

Editorial Introduction

For decades, Australian criminologists have cited crime statistics to illustrate the extreme disadvantage Indigenous peoples in Australia experience in the criminal justice system. Official statistics often present a bleak picture of Australian Indigenous communities, presented as 'problems'. However, broad-brush understandings of Indigenous Australians' interactions with the criminal justice system, as well as sweeping policy responses, often fail to appreciate diversity across and between Australian Indigenous communities. This briefing paper draws on research carried out as part of a Criminology Research Grant through the Australian Institute of Criminology and points to some of the solutions these communities are developing to tackle the historical and contemporary injustices of colonisation and racism.

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Crime Rates and Justice Innovations in the Torres Strait Islands

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In the Global North, crime has mostly been racialised with reference to inner city ghettos or slums. In Australia, the racialisation of crime also has a strong rural and remote dimension, as reflected in the Northern Territory Emergency Response (2007). While crime rates vary considerably between different Indigenous communities, more needs to be known about the sociohistorical contexts that produce such variation, including 'strong' communities (Lawrence, 2007). This briefing paper reports on a project conducted in the Torres Strait Islands (TSI) in 2017–2019, which sought to de-homogenise Australian Indigenous peoples' diverse experiences with the criminal justice system and better understand the impacts of ecology on crime and justice, especially its relation to remote and isolated settings.

This research used a mixed-methods approach, drawing on comparative crime report data for 2001–2018 and triangulating these with qualitative data garnered through fieldwork, including observations and 27 formal in-depth interviews with a range of participants in the TSI.

The Torres Strait Islands

The Torres Strait is a body of water that stretches for 150 km between the most northern tip of Queensland, Australia, and the coast of Papua New Guinea. The region contains over 100 islands, which are spread over 48,000 km.

The history of the TSI suggests that patterns of colonisation were very distinct from other regions, especially those on the Australian mainland. There has been a tradition of self-policing in the TSI: throughout the colonial period, elements of self- or community policing were retained. There are also indications that government administration over the lives of Torres Strait Islanders involved comparatively less intervention than that of Aboriginal Australians (Shnukal, 1995; Singe, 1979). Island councils formed local administrative structures, primarily staffed by local community leaders, which continued to uphold traditional custom and lore, including through local policing. Notwithstanding the ultimate overriding authority of

colonial figures, the councils represented a form of local authority that did not exist for other Aboriginal populations until far later in the 20th century (Frankland, 1994).

In 2016, Aboriginal and/or Torres Strait Islander persons made up 91.8% of the total population of the TSI. These individuals were dispersed across the 38 inhabited islands. The population of each community ranged from 85 to 2,938 (Department of Aboriginal and Torres Strait Islander Partnerships [DATSIP], 2019).

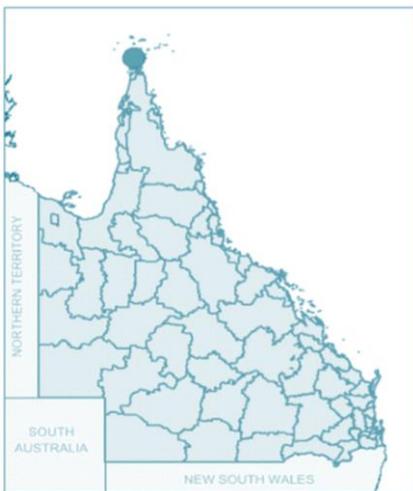


Figure 1
Location of the TSI in Relation to Queensland
Source: DATSIP (2019).

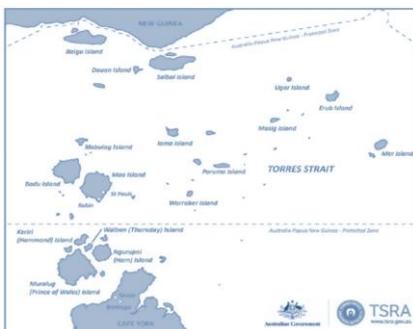


Figure 2
Map of the TSI
Source: Torres Strait Regional Authority, as cited in Australian National Audit Office (2013, p.14).

Offences against the person

The average rate of reported offences against the person in the TSI was lower overall between 2001 and 2018 when compared with Queensland’s Aboriginal communities, though it was higher than for Queensland. These rates trended downwards in both the TSI and Queensland’s Aboriginal communities over the same period, while it remained relatively stable for the rest of Queensland (see Scott & Morton, 2018; Staines & Scott, 2019).

Participants universally considered domestic and family violence (DFV) to be the most serious criminal justice issue in the TSI. In general, the causes of DFV were hard to define; it might be best considered as multi-causal. Many interviewees linked the incidence of DFV (and other offences against the person) to the introduction of alcohol and alcohol culture to the TSI:

“[DFV] is 80–90% of our work and assaults and wilful damage associated with [DFV]. I am talking about every day. Every, single, day.” *Female police officer*

Property Offences

The average rate of reported offences against property in the TSI was lower overall between 2001 and 2018 when compared with Queensland’s Aboriginal communities and was also slightly lower than for Queensland. These rates trended downwards in the TSI and across Queensland over the period, while it trended upwards in Queensland’s Aboriginal communities (see Scott & Morton, 2018; Staines & Scott, 2019).

The more culturally mixed communities of Bamaga and Waiben (Thursday) Island, where there was also a greater in- and out-migration of people, were considered more prone to property crime than other areas in the TSI. Young people were often blamed by participants for any property crime, including theft and vandalism, that did occur. Crime in these locations was also considered to be a result of there being a lack of things to do (‘boredom’) and a lack of parental or adult supervision.

Justice Practices

Community Justice Groups

The Court Innovations Program (1993) funds community justice groups (CJGs), which operate across Queensland’s remote Indigenous communities and whose overarching objective is to reduce the numbers of Indigenous peoples in contact with the criminal justice system. CJGs comprise Elders who, despite being (mostly) voluntary, unpaid and under-resourced, form a very important part of the court process and contribute to unique forms of local justice, such as cultural mediation.

CJGs provide support to defendants and victims, as well as community and cultural information, such as individual and cultural reports at sentencing and during bail applications. Notably, they provide the court with local and cultural information, which was considered an ‘invaluable’ resource by participants associated with the court process. The CJGs were also reported to have made police more inclined to appreciate the local culture and also maintained ‘cultural respect’ for the police within the community.

'Island Courts'

The institution of the court circuit on the islands from 2001 was regarded by participants as intrinsic to ensuring access to justice in the TSI. From 1904 to 2001, everyone in the TSI had to go to Waiben (Thursday) Island for court and to be charged. This practice was highly problematic with regard to access to justice because Islanders often possessed few resources to travel.

The court circuit has been considered 'educational' and a deterrent to offending, invoking a 'shame factor' because defendants are widely visible to their community. The Torres Strait Magistrate involves the CJG members in the court process, asking the opinion of the members and listening to Elders' cultural submissions. The Magistrate also invites Elders to sit on the bench with them. Elders are referred to in matters with regard to a person's history and island protocols, culture and customs.

Cultural Mediation

A strong and unique aspect of the island court process is the involvement of cultural mediation. Cultural mediation is not established in statute, instead being treated as more of an adjournment process. CJG members facilitate the mediation, which involves offenders going to the CJG, where they receive instruction in cultural protocols. With the agreement of the prosecution, a charge can be withdrawn if mediation has been successful, and there is satisfaction that the matter has been dealt with by the community.

Policing

Policing was consistently observed to be distinct from the mainland, and police had to adapt to the local cultures and lifestyles. An important aspect of policing was regular visits and stays on the various islands, and the most successful officers managed to integrate into the local community by engaging in events and networks. Police discretion was also important, given the relatively small size and isolation of some communities. In a couple of recent police appointments to the TSI, a member of the local CJG had participated in the appointment panel, and this was considered a very useful practice, providing community input into long-term decision making.

Torres Strait Island Police Support Officers (TSIPSOs), who were originally employed by the local council, but who have been employed by the Queensland Police Service since 2013, are situated on 13 islands. TSIPSOs can take statements as well as present and serve documents (including DFV orders and affidavits). However, TSIPSOs do not carry firearms or handcuffs; rather, their weapon was considered to be their mouth. An important role of the TSIPSOs is building trust and rapport between police and communities. In this way, they were frequently referred to as the 'eyes and ears' of the community and were the 'front line' of policing operations, especially on the outer islands. There has also been some local advocacy to provide TSIPSOs with further training as well as powers of arrest and detention.

TSIPSOs and CJG members play an important role in ensuring that defendants and victims clearly understand court processes and

orders, as English could be a second or third language for them. They also perform a crime prevention function in communities and visited schools to teach youth about cultural traditions.



Social Capital and Self-Determination

"The culture and family structure is such that there is a lot of self-policing, self-discipline there. If anyone steps out of line, the community helps them back in. Not so much on [Waiben/Thursday Island], because [it] is a little bit easier to hide. But if you play up on some of those outer islands, where do you hide?" *Non-Indigenous male*

"Shame is a really big thing. When shame arrives, or when you put shame on yourself or your community or your family [...] it is a cardinal rule that you mustn't break or shouldn't break. And if we look at the past, with crime and order, they used to have open court sessions where the offender would stand in front of the Elders ... the Elders [would then] make their decision [...] and once that was done it was never spoken about again ... So there was also a form of reparation and restitution through the island courts systems." *Indigenous male*

The geographic isolation of the TSI has fostered a relatively high level of cultural homogeneity. Culture is very strong in the TSI, especially so in the outer islands where populations are small and bounded by geography and kinship systems. The unique ecology of the TSI has influenced the development of tight structures of formal and informal regulation and, in particular, the 'shame culture' of the TSI has drawn sharp distinctions between normative private and public behaviours (Scott & Morton, 2018). The more cultural homogeneity that exists on the islands, the less crime was thought to exist.

Older lore has also frequently been integrated into more modern traditions, the most notable and influential of which was Christianity. The adherence to religion and its embeddedness in island life was also seen as a major factor distinguishing island communities from mainland communities (Queensland Government Statistical Office [QGSO], 2016, p. 15). The inner islands were more culturally

diverse than the outer islands and had a higher count of internal and external migration, particularly from the mainland, which accounted for a greater reportage of crime problems. Even though culture and history were cited as strong, these had been, and were continuing to be, eroded through processes of colonisation and globalisation, especially with regard to the socialisation of young people.

Traditional measures of social capital, such as levels of education and training, in-and out-migration and communal volunteerism, indicate that relatively integrated communities exist in the TSI (Bursik & Grasmick, 1999; Sampson et al., 1997). With this noted, economic indicators, such as wealth and employment, show relatively high levels of disadvantage as well as economic inequality among Indigenous and non-Indigenous households in the TSI. In this way, economic capital presents as weaker than social capital (DATSIP, 2019; QGSO, 2016).

Just as social capital and dense social networks have been theorised in criminology as being crime protective, they can also be crime productive when the norms adopted by networks are criminogenic.

Alternatively, the kind of thick trust involved in dense social networks may also serve to make them opaque. While opaque networks may not be crime *productive* per se, they may indeed enable conditions whereby crime can remain hidden and be left unaddressed.

For example, being embedded in communities could also prevent TSIPSOs from dealing with both serious and minor matters, and possibly prevent responses in some instances, notably in matters involving close kin or families.

Generally, the findings of this study speak to broader literatures about the importance of self-determination for Indigenous Australians. An overriding theme in this study was the notion that relatively higher levels of self-determination in the TSI had played a central role in producing communities that have managed, at least to some degree, to refute and shirk the 'possessive logics' of colonisation (Moreton-Robinson, 2015). This (again) sheds light on the importance of *building* instead of *breaking* social capital through policies that empower rather than disempower Indigenous Australians.

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