

**Submission  
No 73**

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS  
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF  
DEATHS IN CUSTODY**

**Organisation:** Armidale ANTAR

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**ANTaR**

**Armidale People for Reconciliation**

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## **SUBMISSION TO THE SELECT COMMITTEE ON THE HIGH LEVEL OF FIRST NATIONS PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF DEATHS IN CUSTODY**

This submission is made on behalf of ANTaR Armidale, a longstanding advocacy body with both Aboriginal and non-Aboriginal members which supports Aboriginal initiatives and issues and publishes a regular newsletter of Aboriginal events and concerns in town. The Census recorded 7.4 % of Armidale's population as being Aboriginal and Torres Strait Islander and, due to its youthful age structure, the proportion amongst those under 25 and in the schools is considerably higher.

This submission addresses TOR (a) The Unacceptably High Level of First Nations People in Custody in New South Wales, recognising that high levels of deaths in custody stem from high levels of incarceration.

### **BEYOND UNACCEPTABLE INCARCERATION**

Firstly, the level of imprisonment of First Nations People in New South Wales goes way beyond being unacceptable. It is criminal. Aboriginal people constitute just 3% of the population of New South Wales but fully 24% of the prison population (ALRC Report 133 2018). For the non-indigenous population, the incarceration rate was 163 per 100,000 that is less than 2 in every 1,000 persons; whilst for the indigenous population it was 2,039 per 100,000 or some 20 per 1,000 for the First Nations people. Thus, on Census night 2016 Aborigines were 12.5 times more likely to be in prison than non-indigenous people. Going back to the 2006 Census, the trend data show that the indigenous imprisonment rate rose by 41% over the 10 years whilst the imprisonment rate for non-Indigenous people increased by only 24%. In short, the gap has actually widened.

This rising level of incarceration presents clear evidence that New South Wales Governments and legislators and judicial administrators and police have not taken account of Aboriginal realities and needs in their work and that the blind imposition of law and order measures without justice highly disproportionately impacts upon Indigenous Australians.

### **ABORIGINAL JUVENILES**

Department of Juvenile Justice figures for 2016-7 show that Aboriginal juveniles account for 48% of all juveniles in detention centres, and are imprisoned at a rate approximately 17 times that of the non-Aboriginal population. There is no way in which this can represent a just or even an effective outcome.

### **ABORIGINAL WOMEN**

Aboriginal women are even more disadvantaged by the legal system. On Census night 2016 their level of imprisonment exceeded that of non-Indigenous women by a factor of 21.2. Their rate of imprisonment (465 per 100,000) was not only higher than that of non-Indigenous women (22 per 100,000) but also higher than that of non-Indigenous men (291

per 100,000). These brute figures represent many, many broken families and disadvantaged children.

## **COVID**

Under current COVID 19 conditions, the Open Letter from First Nations Families Left Behind #CleanOutPrisons has urgently called for the “Release of all First Nations adults and children from prison”. Members of ANTAR Armidale would support the “Release (of) those who are most vulnerable to contracting COVID-19 or who would be severely impacted by it” only excluding those imprisoned for crimes of violence. We note that 48 % of ATSI in prison are there for sentences of 6 months or less. The bail laws as amended over recent years provide a good example of how the law disadvantages poorer citizens in general and Aboriginal citizens in particular. Aboriginal defendants are more likely to be refused bail in NSW courts – 14.5% compared with 7% for non-Aboriginal defendants [Equality Before the Law Bench Book 2019].

## **ARMIDALE’S EXPERIENCE**

In Armidale town there have over time been a succession of initiatives that have contributed to reducing ATSI incarceration rates by interventions for young people. However, in a depressingly consistent pattern, each initiative will receive funding for a while, funding will then cease and the initiative will fade away. Some examples are set out below.

### **The Foot Patrol/ Night Bus**

Armidale used to have a night bus which went round picking up young Aboriginal children out on the streets late at night. This gradually faded away. It had originally been started as an Aboriginal organization in the 1990s but was taken over by a non-Aboriginal organization so the motivation declined and there was less scope for building strong relationships between those running the scheme and Aboriginal children and youths. [There was also a programme of ‘Midnight Basketball’ which provided activities for refugee and other children who did not always have a responsible adult at home].

### **Circle Sentencing**

There was a trial of circle sentencing in Armidale. Funding then ceased. Currently efforts are underway from within the Aboriginal community to restart the practice with more effective facilitation and more consistent operational procedures. There is also a perception in Armidale that many Aboriginal offenders are not local and therefore are less likely to respond to local elders. Youth unemployment rates are high in Armidale and there is generally a pool of highly skilled university students available to fill any vacancies. We know that some 84% of Aboriginal inmates were unemployed at the time of arrest, and it was very hard to impossible to find employment for those volunteering for circle sentencing.

## **AAHS Aboriginal Parent, Child and Youth Early Intervention & Prevention Offender Programme**

The target group for this programme included Aboriginal youth aged 10 to 17. It focused on the family unit not just the child to find ways to deal with those challenging issues confronting the young people involved with the justice system. This was the first Aboriginal youth programme of its kind to be funded to an Aboriginal organisation in the New England area, ever. It achieved considerable success but it was only an 18 month programme and the NSW Department of Justice refused for reasons unknown to Armidale to extend the funding. It is a common experience in regional NSW that new projects are eagerly announced, but that when funding is not extended there is no announcement or explanation provided to the local community.

### **Justice Re-investment**

The Armidale community, both Aboriginal and non-Aboriginal, has been informed about the apparent successes of the Justice Re-investment Programme in Bourke. Preliminary work with a view to establishing such a project in Armidale has been halted by COVID 19 considerations. One aspect of the work in Bourke appears to be that has received an extraordinarily high level of government support at the political level such that local agencies are subject to direct orders to co-operate from Sydney. Another aspect is that it has been able to implement 'out of left field solutions', for example by providing a men's shelter so that women and children do not have to leave their homes in cases of domestic violence because the male partner can be the one obliged to move out.

### **Aboriginal Impact Statement : NSW Department of Justice**

The NSW Department of Health requires an Aboriginal Impact Statement for each new initiative, whether addressed to Aboriginal health or not. The NSW Department of Justice should be similarly required to produce an Aboriginal Impact Statement for all new legislation and amendments and new programme so that, for example, changes to bail laws or how non-payment of fines are dealt with would be reviewed for their specific impact on Aboriginal citizens. An early example could examine the potential impact of fines for COVID regulation breaches.

### **Reducing Aboriginal Overrepresentation in the Criminal Justice System 2018-2020**

We note the document produced by the NSW Department of Communities and Justice on *Reducing Aboriginal Overrepresentation in the Criminal Justice System* which is based on a clear-headed analysis of the causes of overrepresentation especially those linked to the nature of the legal system. The Plan has three elements: avoiding initial contact with the criminal justice system; reducing the length of time Aboriginal people spend in custody (on remand and convicted) and the reducing the high rates of Aboriginal reoffending (this last with a \$237 million series of initiatives). The government intends to reform sentencing, parole and driving disqualification processes. The three most common types of crime are violent offending and reoffending, justice order breaches and driver license offending and reoffending. There is clearly considerable scope for dealing with justice order breaches and driver licence offending in such a way as to reduce rates of indigenous imprisonment.

### **More Action**

What is needed at this point is not more inquiries, but more informed action accompanied by the funding for the time period (often 5 years+) necessary to allow the impact of the funding to be demonstrated. Where there are genuine questions as to the efficacy of new programmes, the need is often for **direct action research** rather than theoretical studies. This means that promising initiatives are tried out and monitored with sufficient flexibility for adjustments based on experience. There is an urgent need for Aboriginal organizations to have the scope and funding to manage intervention initiatives which they themselves have designed in keeping with the spirit of self-determination, reflecting the impact of talking with Aboriginal families faced with issues related to the criminal justice system. 'Nothing about us without us' should be a self-evident requirement in New South Wales in the 2020s.

Professor Helen Ware, on behalf of Armidale ANTAR, 24<sup>th</sup> August 2020.



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