

**‘Special clientele’: Scoping discourses on Indigenous incarceration in the ACT
and the NT.**

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Introduction

Background

Although Indigenous Australians form a relatively small proportion of the overall Australian population, they are grossly overrepresented in Australia’s prison system. The 2011 census shows the Australian population stood at 21 670 143 people, with Indigenous Australians representing 3% of that total (Australian Bureau of Statistics [ABS] 2013a). However, ABS (2011) reports from the same period show Indigenous Australians accounted for 26% of the total Australian prison population, a figure, which, in some instances, gets markedly worse when analysed at the level of individual states and territories. For example, the 2011 census shows that Indigenous Australians in the Australian Capital Territory (ACT) comprised 1.7% of the general population, while the figure in the Northern Territory (NT) stood at 29.8% (ABS 2013a). However, the 30 June 2013, ABS *Prisoners in Australia* report, shows Indigenous Australians represented 17.8% of the prison population in the ACT and 86.4% of the prison population in the Northern Territory (ABS 2013b). Given their disproportionately high representation in Australia’s prison systems, it is important to examine the discourses surrounding the incarceration of Indigenous Australians and their links, if any, to wider discourses surrounding indigeneity, such as that of “Aboriginal failure” identified by Melissa Lovell (2012, p. 200).

The term discourse obtains a number of different meanings that are dependent on the field of theory in which it is being used. However, within the realm of social theory and analysis discourse refers to the way language operates in concert with people, institutions, and the power structures that govern them. Discourses “shape reality by systematically constructing the subjects and the worlds of which they speak” (Kerin 2012, cited in Fforde et al 2013, p. 162), and create power within society through privileging the status of some people over others (Locke 2004, p. 1-2). Those with power (e.g. government institutions) are then able to shape and recreate discourses, and establish a framework for discourse to which groups and individuals must adhere in order to participate (Kerin 2012, cited in Fforde et al 2013, p. 163). With this in mind, examining the discourses that surround Indigenous incarceration may expose the ways in which the dominant discourse of the prevailing

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social order produces incarcerated Indigenous Australian subjects, distinguish the discursive frameworks to which they have to adhere, and identify the effects the discourse and its frameworks may have on Indigenous Australians. The scope for this paper has been restricted to the years 2008-2013 due to the limited timeframe of the project¹, and relies solely on publically accessible documents for its source material.

Aims

This report aims to scope the discourses surrounding the incarceration of Indigenous Australians and discourses surrounding prison building, with particular reference to the jurisdictions covered by the ACT and the NT. Both the ACT and the NT are currently undertaking active prison expansion or prison building activities, and both—particularly the NT—have Indigenous prison populations that are vastly disproportionate to Indigenous representation in the general population. The ACT’s Indigenous population lives in a more urbanised environment, while a greater proportion of Indigenous Australians in the NT live in rural and remote areas, and this report aims to assess the existence of commonalities or differences between discourses in both places.

Furthermore, this report will attempt to identify the problematic nature of embedded discursive structures that influence the way Indigenous Australians are represented in the public arena by mainstream white Australia and by Indigenous Australians themselves. Particular attention will be paid to the notion of ‘deficit discourse’, in which Indigenous Australians are represented as inherently deficient in comparison to mainstream white Australia, and the ways in which prevailing power structures create and perpetuate such discourse, so that those who are oppressed by the discourse must necessarily participate in it to be recognised. As noted by Fforde et al. (2013):

[d]isengaging Indigenous *and* non-Indigenous Australians from such discourse may be fundamental to affecting change, but there are obstacles to this, which derive from factors such as the tenacity, subtlety and pervasiveness of this mode of discourse (p. 163.)

Thus, this report will attempt to shed light on the nature of discourses surrounding Indigenous incarceration in order to open up a space for further investigation into

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ways that prevailing discursive structures may be recognised and effectively challenged.

Theory

This report aims to scope the discourses surrounding Indigenous incarceration through application of some of the basic tenets of critical discourse analysis. In order to understand the importance of such an activity, it is necessary to understand what discourse and critical discourse analysis is.

Discourse

The simplest definition of the term “discourse” refers to “written or spoken communication or debate” (Oxford Dictionaries 2014); however, the term obtains different meanings within different fields. For instance, in linguistics “discourse” may refer to extended instances of spoken dialogue, or written texts, with an emphasis on higher-level organisational properties and structures such as turn-taking, and emphasises the interaction between the speaker or writer and the addressee or reader (Fairclough 1992, p. 3). “Discourse” may also be used to identify different kinds of language used in different social situations, for example “medical discourse”, or “classroom discourse” (ibid.). However, within the realm of social theory and analysis, the term “discourse” refers to “different ways of structuring areas of knowledge and social practice” (ibid.) and can be thought of as “practices that systematically form the objects of which they speak” (Foucault 1972, cited in Mills 1997, p. 17). With this in mind, Seán Kerin (2012) provides a useful and easily accessible explanation of discourse:

Discourse has been described as systems of thoughts composed of ideas, attitudes, courses of actions, beliefs and practices that shape reality by systematically constructing the subjects and the worlds of which they speak. Discourse plays a role in wider social processes of legitimation and power; emphasising the constitution of current truths, how they are maintained and what power relations they carry with them. (cited in Fforde et al 2013, pp. 162-63.)

Thus, the formation of a speech, idea, or action can be seen as a product of discourse, and not something that can be analysed in isolation of the power structures involved in its production (Mills 1997, p. 17). Furthermore, discourses *create* power within

society through privileging the status and position of some people over others (Locke 2004, pp. 1-2).

The power of a particular discourse resides in the number and social status of people who subscribe to and thus re-create it, (Locke 2004, p. 37); subsequently, some discourses carry more power than others. As a result, people who subscribe to a less-powerful discourse, knowingly or unknowingly, become marginalised and relatively disempowered (ibid.). Therefore, any analysis of the discourses around Indigenous incarceration and their discursive products, such as policy documents, must necessarily investigate the social environment and power relations in which they are produced, not simply analyse the language used therein, in order to identify dominant discourses and the effects such discourses have on their participants.

Critical Discourse Analysis

The practice of discourse analysis is carried out in a number of fields of theory including cultural, critical, and literary theory; mainstream linguistics; social psychology; and critical linguistics. Cultural, critical, and literary theory sees discourse as “the general domain of the production and circulation of rule-governed statements” and is influenced by the work of such theorists as Foucault, Barthes, and Bakhtin. Mainstream linguistics, whose practitioners include Brown and Yule, Sinclair and Coulthard, and Carter and Simpson, is largely concerned with the context and internal constituents of specific texts, while social psychology and critical linguistics “fuse meanings derived from mainstream linguistics and cultural theory . . . [and] tend to integrate a concern with power relations and the resultant structures of authorised utterances . . . with methodology derived from early discourse analysis” and is practiced by social psychologists such as Wetherell and Potter and critical linguists such as Norman Fairclough (Mills 1997, pp. 8-10).

Fairclough has attempted to provide a complex model of the ways power relations shape the production of discourse, and the effects it has on participants (ibid. p. 10), which has been termed critical discourse analysis. Fairclough (1995) has described critical discourse analysis as endeavouring to:

[S]ystematically explore often opaque relationships of causality and determination between (a) discursive practices, events and texts, and (b) wider social cultural structures, relations and processes; to investigate how such

practices, events and texts arise out of and are ideologically shaped by relations of power and struggles over power. (Cited in Locke 2004, p. 1.) Therefore, a critical discourse analysis—in this instance, analysis of the discourses surrounding Indigenous incarceration—would be concerned with the historical situatedness of the prevailing social order, the ways dominant discourses constitute and sustain this order and its social processes, the ideology (however it is conceptualised) that colours and produces the discourse, and would attempt to reveal “the way power is diffused through the prevalence of various discourses” (Locke 2004, pp. 1-2). Another useful tool for examining the discourses around Indigenous incarceration is frame theory, which “suggests that human memory consists of sets of stereotypical situations or ‘frames’, which are constructed out of our past experiences” (Nunan 1993, p. 69) and ties to the notion of the prevailing social order being historically situated.

Primary Sources

Texts examined for this report were sourced from Legislative Assembly Hansard, both local and Federal level government publications, and print media. Primary texts include the following:

- Legislative Assembly Hansard
 - ACT Legislative Assembly Hansard
 - NT Legislative Assembly Hansard
- Local level government publications:
 - ACT Policing Reports
 - *Corrections Management Act 2007* (ACT)
 - *Independent Review of Operations at the Alexander Maconochie Centre* (ACT)
 - *ACT Aboriginal and Torres Strait Islander Justice Agreement*
 - Aboriginal and Torres Strait Islander Elected Body reports
 - *Circles of Support: Towards Indigenous Justice: Prevention, Diversion, and Rehabilitation* (ACT)
 - Northern Territory Police and Emergency Services reports
 - *Northern Territory Prisons (Correctional Services) Act*
 - *Northern Territory Youth Justice Act*

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- Attorney General’s Department Annual Reports (NT)
- *Sentenced to a Job: Prisoner Employment Program* (NT)
- Federal level government publications:
 - *National Indigenous Law and Justice Framework*
 - *Social Justice Report 2009: Aboriginal and Torres Strait Islander Social Justice Commissioner*
 - *Bridges and Barriers: Addressing Indigenous Incarceration and Health*
- Media:
 - *The Canberra Times*
 - *The Northern Territory News*
 - *The Koori Mail*

The Legislative Assembly Hansard records and local and federal level government publications were sourced through publically accessible government websites. The publications were searched using the terms “Indigenous”, “Aboriginal”, “jail”, “prison”, and “incarceration”. Attention was also paid to references to the building and expansion of the ACT’s prison, the Alexander Maconochie Centre (AMC), and to the building of the new Darwin Correctional Precinct (DCP). *The Canberra Times* and *Northern Territory News* back catalogues were accessed using the Factiva database and *The Canberra Times* website (www.canberratimes.com.au) and searched with the terms “gaol or jail and aboriginal or indigenous”. The Koori Mail back catalogue was accessed through the AIATSIS website (<http://www.aiatsis.gov.au/koorimail/>) and searched using the terms “Indigenous”, “Aboriginal”, “jail”, “prison”, and “incarceration”. While the attempt was made to collect all references to Indigenous incarceration, the referenced materials do not account for every mention of Indigenous incarceration within the primary sources.

Method

In order to form a first-stage look at discourses surround Indigenous incarceration and prison building, references were collated into key repeated themes and examined for linguistic styles. Collating the references into key themes helps to identify the dominant discourses that appear in the primary sources, as well as the

prevailing social order, which then opens them to closer analysis. Similarly, examining the styles of language used within the primary sources not only helps to identify dominant discourses, but also indicates the way in which language use feeds into discourses and their frameworks.

Once the dominant discourses and the prevailing social order were identified, they were scoped using the basic tenets of critical discourse analysis as set out by Norman Fairclough. As such, attention was paid to how the prevailing social order is situated historically, the ways in which the dominant discourses constitute this order and its social processes, the ideology or ideologies that colour and produce the discourse, and how power structures are diffused through the prevalence of the dominant discourses. The idea of “frame theory” was also used to help identify the ways in which the prevailing social order is historically situated.

Preliminary Findings

Legislative Assembly Hansard - ACT

In general, references to Indigenous incarceration in the ACT fell under three main themes: the requirement for cultural sensitivity in regards to Indigenous prisoners (Australian Capital Territory 2008b, 2009d, 2012b), the overrepresentation of Indigenous Australians in the prison system (ACT 2010a, 2010b, 2011, 2013) and linking this overrepresentation to endemic Indigenous disadvantage (ACT 2010b, 2011a, 2013). For example, on 28 June 2011, ACT Attorney General, Simon Corbell, stated:

it is a well-documented fact, that Aboriginal and Torres Strait Islander people are overrepresented in our criminal justice system, both as offenders and as victims, and that this is a direct consequence of poverty and of disadvantage stemming from their historical social exclusion and alienation since European settlement (ACT, p. 2655).

References to the building and expansion of the AMC also fell under three main themes: discussing expenditure on the prison build and requirements for its expansion (ACT 2009c, 2010d, 2012, 2011c, 2012a), promoting the prison as providing financial benefit to the community (ACT 2008a, 2009b), and promoting the philosophy behind the prison, as well as the prison itself, as something of which to be proud (ACT 2008a, 2008c, 2009a, 2010c). Indeed, ACT Chief Minister Jon Stanhope

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said, “I see the construction of the Alexander Maconochie Centre as one of the great achievements of this government” (ACT 2010c).

Legislative Assembly Hansard - NT

In general, references to Indigenous incarceration in the NT fell under two main themes: linking the high rate of Indigenous incarceration and recidivism with systemic Indigenous disadvantage (2008a, 2008g, 2008h, 2009d), and flagging alcohol abuse as a causative factor in Indigenous incarceration (2008g, 2008h, 2009b). NT MLA Adam Giles is recorded stating: “Until we deal with the issue of alcoholism, our gaols will continue to get filled” (2008g).

References to the building of the DCP fell under three main themes: the prison as a tool to educate prisoners and reduce recidivism (2008e, 2009a); promoting the prison in terms of long-term cost-saving and job and infrastructure creation (2008c, 2008f, 2009c, 2012b), with NT Chief Minister Paul Henderson stating, “[a]ll of the advice that we have had is that it would be more expensive to expand the existing facility to cater for the projected rise in prisoner numbers in the Northern Territory”; and discussing where the new prison should be situated (2008b, 2008c, 2008d).

Local Level Government Publications – ACT

The ACT government publications examined for this report displayed a number of linguistic trends in regards to Indigenous incarceration. For example, phrases such as “healthier lifestyle choices” and “re-empower” appear in the ACT Policing reports with direct reference to Indigenous citizens (Australian Federal Police 2009, p. 106; AFP 2011, p. 158). The *Corrections Management Act 2007* (ACT Parliamentary Counsel 2013), and the *Independent Review of Operations at the Alexander Maconochie Centre* (Knowledge Consulting 2011) both flag access to cultural activities for Indigenous prisoners, with the latter publication stating that a suite of new programs would ensure that particular attention would be paid to women and Indigenous detainees (p. 99). The *Aboriginal and Torres Strait Islander Justice Agreement* (ACT Department of Justice and Community Safety 2010) refers to a small group of Indigenous families in the ACT that are overrepresented in the legal system and states that “without support and hope for a new future” they will be unable to break the cycle of offending. (p. 14), while it also refers to programs for Indigenous

women designed for “building self-esteem and hope” (p. 15) in an effort to divert them from the justice system. The *Justice Agreement* (ACT Department of Justice and Community Safety 2010) also states that reducing Indigenous overrepresentation in the justice system is directly linked to reducing disadvantage and overcoming barriers and social exclusion (p. 4). In comparison, reports from the Aboriginal and Torres Strait Islander Elected (ATSIEB) body were more likely to focus on the concept of Justice Reinvestment as a way of addressing Indigenous overrepresentation in the justice system (2011, p. 22; 2012, p. 48). For example, Mr Andrew Cappie-Wood related the notion of Justice Reinvestment to investing money in the emergency response end of the health system: “If we just deal with the crisis end, we will never have enough money, because the crisis end will just keep getting worse and worse. And you are not spending anything at the preventative end because you are putting it all at the crisis end” (2011, p. 22).

The *Circles of Support: Towards Indigenous Justice: Prevention, Diversion, and Rehabilitation* report (Aboriginal Justice Centre 2008) attempts to engage with the reasons for Indigenous overrepresentation in the ACT criminal justice system. The report notes Indigenous disadvantage as a root cause (p. 11), refers to a number of programs such as teaching good parenting (p. 38) and social competence training for young offenders (p. 48), and notes the special needs of female, Indigenous, and disabled prisoners (p. 78). The report also notes the importance of programs for Indigenous Australians being led by Indigenous Australians (p. 53), reports on diversionary programs in the Netherlands (p. 62), and evaluates circle sentencing in Nowra (p. 66). Further, the report identifies the importance of community building and incorporating community strengthening components into diversionary tactics, as well as recommending a “bottom up” approach to Indigenous program design:

It is vitally important to support communities to develop their own responses to criminal justice issues. A strong community, resourced, cohesive and inclusive, leads to other positive outcomes, including reduced contact with the criminal justice system and improved educational and employment outcomes. . . . however, the traditional protective bonds of Indigenous family and community have been damaged by colonisation. If diversionary initiatives are to succeed, they need to integrate a community strengthening component into their work. (AJC 2008, pp. 84-85)

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Local Level Government Publications – NT

The NT Police, Fire, and Emergency Services annual reports make very little mention of Indigenous Australians, and none at all about Indigenous incarceration. Similarly, the *Northern Territory Prisons (Correctional Services) Act* (Northern Territory Government 2013) makes no mention of Indigenous prison inmates, while the only mentions of Indigenous Australians in the *Northern Territory Youth Justice Act* (NT Government 2012) is in the definitions and in the recommendation that, “if practicable, an Aboriginal youth should be dealt with in a way that involves the youth's community” (p. 3). Meanwhile, the NT's Department of Justice Annual Reports refer repeatedly to “enhancing Indigenous outcomes” (e.g. 2009, p. 19 & p. 40) and the increased delivery of culturally appropriate jail programs for Indigenous Australians as well as making repeated references to the Federal government's *Closing the Gap: A Generational Plan for Action* (e.g. 2010, p 50). The NT's Department of Correctional Services (n.d) publication *Sentenced to a Job* promotes the employment of prisoners to develop social responsibility and therefore reduce recidivism, but does not directly identify Indigenous detainees in relation to the program.

Federal Level Government Publications

The *National Indigenous Justice Framework 2009-2015* (Standing Committee of Attorneys-General Working Group on Indigenous Justice 2010) flags the combined impact of Indigenous disadvantage as being at the root of Indigenous overrepresentation and adverse contact with the criminal justice system (p. 6 & p. 16), and flags a relationship between Indigenous offending and alcohol and substance abuse (p. 7 & p. 24). The *Framework* also notes the importance of community involvement in the development and implementation of policies and programs to combat substance abuse (p. 24). The National Indigenous Drug and Alcohol Committee (2013) report, *Bridges and Barriers: Addressing Indigenous Incarceration and Health* compares the differences between both police-tested and self-reported levels of drug and alcohol use in relation to criminal activity of both Indigenous and non-Indigenous detainees (p. 5) and identifies alcohol use as a common pre-cursor to Indigenous offending (p. 7). The report also flags the overrepresentation of Indigenous Australians in the criminal justice system as being related to historical

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social disadvantage, cultural displacement, trauma and grief, and poor health and living conditions (p. 6). Furthermore, the report identifies Justice Reinvestment as an important strategy to address the known risk factors around disadvantage:

Justice reinvestment recognises the association between incarceration and disadvantage, and the role for the justice system of investing in communities. It includes targeted programs or interventions for communities identified as having high offender rates, to reduce offending and reoffending; for instance, programs and services to improve housing conditions, employment options, and access to services for harmful substance use. (NIDAC 2013, p. 7.)

Meanwhile, the *Social Justice Report 2009* (Aboriginal and Torres Strait Islander Social Justice Commissioner 2009) devotes an entire chapter to closely examining the concept of Justice Reinvestment, its application overseas, and its value in an Australian context as a means to reduce Indigenous overrepresentation in the criminal justice system.

Media

References to Indigenous incarceration in *The Canberra Times* repeated a number of common themes: the overrepresentation of Indigenous Australians in the criminal justice system and increasing numbers of Indigenous prisoners (Kretowicz 2008; Vumbaca 2009; Downie 2012; Knauss 2012; Kretowicz 2013; Malone 2013), linking this overrepresentation to Indigenous disadvantage and substance abuse (Kretowicz 2013; Vumbaca 2009; Biles 2013), comparing the cost of incarcerating Indigenous Australians to rehabilitation programs and calling for money to be invested in such programs (Kretowicz 2008; Downie 2012; Jean 2013; Fowlie 2013). Similarly, references to Indigenous incarceration in *The Northern Territory News* also repeated some common themes: the notion that Indigenous Australians deliberately try to get into gaol because conditions are far better inside the prison than in their communities (Watkins 2010; Mills 2013; Wood 2013), linking Indigenous overrepresentation in the criminal justice system to disadvantage and calling to invest in communities and alternatives to jail to tackle the causes of Indigenous offending (‘Northern Territory crims’ 2009; Watkins 2010; George 2010; Adlam 2010; Lawrence 2010; ‘More Aborigines in jail’ 201; ‘Agency call’ 2011; ‘NT still has highest rates’ 2012). Indeed, *The Northern Territory News* reported the North Australia Aboriginal Justice Agency principal lawyer Glen Dooley as stating “the

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money the Government was spending on a new prison and new police stations would be better invested in health, education and housing” (Watkins 2010). Meanwhile, references to Indigenous incarceration in *The Koori Mail* were overwhelmingly about Justice Reinvestment and spending money on diversionary programs rather than prisons (‘Inmate levels worsen’ 2009; ‘Call for radical overhaul’ 2009; ‘Calma’s final report’ 2010; ‘ANTaR in call’ 2009; Murray 2010; ‘Invest in justice’ 2010; Coyne 2011; ‘Anniversary of deaths’ 2011; ‘NAAJA call’ 2011; ‘Packed prison sparks concern’ 2012; Coyne 2012; ‘Funds call’ 2012; Coyne 2013a; Coyne 2013b; Coyne 2013c; 2013, ‘Fresh calls’ 2013; Coyne 2013d).

Analysis

Legislative Assembly Hansard – Indigenous Incarceration

The government discourses surrounding Indigenous incarceration in both the ACT and NT Legislative Assembly Hansard display a number of commonalities. Despite the differences in Indigenous representation in the general population and prison population of the two Territories, both governments identify the overrepresentation of Indigenous Australians in their prison systems and directly link it to endemic Indigenous disadvantage. References are made to Indigenous poverty, historical social exclusion, and alienation (ACT 2011a), as well as low education, low incomes, and alcohol abuse (NT 2008h). Furthermore, both governments identify Indigenous detainees as having more complex problems (ACT 2011b) and being particularly vulnerable (ACT 2013) or being “special clientele” (NT 2009d). The NT government in fact refers to prisoners on the whole as “the most disadvantaged in our society” (2009d), and while Indigenous prisoners are not directly identified in that statement, the fact that they made up approximately 80% of the NT’s total prison population at the time (NT 2008h) tacitly implies that the statement is referring to Indigenous prisoners.

The Hansard records also display a number of differences. Although the ACT has a far lower proportion of Indigenous Australians in both the general and prison populations, the Hansard shows repeated references to the requirement for Indigenous prisoners to be treated with cultural sensitivity. For example, it notes that all corrective service staff will be required to undergo cultural awareness training (ACT

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2008b), recognises that Indigenous Australians in the prison system need space and that different peoples need to be catered for, and promotes the building of Indigenous cultural spaces within the prison to allow for spiritual healing (ACT 2009d). On the other hand, the NT Hansard does not appear to flag any requirement for cultural considerations within the prison system. However, it does outline programs to tackle alcohol and illicit drug dependence, sex offender education, and victim awareness (NT 2011), but, again, Indigenous prisoners are only linked to these programs through tacit implication.

In addition, the NT Hansard flags alcoholism and alcohol abuse as a causative factor in Indigenous offending, something that the ACT Hansard does not appear to do. In fact, on 17 February 2009, NT independent MLA Gerry Wood stated, “we know a lot of Indigenous people have not necessarily committed major crimes - they are not bank robbers - they have done stupid things in their lives, and we know alcohol plays a big factor” (NT 2009b). However, despite the tremendous difference in rates of Indigenous incarceration between the ACT and NT (17.8% compared to 86.4%), the ACT Hansard makes direct reference Indigenous incarceration more frequently than the NT Hansard. With this in mind, it seems possible to conclude that the lower frequency of direct reference to Indigenous incarceration in the NT Hansard indicates that *any* reference to prisoners tacitly implies reference to Indigenous prisoners.

Legislative Assembly Hansard – Prison Building

The discourses around prison building in the ACT and NT Legislative Hansard also display a number of similarities. Specifically, both the ACT and NT governments refer to prison construction in terms of financial benefit and infrastructure creation. The ACT government stated the AMC would bring \$20 million to the local economy because the prison would have to source “all of the food, all of the materials and all of the labour for repairs and maintenance” from the ACT, as well as creating local employment through the recruitment of prison officers (ACT 2008a, ACT 2009b). The NT government presented the construction of the DCP as providing “a considerable saving in the longer term” as compared to refurbishing the current prison at Berrimah (NT 2008f), as well as “supporting Territory jobs” (NT 2009c). However, the NT Hansard notes the following question from the deputy Chief Minister Marion

Scrymgour: “Can you please update the House how the Henderson government is increasing the number of prison officers in our corrections system to help stop the cycle of reoffending?” (NT 2009e). This question draws a direct correlation between the employment of more prison officers and the reduction of recidivism, a concept that seems self-defeating. The NT Hansard also notes that the DCP will mean opening up new land and providing water and power infrastructure where there previously was none (ibid.). Furthermore, the Hansard notes public submissions asking the government to consider building the prison in a more remote area, such as Tennant Creek, in order to promote economic growth and infrastructure building in areas other than Darwin (NT 2008b, NT 2008c, NT 2008d), which further positions prison building as a positive activity. On the other hand, however, it also suggests that more remote communities may feel that the only way they will receive advancements in infrastructure creation is through the building of prisons, and thus, indirectly, the gaoling of more citizens.

The ACT Hansard records the government of the day referring the construction of the AMC in terms of “a facility the ACT can be proud of” (ACT 2008a) and promoting the philosophy behind the prison because it is “the first prison in Australia that will be designed and run applying human rights principals” (ACT 2008c), and will provide “an opportunity to address prisoners’ social, emotional and educational needs so that they are less likely to commit crimes upon release” (ACT 2009a). However, this discourse is countered by arguments centred on the cost of building the AMC, with MLA Zed Seselja claiming that the government got a “a human rights price tag without a human rights prison (ACT 2010c), as well as questions regarding the prisons capacity. MLA Simon Corbell stated on 7 December 2010 that the prison had “capacity for the next 25 years” (ACT 2010d); however, by 2012, Estimates reports showed budgeting for expansions to the facility (ACT 2012a). Referring to a prison as something of which to be proud seems to imply pride in gaoling citizens. Indeed, Guthrie et al (2013), have identified that, in Australia, prison construction is referred to in language of enthusiasm and opportunity, rather than any kind of regret about the expanding prison population (p. 258).

Local Level Government Publications

The local level government publications from the ACT and NT are salient because although the NT has a far higher rate of Indigenous incarceration, there are markedly fewer direct references to Indigenous prisoners than in the ACT publications. In fact, the ACT has an entire document attempting to “to engage with the reasons for this over-representation, to identify existing mainstream and Indigenous crime prevention and diversion initiatives in the ACT, to highlight gaps in service provision and areas of unmet need and make recommendations for change” (AJC 2008, p. 7). The NT government does not appear to have published anything similar, but this could be due to the in depth attention paid to Indigenous communities through the Federal government’s 2007 Northern Territory Emergency Response, more commonly known as the Intervention. Indeed, the NT publications often refer to *Closing the Gap: A Generational Plan for Action* and the requirement to “close the gap on Indigenous disadvantage” and “enhance Indigenous outcomes”. Indeed, Collins and Barson (2011) note the NT government literature relating to “the New Era in Corrections” (which encompasses the building of the DCP) barely uses the words “Aboriginal” or “Indigenous”. They expressed a great deal of surprise at this absence given that, with their overrepresentation in the prison system, any changes to the system would impact significantly on Indigenous Australians (Collins and Barson 2011, pp. 23-24). They further note, “on the one hand, the appeal to a deracialised “offender” and “prisoner” is encouraging given the historically fraught racial politics of the NT” (ibid.), but also express concern that it may be reminiscent of the “colour blindness” written about by Patricia Williams in the American context where she highlights the fantasy of a “racially neutral world” (cited in Collins and Barson 2011, p. 24)

Circles of Support (AJC 2008) report refers to the *Royal Commission into Aboriginal Deaths in Custody (RCIADC)* to identify directly disadvantage as the root cause for Indigenous overrepresentation in the AMC, and notes key indicators such as “poverty, homelessness, unemployment, education level, poor health status, high levels of family breakdown and high levels of family and community violence” (p. 11). It also notes that female, Indigenous, and disabled prisoners have special needs compared to the mainstream prison population (ibid., p. 78). This identification of Indigenous Australians in the same sentence as women and disabled people—who are

more likely to suffer oppression in a society that arguably places more value on able bodied (white) men—places Indigenous people in a position of deficit compared to mainstream white Australia. Similarly, while *Circles of Support* (AJC 2008) does note that the ACT’s Indigenous population fares generally better than the national average with “better health status, the highest levels of post-school qualifications, [and] lower rates of arrest” (ibid., p. 11), by referring to the RCIADC key indicators it seems to mark *all* Indigenous communities as the same, and, again, deficient in comparison to white Australia. Furthermore, the ACT government policing reports make note of assisting Indigenous youth and families to “make healthier lifestyle choices” (AFP 2009, p. 106), which suggests that without assistance Indigenous families could not make healthy choices on their own, while the policing reports and *Justice Agreement* use phrases such as “re-empower” (AFP 2011, p. 158), and “building self-esteem and hope” (ACT Department of Justice and Community Safety 2010, p. 15) as ways to break the cycle of Indigenous offending. Phrases such as these also seem to suggest that the Indigenous population in its entirety is not only *not* empowered, but also lacking self-esteem and hope.

While the NT government publications do not mention Indigenous incarceration with the same frequency as the ACT publications, there are, nonetheless, some similarities; specifically, the absence of directly naming Indigenous Australians in a number of key areas. For example, unless *Circles of Support* is discussing culturally appropriate activities, or Indigenous specific programs, it seems to avoid carefully any mention of negative traits as being related specifically to indigeneity or Indigenous Australians. For example, one person who attended a forum on crime prevention and diversion for Indigenous Australians that was held as part of the consultation process for the report stated, “when we manage to link young Indigenous people with Indigenous services, they change completely” (AJC 2008, p. 53). However, where the report speaks about young offenders being impulsive and having poor moral reasoning (ibid., p. 48), it does not directly identify young Indigenous offenders, even though the report is solely about Indigenous overrepresentation in the criminal justice system. This kind of oblique referencing occurs throughout the report. Similarly, the NT *Sentenced to a Job* (Department of Correctional services n.d.) pamphlet promotes the employment of prisoners as a way to develop social responsibility and, therefore, reduce rates of recidivism without directly naming

Indigenous prisoners. However, with the extraordinarily high rate of Indigenous incarceration in the NT, the pamphlet can be seen to be aimed directly at Indigenous Australians. With this in mind, the name of the pamphlet seems to suggest that the only way to get an Indigenous Australian to work is to make it part of the sentencing regime. Similarly, both ACT and NT publications refer to the importance of culturally specific activities and programs for Indigenous prisoners. While this may be an admirable sentiment, it may also be reflective of an attitude that leans towards incarceration rather than prevention, and seems to imply that incarceration is a culturally appropriate activity for Indigenous Australians. However, it must be noted that some of the ACT government publications do flag the importance of Indigenous community involvement and a bottom-up approach in any programs designed to address Indigenous incarceration levels, as well as identifying Justice Reinvestment as a way to tackle Indigenous overrepresentation in the prison system. Similarly, the *Northern Territory Youth Justice Act* (NT Government 2012) notes the recommendation that young Indigenous offenders should be dealt with in a way that involves their community (p. 3).

Federal Level Government Publications

Similarly to the Hansard records and local government publications, the federal government publications examined in this report also identify social disadvantage as being at the root of Indigenous overrepresentation in the criminal justice system. However, the *National Indigenous Justice Framework 2009-2015* (Standing Committee of Attorneys-General 2010) reverses the common correlation between Indigenous disadvantage and overrepresentation in prisons. The *Framework* states that it “seeks to build a sustainable whole-of-government and community partnership approach to law and justice issues to reduce the evident levels of disadvantage that are directly related to adverse contact with the justice systems” (p. 6). Further, the report claims that, “[r]educing the overrepresentation of Indigenous people in the criminal justice system is a precursor to improvements in the areas being addressed by COAG through the Closing the Gap on Indigenous disadvantage agenda” (ibid., p. 16). This statement implies that the imprisonment of Indigenous Australians is actually at the root of problems with Indigenous housing, education, and social exclusion rather than being related to historical social disadvantage,

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cultural displacement, and alcohol misuse and abuse as identified by the *Bridges and Barriers* report (NIDAC 2013, p. 6) and a number of other publications, including the *Framework*, and warrants further investigation.

However, the *Framework* does identify the importance of involving Indigenous communities in the development and implementation of programs to combat substance abuse (Standing Committee of Attorneys-General 2010, p. 24). Similarly, *Bridges and Barriers* flags Justice Reinvestment, and its necessary community involvement, as an important strategy to consider in addressing Indigenous disadvantage (NIDAC 2013, p. 7). Furthermore, Tom Calma’s *Social Justice Report 2009* (ATSI Social Justice Commissioner 2009) devotes an entire chapter to analysing the methods and benefits of implementing Justice Reinvestment and states, “[j]ustice reinvestment acknowledges what Indigenous communities have known for a long time – taking people out of communities through imprisonment weakens the entire community” (p. 42).

Media

The three media sources examined for this report show a strong tendency towards reporting on discussions around Justice Reinvestment, investment in rehabilitation and diversionary programs, and alternatives to prison. For example, Norman George (2010), in *The Northern Territory News*, stated:

We need to invest in things that deal with the causes of offending and re-offending; that encourage individuals to take responsibility for their actions; and allow, where appropriate, for the victim and the community to be involved in finding solutions. (p. 7.)

Meanwhile, Greens senator Scott Ludlum was reported in *The Koori Mail* as saying:

a national rollout of the [Justice Reinvestment] strategy would reflect a unanimous Senate Committee recommendation that governments fund a justice reinvestment pilot program as a means to reduce crime and increase community safety (‘Invest in justice – Greens’, p. 34.)

Furthermore, a report in *The Canberra Times* noted, ‘A former Howard government minister says the ACT could lead Australia in criminal justice reform and save money by sending non-violent Aboriginal and Torres Strait Islander offenders to drug rehabilitation instead of jail’ (Jean 2013). The participants in these discussions come

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from a variety of backgrounds², however, the majority of the discussion around Justice Reinvestment does originate from Indigenous organisations and Indigenous Australians and may indicate either a counter-discourse to the dominant discourse, or perhaps even reflect a movement for discursive change.

Discussion

Analysis of the primary sources revealed the presence of two distinct discourses. On the one hand, there is the discourse emerging from government bodies, which features constant reference to Indigenous disadvantage, and the promoting of prison building as a way to rehabilitate and educate prisoners and reduce recidivism. On the other hand, there is a discourse emerging from Indigenous bodies and media calling for more money to be invested in Justice Reinvestment and diversionary programs as a way to reduce the appalling incarceration rates of Indigenous Australians.

Government discourse

In preliminary discussions prior to beginning this project, it was posited that Indigenous incarceration would be referred to in terms of deficit discourse. Fforde et al (2013) explain deficit discourse as something that “describe[s] a mode of thinking, identifiable in language use, that frames Aboriginal identity in a narrative of negativity, deficiency, and disempowerment” (p. 162), and, indeed, much of what emerges from the government discourse appears to fit this model. As noted above, the local and federal level government publications repeatedly identify endemic Indigenous disadvantage as being at the root of Indigenous overrepresentation in the criminal justice system, and there can be little argument that there is genuine need in Indigenous communities. However, within the government discourse there does not appear to be any differentiation made between incarcerated Indigenous Australians

² Indigenous Australians with personal experience of the criminal justice system (Kretowicz 2008); Indigenous elders (Downie 2012); the National Indigenous Drug and Alcohol Committee (Jean 2013); retired American Judge Peggy Hora (Fowlie 2013); The North Australian Aboriginal Justice Agency (Watkins 2010); 57% of respondents to a public survey who wanted more money spent on diversionary programs (Lawrence 2010); NT Criminal Lawyers Association president John Lawrence (‘More Aborigines in jail “shameful”’ 2011); former Aboriginal and Torres Strait Islander Social Justice Commissioner Tom Calma (‘Call for radical overhaul’ 2009); the Australians for Native Title and Reconciliation group (‘ANTaR in call’ 2010); and the Australian Greens party (‘Invest in justice – Greens’ 2010).

and Indigenous Australians in their entirety. As a result, *all* Indigenous Australians are then incorporated within this discourse of deficit regardless of whether or not particular individuals have had adverse contact with the criminal justice system.

Furthermore, because there is clearly recognised, legitimate need in some Indigenous communities this deficit discourse becomes the prevailing norm and creates a discursive space in which “subtle manifestations of deficit discourse occur within language and terminology . . . often in contexts (including policy platforms) that seek to address very real social and economic need “ (Fforde et al 2013, p. 166). Similarly, Melissa Lovell (2012), in her analysis of the Northern Territory Emergency Response, notes that embedding notions of Indigenous Australians being at higher ‘risk’, or in this case, at greater disadvantage to mainstream white Australia, “becomes part of the administrative knowledge that structures the relationships between Aboriginal people and public agencies” (p. 207), which is certainly evident in a number of the government publications. In other words, embedded notions of Indigenous disadvantage and the common practice of deficit discourse in relation to Indigenous incarceration and Indigenous Australians more broadly create a discursive framework that essentially establishes the ‘rules of the game’ to which participants, be they individuals or groups, must adhere in order to participate and be recognised (Kerin 2012, cited in Fforde et al 2013, p. 163).

Furthermore, as note by Terry Locke (2004), “the more frequently a particular wording is taken up across a range of texts then the more likely it is that particular discourse is enlarging its subscription base (p. 51). Put more bluntly, for an Indigenous Australian to participate in the dominant discourse as set out by the prevailing social order (i.e. the government), the individual (or group) must in fact recreate the discourse in order to be recognised: they must buy into, and thus perpetuate and enlarge the subscription base of the idea of Indigenous deficiency in order to be heard. For example, NT MLA Alison Anderson, then minister for Indigenous Advancement who is of Luritja-Pintupi and Warlpiri heritage (Anderson 2014), used language that positions Indigenous Australians as deficient while she was trying to achieve more positive outcomes for Indigenous Australians in the NT, and references remote NT communities by saying ‘everyone is a child there, even the adults’ (NT 2012a). Although Ms Anderson is not discussing Indigenous incarceration, her statement is evidence of the discursive framework of Indigenous

deficiency and shows how Indigenous people themselves adopt the prevailing discourse. However, the explicit use of deficit discourse, however subtle it may be, is not the only indicator of its presence.

Given the extraordinarily high rate of Indigenous incarceration in the NT, the absence of direct reference to it in the NT’s government publications seems conspicuous, particularly in comparison to the number of references in the ACT’s publications and its significantly lower proportion of Indigenous representation in both the general and prison populations. As noted above, Collins and Barson (2011) expressed surprise at this absence, given that any proposals made as part of the ‘New Era in Corrections’ would impact heavily on Indigenous Australians (pp. 23-4). However, while they posit that this absence may be, on one hand, considered encouraging through the deracialisation of prisoners (ibid. p. 24), it may also point to an always-already existing discursive frame of Indigenous deficiency that is grounded in Australia’s settler-colonial history, which adheres to notions of indigeneity that are still embedded within an outdated racial paradigm.

Indigenous Australians have long been identified as deficient in comparison to those of ‘civilised’ European descent. Indeed, William Dampier (1697 [1927]) described the Indigenous Australians he encountered on the west coast thus:

The inhabitants of this country are the miserablest people in the world. The Hodmadods of Monomatapa, though a nasty people, yet for wealth are gentlemen to these; who have no houses, and skin garments, sheep, poultry, and fruits of the earth, ostrich eggs, etc., as the Hodmadods have: and, setting aside their human shape, they differ but little from brutes. (n.p.)

These ideas of Indigenous Australians were perpetuated over many years through the application of social Darwinism and ‘colonial time’, which positions Indigenous Australians as belonging to an earlier stage of human development, as inherently backward compared to white Australia, and “maladapted to the demands of modern society” (Lovell 2012, p. 202 & p. 207). If this, indeed, forms a discursive frame “which [is] constructed out of our past experiences” (Nunan 1993, p. 69), it seems possible to theorise that the absence of specific examples of deficit discourse and direct reference to Indigenous incarceration in the NT government publications is because the framework of the dominant discourse operates with an *assumed knowledge* of Indigenous deficiency that, therefore, does not need to be explicitly

articulated. Therefore, any discussion of Indigenous incarceration occurs within, and feeds into an existing framework of Indigenous deficiency.

Thus, Indigenous Australian subjects, whether incarcerated or not, are constructed by the dominant discourse as being deficient in comparison to mainstream white Australia, a notion that is perpetuated through the repeated use of phrases such as “Indigenous disadvantage”. As a result, individual Indigenous subjects may subscribe *unconsciously*—or indeed, strategically—to this dominant discourse due to the “effect of the processes of discursive formation that occur at the societal level” (Locke 1994, p. 32). In other words, because the deficit discourse is *naturalised* through the historical situatedness of the prevailing social order, it comes to be seen as a ‘common sense’ position, rather than a particular construction of reality (ibid.). Furthermore, the naturalisation of such discourse and language within programs to address very real need means “the underlying approach continues to carry (and replicate) an implicit assumption of deficit and a positioning of the locus of control away from Aboriginal people” (Gorringe et al 2011, p. 4). Indeed, discourses around reducing the overrepresentation of Indigenous Australians display characteristics of a top-down, paternalistic attitude based on a “liberal discourse of individual agency” (Lovell 2012, p. 212)—where it is the individual’s responsibility to help themselves—which is a hallmark of white, settler-colonial society and in which, due to the inherent assumptions made about Indigenous Australians within the dominant discourse, they are not expected to be able to effectively participate.

There is an inherent complexity in navigating discourses around Indigenous incarceration and indigeneity more broadly. On the one hand, the historical reality of Indigenous disadvantage cannot be ignored or denied. On the other hand, the very nature of discourses and their inherent power structures makes it difficult to challenge discursive frameworks without resorting to language that effectively reinforces them. For example, Laurie Bamblett (2011) notes the way representations of Indigenous sporting achievements are “full of references to deficit, even when telling stories of success’ (p. 11); thus, stories of Indigenous achievement do not challenge but are, in fact, compliant with the discursive status quo. With this in mind,

strategies for challenging deficit discourse while improving outcomes for Indigenous Australians and addressing the genuine need that exists in some Indigenous communities, without perpetuating the prevailing discursive framework, are fraught with difficulty.

Indigenous organisations and media

In comparison to the discourses emerging from government bodies, the discourses originating from Indigenous organisations and the media is more focused on a bottom-up, socially-oriented approach that emphasises positive, community-strengthening action as a way to reduce Indigenous overrepresentation in the criminal justice system. Indeed, the focus on Justice Reinvestment and other diversionary programs emphasises the need for investment in Indigenous communities, not prisons, as a way to stop individuals having adverse contact with the criminal justice system. When examined in contrast to the prevailing government discourse, the emphasis on Justice Reinvestment and community strengthening indicates a counter-hegemonic relationship and may in fact show proof of the beginnings of a change in the dominant discourse surrounding Indigenous incarceration.

However, the challenge met by this counter-discourse is that it is emerging largely from Indigenous bodies, which are, of necessity, working within the discursive framework designated by the prevailing social order: a discursive framework of Indigenous deficiency. Thus, when entry into a discourse is “inextricably linked to questions of authority and legitimacy” (Mills 1997, p. 51), the question is raised of how an Indigenous bodies or individuals can gain legitimacy or authority when the very nature of the discourse that they are trying to enter determines that they can have none because they are inherently deficient. Melissa Lovell (2012) identifies further difficulties in the legitimation of a counter-discourse and states, “it is possible that the shared nature of the settler-colonial mentality shelters it from examination by many of those who are influenced by it” (p. 217). In other words, the networks of power that produce and recreate the dominant discourse influence those who create it, as much as those who are affected by it, and until these networks and their ‘common sense’ positions are exposed as

discursive constructions, they cannot be demystified, or denaturalised (Locke 1994, p. 32). Nonetheless, discourses are socially constructed, and susceptible to change, and, in this instance, the media may be playing a part in advocating the counter-discourse emerging from Indigenous bodies.

As noted by Kerry McCallum (2011), ‘[t]he way an issue is framed in news media coverage has been found to influence political agendas, reflect elite agendas and highlight the public salience of an issue’ (p. 23). Although McCallum analysed the influence of media on Indigenous health policy, it seems likely that the high level of media reporting on Justice Reinvestment and other diversionary programs could potentially play the same role. Indeed, McCallum’s research ‘suggests that the structuring of news about a public policy issue can be seen to have real policy consequences’ (p. 29), thus it remains to be seen whether the positive reports about Justice Reinvestment in the media will have any influence on government policy and discourse, and warrants deeper analysis.

Strength-based approaches

Outside the realm of the media, positive outcomes for Indigenous Australians are being achieved through programs that actively employ community-oriented, strength-based approaches in areas where there is genuine need. For example, Bamblett (2013) reported high levels of success achieved through the ‘Read With Me Everyday’ program at the Erambie Mission in Cowra that employed a strength-based approach to improve literacy levels for Indigenous youth at the mission. A conscious effort was made to employ positive, inclusive language in the advertising and delivery of the program, and community members were actively engaged to create an encouraging, enthusiastic environment. The program was highly successful, and Bamblett (2013) states, ‘[a] lot of what we accomplished . . . was due to the positive way we delivered our message’ (p. 103). Similarly, Gorringer et al (2011) discuss the use of the *Engoori* process as a successful, strength-based foundation for the cultural framework of Ipswich’s ‘Keeping Families Strong Group’ (p. 14). The *Engoori* process ‘focuses on (1) *remembering and reconnecting* (who we are and what makes me/us strong), (2) *re-examining*

and re-learning (what behaviours/thinking do we need to take forward/leave behind) and (3) *recreating and renewing* (how we ritualise the behaviours/thinking that we take forward)’ (ibid. p. 7), and is ‘a way of enabling and encouraging a shift away from a deficit mindset’ (ibid., p. 14). Therefore, with these examples in mind, it seems likely that far more positive outcomes in lowering the rates of Indigenous incarceration both in the ACT and the NT, as well as Australia wide, will be achieved through careful application of strength-based, community-focused discourses and programs that challenge the current dominant discursive frame of Indigenous deficiency.

Conclusion

While Indigenous incarceration rates in the ACT and NT vary greatly, and although the AMC is touted as a ‘human rights prison’ and the DCP is not, the political rhetoric emerging from both governments is similar because it is both produced by and recreates the dominant discourse of Indigenous deficiency that is historically situated in Australia’s settler-colonial heritage. Furthermore, both governments promote prison building as a positive activity of which to be proud, despite the fact that the construction of new prisons can only have detrimental effects on their Indigenous populations given the extremely high, and still increasing, levels of Indigenous incarceration in both territories (and Australia-wide). Although the discourses emerging from Indigenous bodies and the media focus more strongly on Justice Reinvestment and investment in community-strengthening as a way of combatting Indigenous overrepresentation in the criminal justice system, they must necessarily operate within the discursive framework that is set down by the prevailing social order, which denies Indigenous people agency and legitimacy. While there is evidence indicating the success of strength-based, community-oriented programs for Indigenous peoples, the complexity of operating within a space that is dominated by liberal notions of individual agency rather than community connection problematises the large-scale implementation of such programs. Furthermore, the dominant discourse of Indigenous deficiency encompasses Indigenous peoples in their entirety, regardless of whether or not individuals have had adverse contact with the criminal justice system, which further complicates the ability for Indigenous bodies to

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undertake meaningful engagement within the discursive space. Thus, further research and deeper analysis of the various discourses scoped in this report is warranted in order to identify the ways in which the dominant discourse may be effectively challenged.

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