

Incarceration Rates of Aboriginal and Torres Strait Islander People

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My qualifications and experience

I am currently lecturing and tutoring at Charles Sturt University, Bathurst and Western Sydney University, Penrith. At CSU I teach *Punishment and the State* and *Indigenous Issues in Policing* within the Centre for Law and Justice. I teach *Managing Offenders in the Community* within the School of Social Sciences and Psychology at WSU. I am also involved in *Experiences of Young People with the NSW Police Force*, Prof Jane Goodman-Delahunty as CI, and have extensive experience working with Aboriginal communities in Western Sydney, The Greater West of NSW and Central Australia. I have been working with young people and published research on the NT Intervention specifically regarding youth and cultural practises, while also being involved in other ARC research projects with NSW Public Health and The NSW Police Force. I have been involved in Restorative Justice practices in research, within the Department of Justice and the Department of Education (NSW and NT) for nearly two decades. I have qualifications in teaching and adult education, study law and hope to be embarking on my PhD in the immediate future.

I am available for consultation and can be contacted on email sgalovic@csu.edu.au or mobile 0420903317.

Outline

In this response I am going to discuss police oversight in NSW specifically, with reference to recent organisational restructuring, and the process of ‘complaints’ as a tool for community engagement with police. I will briefly outline the possibilities of ‘disruptive technologies’ for constructive community engagement; constructive engagement demonstrably sought on the policing frontline itself evidenced in recent research.

Police and politics

In May 2015, the former Shadow Minister for Policing and former Shadow Attorney General Andrew Tink, was commissioned to review police oversight in NSW this presumably was to include the complaints process which certainly featured in the majority of the 27 submissions received in the brief call out for them in June. The Government responded in December that

same year and while other departmental structural changes will occur, the complaints system itself will remain. If procedural justice relates directly to the satisfaction people have with a procedure during the decision making process (Cohen, 1985, Vickers et. al 2016), then we can see that in NSW that the status quo regarding complaints against and managed by police, will remain the same.

Policing is a political beast – the NSW Ombudsman’s Office, along with the ALP and the Greens have been clear about their opposition to the reforms made as a result of the Tink Report, the latter making recommendations to remedy some of these weaknesses, but to no avail.

Police and recent law reform

The Royal Commission into Aboriginal Deaths in Custody was highly critical of ‘reactive arrest practises’ and the criticism of the misuse of discretion has continued since 1991 (Prenzler & Sarre 2002) – and we see discretion emerge again and again as an important issue and power in police activity. With this in mind we need to consider two recommendations the Royal Commission that are particularly pertinent here;

87. Arrest people only when no other way exists for dealing with a problem

92. Imprisonment should be utilised only as a sanction of last resort

Despite this we have seen in the introduction of paperless arrest laws in the Northern Territory, which in its first year of operation saw 80% of people detained under this newly expanded discretion, come from Aboriginal lands.

In NSW laws increasing police powers to search without warrant and seize a ‘thing’(that is an object) on suspicion that it could be used obstruct a business or it’s equipment, have been passed in March this year. That means someone can be arrested for carrying a piece of rope or even some glue (NSWCCL 2016). The Government says they need to balance the rights of protestors with ‘the rights and interests of others and the community as a whole’ (NSW Dept of Industry 2016) and the full impact on the Indigenous community is yet to be seen. Anti-consorting legislation passed in 2012, which increased police powers to issue non-association notices, control orders and stop and search without warrants (The Law Council 2014) clearly disproportionately impacted on Aboriginal women and Juveniles according to the NSW Ombudsmans review of its use within the first year.

Police and complaints

Research just prior to the Tink Report in NSW and cited in submissions made to the call out for responses to its discussion paper, shows four crucial areas of concern regarding the then complaints system, which has remained the same from a community perspective. These areas are; neutrality, effectiveness, speed and a tendency to under report a complaint in the first place (Delahunty et al 2014). Submissions made to the Tink report overwhelmingly cited the fear of retribution and the lack of anonymity in the process of making a complaint as one of the main reasons not to do so. On reading these submissions, one would think that it is the community, namely the Aboriginal communities, themselves who lack faith in the integrity of the process, but this is not so. Evidence has also emerged that police on the frontline also share this same concern and want to see community policing localised, cooperative and of course transparent.

Research conducted in WA reviewed what police call ‘inhibitors’ within the Aboriginal community and how this impacted on engagement with police and ‘formulating and executing law and order policies in their communities’ (Wolfe & Piquero 2011). Three inhibitors featured in the discussion – alcohol, dependence on service providers and ‘Aboriginal political culture itself’ (Ibid) – the latter clearly begging the attention of the recommendation 339 of The Royal Commission;

339: Initiate a formal process of reconciliation between Aboriginal people and the wider community.

and others, as the research discussion does of course cover.

Exploratory research conducted into the well-being of NSW Police Force officers, rendered important revelations in police perceptions of *how* they are to do their job, enforce the law and maintain the trust of the community, with particular reference to the Aboriginal community they are working in (Galovic et. al 2016). The strict criteria to make a complaint for successful consideration includes making it in writing to where the police officer is stationed. It is decided at the local level how the complaint is to be triaged – it is either escalated internally or resolved locally. However police are seeing the complaints system as a clear organizational inhibitor to their role;

You spend more time dealing with complaints than you do policing, both internally and externally. We get so tied up with dealing with them that there's no front line policing any more. (Ibid)

Police, complaints and disruptive technology

The use of disruptive technology in the legal field is a relatively new phenomenon. Leaders of dispute resolution design such as Modria in the USA, are moving swiftly and surely to support alternatives to court room, and the fact that Modria's CEO is responsible for creating on-line ADR in a consumer environment which actually saw E-Bay grow as a result, means that we need to be looking at how such processes may benefit our own communities and the policing of them. We need to ask how Aboriginal communities can be assured a sense of security and how this may be created in partnership, via an on-line 'disruptive' tool.

We know that police have expressed concern about the time it takes to process complaints and we also know from the NSW Ombudsman that policing complaints at a local level are in the main, 'customer/client service' related (Galovic et. al 2016). This same evidence also suggests that police seek partnerships beyond Reconciliation Action Plans in engagement programs that deliberately engage with the community and communities and their representatives have been calling out for this for years.

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