

**Submission  
No 70**

**INQUIRY INTO HIGH LEVEL OF FIRST NATIONS  
PEOPLE IN CUSTODY AND OVERSIGHT AND REVIEW OF  
DEATHS IN CUSTODY**

**Name:** Mr Christopher Puplick AM and signatories

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# A HEALTH FOCUS ON FIRST NATIONS PEOPLE IN CUSTODY

## Submission to the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

On behalf of Christopher Puplick AM and the attached signatories.

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This submission is lodged on behalf of the attached signatories, each of whom is a member of the Board of the Justice Health and Forensic Mental Health Network (the Network) of NSW, however the submission is made entirely in their personal capacities and does not formally represent the position of the Network or of the NSW Ministry of Health.

Relevant to its Inquiry, the Committee is referred to the Australian Law Reform Commission (ALRC) Report 133, December 2017, *Pathways to Justice — An Inquiry into the Incarceration Rate of Aboriginal & Torres Strait Islander Peoples*.

The Committee is also referred to the *National Agreement on Closing the Gap July 2020*, released by the Australian Government in agreement with the Coalition of Aboriginal and Torres Strait Islander Peak Organisations. The new agreement took effect on 27 July 2020. Its agreed targets include Targets 10 and 11 respectively, relevant to reducing the rate of Aboriginal and Torres Strait Islander adults held in incarceration and reduction of the rate of Aboriginal and Torres Strait Islander young people in detention.

### The National Data

As of 30 June 2020 there were 12,898 people in custody in NSW<sup>1</sup>. Of these people in custody, 195 were young people and a further 12,703 were adults.

The Committee would be aware of the significant over-representation of Aboriginal and Torres Strait Islander people in custody. Aboriginal people account for 2.9 per cent of the total NSW population<sup>2</sup>. However, at the end of June 2020, Aboriginal people accounted for 39 per cent (77 people) of young people in custody and 25 per cent (3,184 people) of adults in custody<sup>1</sup>.

Not only are Aboriginal people over-represented, but Aboriginal females are significantly over represented compared to non-Aboriginal females in custody. Aboriginal women account for 47 percent (seven people) of young women in custody and 32 percent (266 people) of adult women in custody<sup>1</sup>.

Over time the prison population in NSW has steadily increased faster than the Australian population. The numbers of adults in custody have increased by 29 per cent

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<sup>1</sup> NSW Bureau of Crime Statistics and Research (June 2020), *New South Wales Custody Statistics Quarterly Update June 2020*,

[https://www.bocsar.nsw.gov.au/Publications/custody/NSW\\_Custody\\_Statistics\\_Jun2020.pdf](https://www.bocsar.nsw.gov.au/Publications/custody/NSW_Custody_Statistics_Jun2020.pdf)

<sup>2</sup> Aboriginal Affairs NSW (January 2018), *NSW Aboriginal People*,

<https://www.aboriginalaffairs.nsw.gov.au/pdfs/research-and-evaluation/key-data-on-Aboriginal-people-in-NSW-2018.pdf>

in the past seven years, from under 10,000 in June 2013 (9,814 people)<sup>3</sup> to 12,703 in June 2020. Compare this to the annual Australian population growth of nine per cent across this same period of time (23,319,400 people in December 2013<sup>4</sup> to 25,522,169 people in December 2019<sup>5</sup>).

The Network vision is to *return healthier patients to their communities* and ensure the health needs of Aboriginal people in prison are culturally safe and embedded at all levels of service delivery. The Network's position is that Aboriginal people's health is everyone's business and that all services provide culturally safe and sensitive healthcare to Aboriginal people in prison.

## **Our focus**

This submission identifies the significantly higher rate of Aboriginal people in custody and focuses on aspects of care for this population. This includes the provision of high quality health care for Aboriginal people in custody, as well as diversion and reintegration programs for Aboriginal prisoners.

## **Aboriginal people in custody suffer from poorer health outcomes than non-Aboriginal people**

The Network strives to provide appropriate and culturally sensitive healthcare to Aboriginal patients in custody, and considers this population as a priority. Network health data shows a high rate of known health conditions for Aboriginal people in custody, and impacting on incarceration rates and recidivism (June 2020):

- Depression 568 (7.8%)
- Opioid dependence 442 (16.7%)
- Schizophrenia - males 290 (5.3%)
- Amphetamine type substance abuse 236 (3.3%)

Further data from the *2015 National Patient Health Survey (NPHS) – Aboriginal People's Health Report*, highlights that Aboriginal people in custody come from more disadvantaged backgrounds and suffer from poorer health outcomes than their non-Aboriginal counterparts<sup>6</sup>.

Compared to non-Aboriginal participants, Aboriginal people who participated in the NPHS were more likely to have spent time in out of home care. They were more likely to have left school without completing year 10 and were more likely to have never been employed, or have been unemployed prior to entering custody.

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<sup>3</sup> NSW Bureau of Crime Statistics and Research (June 2013), *New South Wales Custody Statistics Quarterly Update June 2013*,

<https://www.bocsar.nsw.gov.au/Publications/custody/nswcustodystatisticsjun2013.pdf>

<sup>4</sup> Australian Bureau of Statistics (December 2013), *3101.0 - Australian Demographic Statistics, Dec 2013*,

<https://www.abs.gov.au/ausstats/abs@.nsf/Previousproducts/3101.0Main%20Features3Dec%202013?opendocument&tabname=Summary&prodno=3101.0&issue=Dec%202013&num=&view=>

<sup>5</sup> Australian Bureau of Statistics (December 2019), *3101.0 - Australian Demographic Statistics, Dec 2019*, <https://www.abs.gov.au/ausstats/abs@.nsf/mf/3101.0>

<sup>6</sup> Justice Health and Forensic Mental Health Network (November 2017), *2015 National Patient Health Survey – Aboriginal People's Health Report*,

<https://www.justicehealth.nsw.gov.au/publications/2015NPHSReportAboriginalPeoplesHealthReport.pdf/@@download/file/2015%20NPHS%20Report%20-%20Aboriginal%20Peoples%20Health%20Report.pdf>

Aboriginal people in custody present with a unique and complex health profile, with higher rates of serious mental illness. Aboriginal participants in the NPHS were more likely to be diagnosed with a mental illness (men, 66.3%; women, 80.5%), compared to non-Aboriginal participants. Aboriginal participants also reported higher instances of schizophrenia, psychosis, alcohol misuse or dependence, and post-traumatic stress disorder than non-Aboriginal participants. This population also had a slightly higher history of suicidal ideation.

Data from the NPHS shows that Aboriginal patients have a higher prevalence of alcohol misuse prior to entering custody. Aboriginal participants were more likely to report using alcohol at hazardous levels compared to non-Aboriginal people, using the World Health Organisation's AUDIT tool. Aboriginal participants were more likely to report that they were drunk, or otherwise intoxicated, at the time of their offence than non-Aboriginal participants but were less likely to report committing an offence in order to obtain alcohol or drugs.

Other substances most commonly misused by Aboriginal participants in the NPHS included methamphetamine (77%), cannabis (75.7%), heroin (50.7%), amphetamines (46.1%), and buprenorphine (34.2%).

These highly complex social and health outcomes of Aboriginal patients need to be addressed by all health agencies, especially while patients are in the community.

### **Recommendations**

Primary Health Networks, Local Health Districts and Non Government Organisations should ensure their strategic plans include the provision of culturally appropriate and specific healthcare to Aboriginal people. The clinical policy and care pathways should acknowledge the significant health detriments of Aboriginal people in the community and ensure they are considered before they enter custody.

Additionally, these community organisations should recognise the limited opportunities of some Aboriginal people to access appropriate healthcare, particularly those living in rural and remote communities with few travel options available. An increase in telehealth services by these community health organisations, supported by additional funding to implement these programs, will allow improved contact with Aboriginal groups in these regions.

It is recommended that the Committee supports these culturally appropriate initiatives and expansion of telehealth services, and endorse their funding, monitoring and reporting.

### **Increased focus on diversion programs for Aboriginal people in contact with the criminal justice system**

The Network has a number of diversion programs in place to support Aboriginal people in contact with the criminal justice system. These include:

- **The Aboriginal Chronic Care Program (ACCP)** – a state-wide program for Aboriginal patients to assist in the detection and management of chronic diseases, as well as with the provision of health education, support and advocacy. More than 2,229 patients accessed ACCP in 2019/20, with a notable increase in appointments in three centres (Dillwynia Correctional Centre increased 114% from 2018/19, South Coast Correctional Centre increased

67% from 2018/19 and Emu Plains Correctional Centre increased 29% from 2018/19).

- **Compulsory Drug Treatment Program (CDTP)** - an abstinence-focussed recovery program jointly managed by Corrective Services NSW (CSNSW) and the Network, similar to a residential drug and alcohol rehabilitation program. While this program is not Aboriginal specific, more than 26 per cent of participants in the program in 2019/20 identified as Aboriginal.
- **Drug Court of New South Wales** - diverts eligible drug dependent offenders into treatment, who would otherwise serve a custodial sentence. A high proportion of participants report a history of mental health problems. While the program is not Aboriginal specific, more than 19 per cent of participants in the program in 2019/20 identified as Aboriginal.
- **The Statewide Community and Court Liaison Service (SCCLS)** - a court-based diversion program, operating in 22 courts across NSW, which targets individuals with mental health difficulties charged with non-indictable offences. In 2019/2020 more than 12,000 people were screened and 2,116 were diverted into community-based care. Of those people assessed, 585 (21 per cent) identified as Aboriginal and 412 were diverted into community based care.
- **Connections Program** - a state-wide service providing pre-release comprehensive assessment, care planning, post-release support and assistance with linkage patients to community based services. The impact of access to this program within the Aboriginal identified population went from seven per cent still being in the community at two years following release (pre Connections) to 23 per cent of Aboriginal patients remaining in the community at two years following release (post Connections participation). An ability to remain in the community for two years following release has been found to be a strong protective factor in not returning to custody.
- **Substance Use in Pregnancy Care Coordinator** - provides high level consultancy and comprehensive expert drug and alcohol advice to best manage the care of pregnant patients in contact with the criminal justice system who have substance use problems. This Coordinator saw 112 pregnant patients with reported substance use in 2019/20, with 39 per cent of these identifying as Aboriginal.
- **Telehealth services** – used to improve access and engagement with patients at rural and remote sites within the Network. Of the 33,442 telehealth appointments in 2019/20, 10,885 were delivered to Aboriginal patients (32.5 percent of the total telehealth appointments). Telehealth has been used to improve access and engagement with Aboriginal patients in 2020.
- **Aboriginal Family Health Worker Program** – supports Aboriginal women in custody who are transitioning back to the South Coast NSW. This program is delivered in partnership with Waminda South Coast Women’s Health and Welfare Aboriginal Corporation. Between October 2019 and December 2019, 59 Aboriginal women were assisted through this program.

These programs have all proven to be extremely beneficial for Aboriginal people in improving health outcomes, ensuring at-risk patients are diverted from custody to

appropriate care, linking them in to appropriate community organisations and reducing recidivism.

## **Recommendations**

The success of these programs highlights the need for increased diversion programs to support Aboriginal people in contact with the criminal justice system. These programs can target people with mental health problems, drug and alcohol issues and young people to ensure they are adequately supported in the community rather than being sentenced. The expansion of these diversion programs will require additional funding and support from community health service providers, including Local Health Districts and Primary Health Networks, to ensure the Network has a service or agency to divert these patients to.

There is further opportunity to change the trajectory of young people's lives, by diverting them from custody. This would improve mental health outcomes and less offending in adulthood. The Committee would be aware of recent attention and discussion directed to the important issue of increasing the minimal age of criminal responsibility to at least 14 years. Additionally, legal advisors are often hesitant to consent to young people having a mental health assessment, however there is viable appetite for the court or magistrate to refer. Should there be mandatory referrals to the Adolescent Court and Community Team services, then there could be a significant increase of young people diverted from custody.

It is recommended that the Committee support the expansion and increase in participation of these diversion programs, by again endorsing adequate funding, monitoring and reporting for these initiatives.

## **The oversight bodies tasked with inquiries into deaths in custody in New South Wales**

To assist with the inquiry, the Committee should note that the Network investigates all Deaths in Custody (DIC). All DIC are classified as Expected (due to natural cause of illness) or Unexpected (unnatural causes). All unexpected deaths are subject to a Network led Root Cause Analysis (RCA) and expected deaths are subject to a death review.

The Network is subject to and actively supports the work of the Inspector of Custodial Services, the NSW Ombudsman, the Independent Commission Against Corruption and the NSW Coroner in relation to investigation and reviews of deaths in custody.

There were a total of 22 Aboriginal people's DIC from 1 January 2015 – 30 June 2020 representing 13.5 per cent of the 163 total DIC during this period. Fourteen (14) of the 22 Aboriginal people's DIC have been listed as deaths from natural causes and 8 listed with unnatural causes of death.

## **Signatory and Supporting Signatories**

<b>Name</b>	<b>Qualifications</b>
Christopher Puplick AM	Former NSW Senator and former President of NSW Anti-Discrimination Board and NSW Privacy Commissioner
Stuart Loveday	Former CEO, Hepatitis New South Wales

Ian Gillespie	Fellow of CPA Australia, Fellow of the Institute of Managers and Leaders and Member, Australian Institute of Company Directors.
Alison Churchill	CEO, Community Restorative Centre
Ken Barker	Principal, Ken Barker Consulting Pty Ltd
A/Professor Carolyn Quadrio	Clinical Psychiatrist and Conjoint Associate Professor School of Psychiatry, UNSW
Professor Jonathan Phillips AM	Clinical Psychiatrist
Dr Mindy Sotiri	Programme Director, Community Restorative Centre
Michelle Eason	Director of Organisational Development, Network and Registered Nurse
Dr Robyn Shields AM	Psychiatry Registrar, Forensic Hospital and former NSW Deputy Mental Health Commissioner
Peter Dwyer	Barrister
Dr Kath MacFarlane	Adjunct Associate Professor at Kirby Institute, UNSW
Dr Penny Abbott	General Practitioner, Associate Professor Department of General Practice, School of Medicine, Western Sydney University

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**Addendum:** *The Justice Health and Forensic Mental Health Network*

This section is included in order to contextualise the position of the submitters with reference to their membership of the Board of the Network.

Justice Health and Forensic Mental Health Network (the Network) is part of NSW Health and provides health care to adults and young people in contact with the criminal justice and forensic mental health systems in NSW. The Network forms a vital component of the NSW public health system through its support of a highly vulnerable patient population whose health needs are often more numerous and more complex than the wider community.

Each year, the Network's staff care for more than 30,000 patients in correctional centres, youth justice centres, courts, police cells, inpatient settings and in the community. The Network provides multidisciplinary health services to patients, including primary care, drug and alcohol, mental health, population health, women's and midwifery care, oral health, Aboriginal health, youth health, and a range of allied health services.

The Network is a Specialty Network Governed Statutory Health Corporation constituted under the Health Services Act 1997 (NSW). The Network is part of NSW Health and reports to the Minister for Health through the Network Board and the Secretary, NSW Health.

The Network Board carries out its functions, responsibilities and obligations in accordance with this same legislation, and determinations of the NSW Minister for Health.

The Network's Board Charter outlines its primary governing responsibilities, including:

- Setting the strategic direction for the organisation and its services,
- Monitoring financial and service delivery performance,
- Ensuring clinical governance responsibilities are clearly allocated and understood,
- Maintaining high standards of professional and ethical conduct,
- Involving stakeholders in decisions that affect them,
- Establishing sound audit and risk management practices.

The Network enjoys a close working relationship with Corrective Services NSW (CSNSW) and Youth Justice NSW (YJNSW), divisions of the NSW Department of Communities and Justice. The Network works closely with these agencies to also play a key role to divert people away from custody through a range of intervention programs.

### **Snapshot of current health conditions for Aboriginal patients 2019-2020:**

#### ***Estimated uptake of mental health services by Aboriginal inmates with depression***

(Third most recorded health condition for all Aboriginal inmates currently in the Network's care – estimated prevalence 7.8%)

Age	Female		Male		Total	
	n	% uptake	n	% uptake	n	% uptake
<45	76	89%	407	71%	483	74%
45-88	4	100%	81	72%	85	73%
Total	80	90%	488	72%	568	74%

#### ***Estimated Uptake of Drug and Alcohol services by Aboriginal inmates with Opioid-related health conditions***

(Fourth most common health condition recorded for Aboriginal inmates currently in Network's care – estimated prevalence 3.3%)

Age	Female		Male		Total	
	n	% uptake	n	% uptake	n	% uptake
<45	50	90%	338	84%	388	85%
45-57	5	60%	49	88%	54	85%
Total	55	87%	387	84%	442	85%

#### ***Estimated update of mental health services by male Aboriginal inmates with Schizophrenia***

(Fifth most common health condition recorded for Aboriginal males aged 11 to 44 years currently in Network's care – estimated prevalence 5.3%)

Age	n	% uptake
<45	255	91%
45-67	35	86%
Total	290	91%



**Estimated Uptake of Drug and Alcohol services by Aboriginal inmates with Amphetamine-related health conditions**

(Sixth most common health condition recorded for Aboriginal inmates currently in Network's care – estimated prevalence 3.3%)

Age	Female		Male		Total	
	n	% uptake	n	% uptake	n	% uptake
<45	68	79%	151	66%	219	70%
45-52	6	50%	11	64%	17	59%
Total	74	77%	162	66%	236	69%

**Submission administration contact**

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End of submission.