



# Mental health at the intersections: The impact of complex needs on police contact and custody for Indigenous Australian men



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## ABSTRACT

Indigenous Australians experience significant social risk, vulnerability and disadvantage. Nowhere is this more starkly demonstrated than in the levels of contact that Indigenous Australians have with the criminal justice system, particularly the police. Utilizing a linked dataset of extant criminal justice, human and health service administrative data in New South Wales (NSW) Australia, this paper explores patterns of police contact and custody for a cohort of Indigenous males with complex needs. Four significant factors are identified that alone or in combination appear to impact on the frequency with which these men experience police contact and custody, including young age at first police contact, experiencing out of home care as a child, alcohol misuse, and limited locational mobility. Whilst it might be expected that the presence of mental ill-health and/or cognitive disability would be a key predictor of the frequency and intensity of police contact and custody, the findings suggest rather that the presence of multiple disadvantages beginning in the early years and compounding throughout individuals' lives, in which mental illness may or may not be a factor, is more significant than the presence of any one diagnosis in precipitating police contact and custody for this group.

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## 1. Introduction

### 1.1. Indigenous Australians and the criminal justice system

The position of Indigenous persons in contemporary Australian society is complex on numerous levels. Indigenous Australians make up 3% of the Australian population (ABS, 2012a) but comprise over one quarter (27%) of the total prisoner population (ABS, 2012b). Pressing issues regarding the differences in life expectancy between Indigenous and non-Indigenous Australians (Biddle & Taylor, 2012), substantially worse social, economic and health position (Vos, Barker, Begg, Stanley, & Lopez, 2009), the rate of drug and alcohol abuse in Indigenous communities (Cunneen, 2006a) and the impact of mental health and cognitive disorders on the Indigenous population (Glasson, Sullivan, Hussain, & Bittles, 2005; Simpson & Sotiri, 2006) are all part of this picture of over-representation of Indigenous Australians in the criminal justice system (CJS). Whilst the factors are varied and interlocking, all occur within a historical context of colonisation and dispossession (Calma, 2008) and together precipitate significant levels of social risk, vulnerability and disadvantage for Australia's First Peoples.

Concern regarding the high rates of police contact and custody for Indigenous Australians has a substantial history, most publicly recognised in the 1987 Royal Commission into Aboriginal Deaths in Custody (RCIADIC), established following a spate of Indigenous deaths in custody during the 1980s. The Commission's mandate was broadened from the investigation of these deaths to incorporate a sociological or advisory investigation into why so many Indigenous individuals were being incarcerated (Marchetti, 2005). Factors identified included the harmful use of alcohol and other drugs, poor schooling and disengagement from education, unemployment and poverty, lack of suitable housing and infrastructure, land needs, and self-determination (Cunneen & McDonald, 1997) as interacting in the process of increasing the vulnerability of Indigenous persons to contact with the CJS. The RCIADIC concluded that the high number of deaths in custody was directly related to the over-representation of Indigenous people in police and prison custody (Marchetti, 2005).

In the years since the 1991 tabling of the Commission's findings, the problem of over-representation has not abated. Rather it has worsened from an Indigenous imprisonment rate of 15 times the non-Indigenous population to current figures indicating upward of 18 times the non-Indigenous rate (Weatherburn & Holmes, 2010). Explanations for this variously identified systemic bias in the CJS that at its core is reflective of the power structure of Australian society. Further factors include the limitations of statistical data to reveal and analyse discrimination based on cultural background, institutional racism (Cunneen, 2006a,

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2006b; Cunneen & McDonald, 1997) or that over-representation is more reflective of over-representation of Indigenous Australians in crime more generally (Weatherburn & Holmes, 2010).

Competing accounts aside, there is a resolute agreement that the impacts of socio-economic disadvantage, family dissolution, unemployment, substance abuse, cognitive impairment due to intellectual disability, borderline intellectual disability or acquired brain injury and poor physical health are factors directly or indirectly contributing to over-representation. The issue of mental illness and its relationship to criminal justice contact is assumed to form a key part of this picture although the impact of the presence of mental illness in the context of these myriad dimensions of social disadvantage is not clearly understood. These issues are most pressing, not because such people are necessarily large in number, but rather these patterns of disadvantage signal highly significant personal and social cost to Indigenous individuals and communities and to the Australian social fabric more generally. The flow on effects is significant in demand on community, justice and correctional resources, and in particular is a key concern in frontline police work.

### 1.2. Complex needs and police work

The recognition by the RCIADIC of the multiple interlocking individual and socio-economic elements that contribute to Indigenous disadvantage and over-representation in the CJS was a step toward apprehending and addressing the complexity of the problem. In NSW for example, policing responses to the findings of the RCIADIC have been implemented via the Aboriginal Strategic Direction Policy which identifies a range of measures at programme and policy level aimed at bringing about 'positive outcomes between police and Aboriginal people' (NSW Police Force undated). The enactment of the Law Enforcement (Powers and Responsibilities) Regulation 2005 also addressed the issue by identifying the need for 'immediate steps to be taken to contact a support person' should a 'vulnerable person' (including both people who have impaired intellectual functioning and people who are Aboriginal or Torres Strait Islanders) be placed under arrest at a police station (New South Wales Police Force, 2012). In relation to mental health and policing, initiatives such as the NSW Police Force Mental Health Intervention Team have been developed to respond to the challenges facing community policing of acute mental illness through the provision of mental health training to frontline officers (Donahue & Andrews, 2013). These measures, whilst signalling separate programmatic attention in policing to address indigenous over-representation and issues specifically associated with mental illness and policing, have occurred in relative isolation, with limited integration of the considerations which arise when multiple individual, systemic, social and cultural dimensions of disadvantage intersect.

Intersections of multiple dimensions of disadvantage and the ways these tend to combine in negatively synergistic ways are increasingly identified as 'complex need' (Carney, 2006; Draine, Salzer, Culhane, & Hadley, 2002). Broadly, individuals identified as having complex needs experience various combinations of mental illness, cognitive disability, acquired brain injury, physical disability, behavioural difficulties, homelessness, social isolation, and family dysfunction, have problematic drug and/or alcohol use (Hamilton, 2010) and systemically may be known to utilize a wide range of different services, often with high frequency but with limited benefit (Keene, 2001). It is now well recognised that in the context of the CJS those with complex needs are particularly vulnerable to a range of harms and are more likely than people with only one impairment or none to have earlier contact with police, be victims as well as offenders, enter the juvenile justice system in their childhood or adolescence, have more police contacts, more police and prison custody episodes (Baldry & Dowse, 2013; Dowse, Baldry, &

Snoyman, 2009; NSWLRC, 2012: 63) and be more likely to be refused bail and to be imprisoned (Lyall, Holland, & Styles, 1995). The presence of the multiplicity, breadth and depth of factors and their nature as interlocking and compounding (Rankin & Regan, 2004) goes some way to accounting for the limited impact for this group of traditional interventions which tend to take account of only one or two layers of risk or disadvantage.

Substantial research has focused on factors surrounding the over-representation of Indigenous Australians in the CJS since the RCIADIC in 1991, with studies examining singly the role of risk factors for individuals in the CJS such as substance abuse (Smith & Trimboli, 2010), mental illness (Butler & Allnutt, 2003; Fazel & Danesh, 2002), cognitive disability (Glasson et al., 2005; Simpson & Sotiri, 2006) or in specific combination such as mental health and drug use (Day & Howells, 2008; Treloar & Holt, 2008). However there has been very limited work that addresses the experience of individuals at the intersection of all these. For example, Indigenous young people are already at a much greater risk of contact with the criminal justice system as compared to their non-Indigenous counterparts, but it appears that the intersection of being Indigenous and having a cognitive disability or a mental health disorder results in increased contact with the CJS from a young age. Nationally, Indigenous young people are 23 times more likely to be placed in detention than non-Indigenous young people, whilst adding cognitive disabilities and/or mental health issues into the mix increases a young person's disadvantage, and therefore, risk of contact with the criminal justice system (Allard, Birks, Chrzanowski, et al., 2010; Calma, 2008). Studies also indicate that Indigenous Australians with cognitive disability are at higher risk of re-offending than non-Indigenous Australians and have often been excluded from treatment services that target criminogenic needs (Frize & Kenny, 2010). The combination of a person's Indigenous background and cognitive disability or mental health disorder therefore appears to reinforce a cycle of police contact and custody beginning at a young age.

Specific consideration of the presence of individuals with complex needs in policing work is limited despite the recognition that individuals with single or dual diagnoses increasingly make up a major proportion of police work. Research undertaken in NSW examining the nature and patterns of frequent presenting to Police associated with apprehension under the Mental Health Act<sup>1</sup> established that Indigenous persons were consistently over represented when compared to the current Aboriginal population rate in NSW at 2.2%, with 14% of individuals presenting frequently to police in the study snapshot year of 2005 being Indigenous persons (Baldry, Dowse, & Clarence, 2012). The longitudinal evidence from the study further indicated that over the nine year period (2001–2009) examined, Indigenous persons were twice as likely as non-Indigenous persons to come into contact with Police under the MH Act, with an average of 73 contacts during the period found for Indigenous men, or a rate of 3.5 events per year. Qualitative research investigating this phenomenon indicates that frontline police are perhaps less conscious of this disproportionate representation in their policing work, but that the issue is itself a significant concern as a broader programmatic challenge (Andrews & Baldry, 2013).

A recent Australian study investigating the prevalence of mental illness in offenders detained by police found that almost half of the 690 detainees screened may have had a diagnosable mental disorder at the time of arrest (Forsyth & Gaffney 2012). Moreover, it is recognised that individuals with mental illness or psychiatric

<sup>1</sup> Having an event dealt with in this way requires police to transport the individual to the nearest declared mental health facility or to an agreed hospital under local protocol agreements. Apprehension under these circumstances indicates that police believe the person is experiencing a mental health issue at the time of contact. Frequent presenting is identified as three or more events dealt with under the Mental Health Act in any one year.

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