

## INCARCERATION RATES OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES

I do not have a carefully constructed view of the problem as a whole – just some touch points of concern and commentary that might assist thinking. Identified below.

### 1. TOUCH POINT

Incarceration rates for ATSI people are disproportionately high in every jurisdiction – except Tasmania (so far as I recall). At what level might the overrepresentation rate be considered ‘social engineering’?

### 2. TOUCH POINT

Queensland, with one of the more disproportionate incarceration rates has no substantial differentiation between remand and convicted prisoners.

### 3. TOUCH POINT

A perusal of statistics in various jurisdictions annual reports covering criminal justice agencies reveal many crimes with only ATSI offenders. With a seeming disproportionate punishment including incarceration. Is Parliament and the passage of such laws really intended to deliver such a result?

### 4. TOUCH POINT

Courts are adversarial decision making fora – not inquisitorial. Essentially a ‘performance’ of prosecution and defence before a stranger. Special purpose ATSI Courts have worked well in some jurisdictions – but they are exceptions to the rule. The average term of remanded in custody is almost twice the average custodial sentence – with about 10 arraignments (typically before Police are prepared to prosecute a case).

### 5. TOUCH POINT

Some people talk of sentencing options for ATSI – this is prospectively an all care and no responsibility response by both Court and Corrections advisers. It is rather contrary to the conduct of the Court as an adversarial fora. It is also inconsistent with the Courts non-role in directing what happens within a correctional institution.

Might be better to consider ‘incarceration’ as a placement option for the entity with lawful custody. Similar to the triage and placement option made by Registrars with lawful care responsibility/ accountability for patients. Response to non-compliance with terms of EM does not necessarily require police and their powers of arrest.

### 6. TOUCH POINT

Consider McGregor UK HO research and publication – withdrawn on the day of publication and he resigned the same day. Supported by commentary from various Australian jurisdictions, without explicit comparable data or analysis. Offenders tend to fit into 3 categories:

- ‘*Very bad*’ – deserve or need to be incarcerated, typically a very small number of offenders.
- ‘*Career choice*’ – prison as an occupational hazard (recidivism A). Perhaps  $\frac{1}{3}$  of prisoners &  $\frac{2}{3}$  crimes.

- *'Bad judgement'*, bad luck, passion, or opportunism – repeated sequence of crime, detection and sentence until person 'sees the light'. Often only one period of imprisonment - rarely more than 3 (recidivism B). Perhaps  $\frac{2}{3}$  prisoners for  $\frac{1}{3}$  crimes.

The point being that the second and third categories need not be treated the same as the first and, in fact, to do so is prejudicial to their rehabilitation.

## 7. TOUCH POINT

Sought to understand the various systems intended to enhance community well-being – criminal justice, health and non-Australian. Call this DOLI – deprivation of liberty infrastructure. Started PhD research to see what was at forefront of thinking and best practice at a global level. Required separation of each agency tends to facilitate dysfunctional silos with poor information and poor analysis and thus poor policy decisions arising. (Two decades of Productivity Commission ROGS is surely ample evidence.)

There are multiple disconnects and inconsistencies across the various forms of DOLI.

Data and information access is poor – with significant implications to the development and evaluation of public policy across the various forms of DOLI.

Sample summary documentary descriptions of DOLI attached.

## 8. TOUCH POINT

Presented DOLI to Aboriginal community groups using framework of "*it takes a village to raise a child*" and how the broader community 'interferes' in the event of behaviour issues, health issues or strangers coming to the community. Presentations went well and several people volunteered that they better understood the 'system' and its workings.

Copy attached.

## 9. TOUCH POINT

The DOLI framework is based on community well-being – NOT safety or security or other laudable objectives that can become perverse at the extreme.

The purpose of deprivation of liberty (for each of its 3 forms) are:

- protection (community/ individual);
- prevent flight;
- as punishment;
- facilitate treatment/ rehabilitation; and
- deterrence/ prevent further offences.

These purposes do not necessarily require incarceration or imprisonment – except for tradition. Each of these purposes can be achieved by electronic monitoring (EM) of people in a community setting – with much more convenient access to services to support their membership and contribution to community well-being. Consider hospital in the home and other health innovations (not so common for criminal justice administration).

Criminal Justice is based on a sequence of agencies – police – courts – corrections. The ‘independence’ of these separate agencies has become perverse and created silos with limited/ no sharing of information between them. The situation in health is better (but is still not good).

#### 10. TOUCH POINT

The rating protocols for prisoners is worthy of careful consideration. A single H/ M/ L descriptor of a persons propensity for re-offending, for self-harm, for harming others, for escape is surely nonsense. Further compromised by its non-change over the course of a custodial sentence. Even further compromised by default rating of M for remandees (similarly credible as ‘mandatory sentence’).

#### 11. TOUCH POINT

Incarceration is particularly disruptive to ATSI people. Typically secured away from their community – the village that raised them. Typically with a power structure (staff and other prisoners and even visitors) that is alien and unlikely to provide positive learnings. Typically not sensitive to the purpose intended and identified above.

Programs, in some jurisdictions, for basic skills:

- Driving
- Home maintenance
- Child raising
- Non-ATSI community norms

Have delivered skills that provided ATSI people with worthwhile leadership behaviour modelling status in their community. BUT, incarceration is an expensive means of doing so.

#### 12. TOUCH POINT

US Congress model of justice reinvestment (in spite of different MoG arrangements) is a better model than those published in various Australian jurisdictions – many of which are derived from prisoner work (rather than prisoner rehabilitation).

#### 13. TOUCH POINT

Given that many of the objectives of incarceration can be delivered/ achieved with EM in a community setting, might there be an opportunity to combine:

- Justice re-investment in ATSI communities – providing mobile phone facilities; with
- Intensive community based deprivation of liberty – using intensive EM utilising mobile phone services

#### 14. TOUCH POINT

Prisoner and offender health care services, within the secure facilities of a prison, are rarely appropriate to over-represented ATSI prisoners. More appropriate provision of such services is possible in a community setting – especially in the ATSI community setting described above.

**15. TOUCH POINT**

Exposed to anthropological review of Manus Island IDC. Identified issue of community setting for IDC and the community within the IDC – and the almost complete non-recognition and non-response before the study. Have never seen a similar assessment/ analysis for any prison or prisoner population in Australia. (Nearest equivalence might be Environmental Impact Assessment – based on people, rather than other characteristics of environment). A sad oversight.

**16. TOUCH POINT**

Cultural appropriateness is easier said than done. Most people could name 5-10 tribes on American Indians – how many could name any ATSI 'tribes'. Loss of ATSI language has profound impact on cultural identity – how can non-ATSI people demonstrate sensitivity to something that is rapidly disappearing?

**17. TOUCH POINT**

The non-engagement with people deprived of their liberty in all its 3 basic forms is troubling. What other human endeavour allows (not even supports) such isolation? Such isolation surely contributes to the lack of progress.

Mt Gambier Prison is managed by contracted providers. Prisoner services are described from the perspective of what prisoners might reasonably expect to receive. Prisoners (including friends and family) are surveyed each quarter and the contractor required to respond to commentary. The prospect of surprises and manifestly poor 'incarceration' becoming an issue is near nil – and the costs of doing so are miniscule.

**18. TOUCH POINT**

Through-care sounds attractive but ... By legislation (and thus Budget setting protocols) Corrections does not have a role in the general community apart from community service orders. Change to facilitate the placement option referred to above could be good but will require coordination for community well-being and for the benefit of people ('prisoners' and others) served by the system. The notion of disproportionate benefit to offenders in the community might attract even media attention than disproportionate beneficial access to health services in a prison setting.

**19. TOUCH POINT**

Numeracy and literacy programs in prisons are often misguided. The school system failed in 10 years – but somehow a prison based system will work in weeks/ months (average custodial sentence is about 1 month and remands generally have no access to programs).