knowledge notes

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Australian Indigenous Justice Strategies

Introduction

Indigenous Australians are over-represented in all aspects of the Australian criminal justice system. In the most extreme cases, indigenous individuals comprise 40% of the adult prison population and around 70% of juveniles in detention while only being 3% of the state's total population. In recent years, in an attempt to overcome these disparities, a number of states, and now the federal government, have established indigenous justice agreements. This knowledge note provides a brief discussion of these various justice strategies before discussing a number of issues which will be key to the success of these programs, these being: the issue of integration across and between levels of government (horizontal and vertical alignment); interaction with indigenous communities and the customary/community law and justice sector; and the successful measurement and evaluation of the programs that flow on from these agreements.

Justice Strategies

In an attempt to overcome the over-representation of indigenous Australians in the criminal justice sector, and to create safer indigenous communities, a number of Australian governments have worked with indigenous Australians to create indigenous justice strategies. As general policy documents and programs of action these various indigenous justice agreements fit into the whole-of-government approach to policy which has underpinned Australian government policy at all levels over the last decade or so. By providing a coherent platform for action these agreements will create a stage for successfully diverting indigenous Australians away from the criminal justice system and improve justice outcomes for indigenous individuals and communities. The following section provides a brief outline of the various state and federal agreements.

Queensland

The *Queensland Aboriginal and Torres Strait Islander Justice Agreement* was entered into in 2000. It was the first whole-of-government agreement between an Australian government and indigenous groups. The stated aim of the Agreement is to reduce the rate of Aboriginal and Torres Strait Islander people coming into contact with the Queensland criminal justice system, to at least the same rate as other Queenslanders. While indigenous Queenslanders make up 3.5% of the State's population they make up 25% of adult prisoners and around 60% of juveniles in detention. The stated overarching outcome of the Agreement is a 50% reduction in the rate of Aboriginal and Torres Strait Islander peoples incarcerated in the Queensland criminal justice system by the year 2011.

Victoria

Signed in 2000 the *Victorian Aboriginal Justice Agreement* is the first significant indigenous policy initiative launched by the Victorian government in the development of policies and programs in all areas of the justice system that affect indigenous Victorians. The agreement aims to address the ongoing issue of Aboriginal over-representation within all levels of the criminal justice system. In doing so the agreement is designed to provide a platform to promote greater awareness in the Aboriginal community of their civil, legal and political rights and improve Aboriginal access to justice-related services.

New South Wales

The *New South Wales Aboriginal Justice Plan* was signed off in 2004. Built on over 18 months of community consultation, it aims to provide a platform for government agencies to engage with Aboriginal

communities in order to reduce the over-representation of Aboriginal people in the criminal justice system and in making Aboriginal communities safe places. The indigenous New South Wales population, while only 1.9% of the state's total population make up 19% of adult male prisoners and around 47% of juveniles in detention. The plan focuses more broadly than on the criminal justice system alone, providing an opportunity to ensure the justice system works effectively for both Aboriginal victims and offenders while also tackling those factors that can be clearly linked to offending in Aboriginal communities.

Western Australia

The 2004 *Western Australian Aboriginal Justice Agreement* is designed to provide a framework to improve justice-related outcomes for indigenous Australians in Western Australia through establishing safer indigenous communities and lowering the incarceration rates and rates of contact of indigenous Australians with the formal law and justice sector. While the indigenous Western Australian population comprises 3% of the state's total population they make up about 40% of the adult prison population and around 70% of juveniles in detention. The agreement provides a framework for not only monitoring and reporting but also for the negotiation and establishment of local, state and regional justice plans.

Commonwealth

Currently out for consultation the federal government's *National Indigenous Law and Justice Strategy* aims to provide a national framework for the creation of a coherent and coordinated whole-of-government approach to indigenous justice issues across Australia. The strategy was jointly developed by the Commonwealth Attorney-General's Department in conjunction with relevant government agencies, state and territory agencies and representatives of the indigenous community.

All of these agreements realize the holistic approach that is required in order to overcome this area of indigenous disadvantage. While the explicit focus of these agreements is on the more formal aspects of the criminal justice system, as a group these documents also pay attention to the important role that strengthening social, economic and cultural aspects of indigenous society will play in providing safer indigenous communities and diverting indigenous individuals from the formal law and justice sector. In looking at these agreements and after talking to officials in a number of the jurisdictions covered by these agreements there appear to be a number of key issues which need to be addressed to increase the chances of successful uptake of these programs.

Problems of Integration

One of the key aspects to be addressed in the construction of programs that flow on from these agreements is the issue of integration. Integration of:

- the various government agencies involved in the law and justice sector within various governments (horizontal alignment);
- the various level of government involved in this process (vertical alignment);
- with the indigenous communities involved in this process; and
- with the customary/community law and justice sector.

While these agreements have been explicitly established within a whole-of-government framework exactly how this is to play out in practice is still being determined. This is further complicated by the fact that the release of the national strategy raises the issue of how this agreement will articulate with pre-existing state agreements – many of which are already well-established. One of the key aims of the whole-of-government approach is to reduce unnecessary overlap between government agencies. However, without careful phasing and planning and good cross-government communication strategies the rolling out of the new federal strategy could lead to exactly this form of redundancy. So too, while much useful work has been done looking at the interaction between the formal Australian law and justice sector and the customary/community law and justice sector, if this work is not utilized in a coherent way increased redundancy could be introduced into the system. Indeed, by not building on the articulation between these two complementary systems Australian governments could be missing out on an opportunity to increase the sustainability and effectiveness of these agreements and the programs that flow from them. Another key issue to be dealt with in the introduction of these agreements is the issue of integration and engagement with community.

Working with Community

Given that to some extent all of these agreements are based on building mutual trust between government and indigenous communities in the quest for increased justice for these communities – be it overcoming the over-representation of indigenous Australians in the criminal justice sector or the creation of safer indigenous communities – then a key platform for these agreements, and so too a key factor for their success is engagement in an authentic manner with indigenous communities.

In many respects this is easier said then done. While these agreements were constructed through wide-ranging consultation with indigenous communities, in order to be effective in the long-term this engagement needs to continue through all aspects of the development and operationalisation of these agreements. A number of methods are being applied to ensure that this engagement does occur. With the largest regional coverage (excluding the commonwealth agreement) of the state's which have indigenous justice agreements in place, the Western Australian government, for example, has begun to establish local justice forums which feed into regional forums which eventually feed into a state-wide aboriginal justice congress and forum. These forums provide an explicit link – at all levels of government – with indigenous communities in the state. This is not to say that representative structures such as that being utilized in Western Australia are the only methods to use in order to maintain effective and authentic engagement with indigenous communities. As these agreements are living, and hence constantly evolving, documents useful work could be done looking at how effective engagement strategies used by different governments could be transferred through to other jurisdictions. How you measure effectiveness then brings us to the final aspect for discussion – this being the measurement of outcomes.

Measuring Outcomes

In looking at measuring and evaluating the success of program's flowing on from these indigenous justice agreements we need to be aware of the various forms of data that is required. While a number of these agreements were drawn up following the indicators of indigenous disadvantage utilized by the Productivity Commission in their bi-annual reports there are number of forms of data which these indicators do not capture. As the latest *Overcoming Indigenous Disadvantage: Key Indicators 2005* report makes clear the Productivity Commission itself is still struggling with how to best measure the concept of culture and its impact on indigenous success. In addition no real movement has been made in Australia on how family and community well-being can best be measured, moving on beyond simplistic aggregations of individual data sets, even though similar work has begun to be undertaken in neighbouring countries. So too, defining, let alone measuring what constitutes a well-functioning indigenous community is something that still needs to be addressed – especially given the express acknowledgment contained within these agreements of the holistic approach needed to overcome the over-representation of indigenous Australians in the criminal justice sector and to create safer indigenous communities.

At a more basic level there is a need – given the long-term focus of these agreements – to ensure that the processes utilised are monitored and evaluated as well as the end outcomes achieved. Indeed, process outcomes, especially in terms of engagement with indigenous communities, will probably be some of the most important outcomes to emerge from these programs. And, in looking at the success of these agreements, we should also be aware that one of the initial outcomes of successful implementation might be an increase, in the short-term, in certain negative statistics. A recent example of this is the increased reportage rates of child abuse in indigenous communities in the East Kimberley. This rise in reportage that this represents should be seen as an example of the success of the Gordon Enquiry in normalising the reportage of child abuse within communities.

Conclusion

In attempting to overcome the over-representation of indigenous Australians in the criminal justice sector and to create safer indigenous communities, a number of Australian governments have worked with indigenous Australians to create indigenous justice strategies. While these strategies provide useful platforms for the implementation of effective and coordinated programs to address issues of indigenous disadvantage and over-representation in the law and justice sector there are a number of issues which need to be considered in maximizing the effectiveness of these agreements. These issues of integration across and between levels of government and the community/customary law and justice sector; interaction with indigenous communities; and the successful measurement and evaluation of the programs that flow on from these agreements are not impediments, in and of themselves, to the achievement of the aims and goals of these various agreements. But if these agreements are to provide as robust and sustainable outcomes for indigenous

Australians as possible then these issues need to be addressed.

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