20 stillbirths out of every thousand births for Indigenous mothers compared with ten stillbirths out of every thousand where the mother was non-Indigenous. Hospitalisation rates are several times higher among Indigenous peoples. Hospitalisations attributed to assaults are eight times higher for Indigenous males and 28 times higher for Indigenous females when compared with their non-Indigenous counterparts.

Indigenous people aged 18 years and over were twice as likely to be current smokers (51%) compared with non-Indigenous people (24%). Interestingly, Indigenous adults aged 18 years and over were less likely (42%) than non-Indigenous adults (62%) to have consumed alcohol in the week prior to the National Health Surveys. Of those Indigenous people who consumed alcohol their level of risky/high drinking was 29 per cent compared to 17 per cent of non-Indigenous consumers. There is repeated association between substance abuse and violence in Indigenous communities (Atkinson 1991; Fitzgerald 2001; Robertson 2000). According to Noel Pearson:

Ours is one of the most dysfunctional societies on the planet: surely the fact that the per capita consumption of alcohol in Cape York is the highest in the world says something about our dysfunction. (cited in Robertson 2000: 71)

The ABS (4704.0) concludes, "after adjusting for different population compositions, Aboriginal and Torres Strait Islander peoples are shown to be dying at three times the total population rates".

These tragic national figures can often mask very real regional differences. According to data given to the Wilcannia Health Service Development Transitional Plan in 2000, the average life expectancy for an Aboriginal man living in Wilcannia was 36.7 years and for an Aboriginal woman 42.5 years. The estimates show the life expectancy in that particular location to be far lower than people living in NSW.

Given the demographic distribution of Indigenous people with a far heavier concentration in rural and remote areas, it would be significant to consider regional variations and regional figures as well as national statistics.

Summary and future directions

Tomison and Wise (1999) have shown the association between stressful, negative community conditions and maladaptive coping behaviours and social dysfunction. Memmott et al (2001) describe the pattern of some Indigenous communities as "dysfunctional community syndrome".

Indigenous over-representation in prisons has increased rather than decreased. Indigenous people continue to be disadvantaged in a range of areas including health, housing, employment and education. Aboriginal offenders offend (at least in the serious offence categories) at a higher rate than non-Indigenous people. Many of the victims (of Aboriginal offenders who end up in custody) are themselves Indigenous.

Robertson states:

Indigenous people generally have been profoundly affected by the erosion of their cultural and spiritual identity and the disintegration of family and community that has traditionally sustained relationships and obligations and maintained social order and control. (2000: xii)

In this author's view, the future approach to redressing the continuing and escalating over-representation of Indigenous people will need to be understood within a framework that acknowledges the past and takes account of multiple societal, family, community and individual factors in an holistic way. Understandings of oppression (possibly based on the work of Friere), passive welfare, racism, silence and denial (both within and outside of the Indigenous community), distorted development and a commitment to economic and social empowerment will be necessary pre-conditions for reversing the trend towards increasing over-representation of Indigenous people.

Models of intervention may have the following characteristics

(modified from Blagg 2000 – in relation to family violence):

- Programs that are customised to meet the needs of specific locations;
- Programs based on community development principles and models of empowerment;
- Programs that are linked to health, housing, education etc in an holistic way;
- Programs (where possible) that employ and upskill local Indigenous people;
- Programs that respect traditions and traditional law and custom;
- Programs that are linked to progressive education;
- Programs that employ a multi-disciplinary approach;
- Programs that emphasise partnerships between communities and agencies;
- Programs that focus upon working with men;
- Programs that emphasise healing;
- Programs that promote positive pro-social role models and whole family models;
- Programs that enhance existing functional community structures and groups;
- Community Corrections Services that are advocates for community change;
- Departments of Corrective Services that are involved in whole community change in alliance with the Indigenous communities; and
- Empowering correctional and justice programs that restrict and reverse the debilitating effect of crime and corrections within communities.

There are differing paradigms of corrections and criminology. There are differing paradigms of welfare intervention. These paradigms and approaches can be applied to the over-representation of Indigenous people. In the author's view, until the social and structural disadvantages of the Indigenous community are addressed from a basis of self-determination and self-governance and until the social conditions that promote crime and offending behaviour are addressed in a cooperative, reconciliatory and just way, then the future may be an escalating number and rate of Indigenous people in Australian prisons.