

**Submission
No 103**

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

Organisation: Australian Medical Association (NSW) Ltd

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***From the President's Office
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3 September 2020

The Hon. Adam Searle MLC
Committee Chair, Select Committee
Parliament of New South Wales
Macquarie Street, Sydney NSW 2000

Via email: First.Nations@parliament.nsw.gov.au

Re: Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody

Dear Select Committee,

Thank you for providing the Australian Medical Association of New South Wales (AMA NSW) with the opportunity to make a submission on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody.

AMA (NSW) acknowledges the Terms of Reference, which require:

1. That a select committee be established to inquire into and report on First Nations people in custody in New South Wales, and in particular
 - (a) the unacceptably high level of First Nations people in custody in New South Wales,
 - (b) the suitability of the oversight bodies tasked with inquiries into deaths in custody in New South Wales, with reference to the Inspector of Custodial Services, the NSW Ombudsman, the Independent Commission Against Corruption, Corrective Services professional standards, the NSW Coroner and any other oversight body that could undertake such oversight,
 - (c) the oversight functions performed by various State bodies in relation to reviewing all deaths in custody, any overlaps in the functions and the funding of those bodies,
 - (d) how those functions should be undertaken and what structures are appropriate, and
 - (e) any other related matter.
2. That the committee report by the final working day in March 2021.

AMA (NSW) is a medical professional organisation representing more than 11,000 medical practitioners and medical students in NSW.

Whilst the AMA (NSW) exists to advance the professional interests of doctors and to uphold the integrity and honour of the profession, it also serves patients through effective advocacy and encourages the advancement of the health of the community.

The over-representation of Aboriginal and Torres Strait Islander people in prison is of urgent concern.

The imprisonment rate in Australia has steadily increased in recent decades.ⁱ The figures in NSW reflect this rise, with sharp increases experienced between 2011 to 2018.

The growth in this rate has been concentrated in particular population groups, disproportionately affecting Aboriginal and Torres Strait Islander peoples, those with mental illnesses, and individuals experiencing socioeconomic deprivation.

There is a concerning increase in the imprisonment of women. Between March 2013 and June 2019 there was a 33% increase in the number of women in prison. Although Indigenous people make up only 2.9% of the population, 32% of women in prison are Indigenous. Indigenous women are over-represented in the sentenced population, with a 49% increase since 2013 compared to a 6% increase among non-Indigenous women.ⁱⁱ

This growth has been attributed to changes in the way courts respond to suspected or convicted offenders and an increase in the number of people charged by police with serious offences.ⁱⁱⁱ

Further research into rising Indigenous imprisonment rates point to steep increases in the number of prisoners on remand, more punitive sentencing laws and practices, and limited availability of non-custodial sentencing options.^{iv v vi vii}

Correlation between imprisonment and poor health

The AMA Position Statement on Health and the Criminal Justice System 2012 details the strong association between imprisonment and poor health.

Prisoners and detainees have significantly higher health needs than the general population. They face higher levels of serious health conditions such as cancer, heart disease and diabetes, as well as poorer dental health, and a higher prevalence of disability, communicable diseases, and mental illness.^{viii ix x xi}

Prisoners tend to come from disadvantaged backgrounds marked by high levels of unemployment, low educational attainment, drug and alcohol addiction, insecure housing, and illiteracy and innumeracy.^{xii xiii}

Research indicates a significant proportion of prisoners engage in risky health behaviours, including drug and alcohol use and tobacco smoking.^{xiv xv xvi xvii xviii xix}

Prisoners and detainees are more likely to be victims of violence or abuse. Many have not had regular contact with health services prior to incarceration or detention. Imprisonment can further exacerbate and entrench the social and health disadvantages that contribute to imprisonment occurring in the first instance.

Many of those incarcerated have fallen through cracks and not had access to community-based health and social services, including services for housing^{xx}, mental health, substance use^{xxi}, disability, and family violence.^{xxii}

Lack of community-based treatments for substance abuse, mental illness, and co-occurring disorders are key factors driving the growth in the prison population and its disproportionate impact on population groups such as Aboriginal and Torres Strait Islander peoples.^{xxiii}

The AMA acknowledges the complex drivers of imprisonment in any individual's case but considers the 'imprisonment gap' as symptomatic of the health gap.

Justice targets

As outlined in the AMA 2015 Report Card on Indigenous Health, the AMA believes it is possible to isolate particular health issues (mental health conditions, alcohol and other drug use, substance abuse disorders, and cognitive disabilities are the focus of this report card) as among the most significant drivers of the imprisonment of Aboriginal and Torres Strait Islander peoples, and target them as health issues as a part of an integrated approach to also reduce imprisonment rates.^{xxiv}

The AMA 2015 Report Card called for Governments to commit to a national target for 'closing the gap' in the rates of imprisonment of Aboriginal and Torres Strait Islander people. We acknowledge the national agreement signed by all state and territory governments to set new targets to: move 30 per cent of young Indigenous prisoners out of detention by 2031; move 15 per cent of Indigenous adults out jail by 2031.

However, we are disappointed that the Federal Council of Attorneys-General did not decide to raise the age of criminal responsibility from 10 to 14 years. Doing so would have had an immediate impact on the over-incarceration of Indigenous children.

Australia has one of the lowest ages of criminal responsibility in the world. The United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older.

The Special Rapporteur on the Rights of Indigenous peoples urged Australia to increase the age of criminal responsibility, saying that children *'should be detained only as a last resort, which is not the case today for Aboriginal and Torres Strait Islander children'*.

Australia has been repeatedly criticised by the United Nations, including by the Committee on the Elimination of Racial Discrimination, for failing to reform the current minimum age.

The criminalisation of children disproportionately affects Aboriginal and Torres Strait Islander children. Around 600 children below the age of 14 imprisoned in youth jails each year, with Aboriginal and Torres Strait Islander children constituting 70 per cent of this cohort.

Around 9,000 children below the age of 14 are dealt with in the broader criminal justice system each year.

Overall, Aboriginal and Torres Strait Islander children constitute around 5 per cent of the youth population, yet close to 60 per cent of children in prisons.^{xxv}

Imprisoning children creates a cycle of disadvantage. The AMA is advocating all levels of Government to support developmentally and culturally appropriate health, education, and rehabilitative-based alternatives to the criminal justice system.

Justice Reinvestment

The AMA 2015 Report Card on Indigenous Health also recommends Governments adopt a justice reinvestment approach to fund services that will divert Aboriginal and Torres Strait Islander people from prison.

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Community-led justice reinvestment initiatives will be central to achieving the justice targets established by the NSW Government. By supporting these programs, NSW can reduce the number of Aboriginal and Torres Strait Islander people in prison.

The AMA recommends that diversion programs for people with mental health conditions, substance use disorders, and cognitive disabilities be prioritised. A targeted approach to these health and social issues, in particular, could significantly reduce the risk of these people coming into contact with the criminal justice system. This involves reinvesting in the right community support services and in the Aboriginal Community Controlled Health Organisations (ACCHOs).

Integrated approach

Specialised health services for Indigenous people are essential to Closing the Gap, particularly in meeting justice targets. ACCHOs provide holistic, comprehensive and culturally appropriate health care to the community. Research indicated ACCHOs are 23% better at attracting and retaining Indigenous patients than mainstream healthcare providers and they are better at identifying and managing risk of chronic disease.

Culturally safe and comprehensive primary and other health services in the community and in prisons is vital – not only to improving the health of Aboriginal and Torres Strait Islander people, but also preventing them from coming into contact with the criminal justice system in the first place, and repeat offending.

Funding for services that work in conjunction with other services and professionals to address mental health conditions, substance use disorders, and problems that can arise as a result of cognitive disabilities, as well as accommodation, employment, and other issues that can exacerbate the risk of imprisonment associated with these conditions is needed.

These services should involve schools, teachers, and other front-line professionals and workers who come into contact with children and young people.

The AMA recommends Governments develop service models to support the expansion of ACCHOs and other services as part of an integrated approach to improving the health of Aboriginal and Torres Strait Islander peoples in the community (including responding to mental health conditions, substance use disorders and cognitive disabilities based on need) and as a preventative measure to reduce imprisonment rates.

Building on this, AMA recommends that in partnership with ACCHOs, prison health services, and other services as appropriate, develop a model of health care that integrates ACCHOs, prison health services, and other services to deliver an integrated approach to service provision that aims to improve health and reduce imprisonment rates at the same time.

We recognise that there is work underway to address these recommendations; however, we feel it is critical that this integration occur if we are to reduce imprisonment rates.

Culturally competent health services

The AMA recommends NSW employs Aboriginal Health Workers and Indigenous health professionals in prison health services to support them to deliver a culturally competent health service. Workforce targets could support the employment of Aboriginal Health Workers and health professionals by prison health services.

Indigenous deaths in custody

It's been almost three decades since the Royal Commission into Aboriginal Deaths in Custody, and yet First Australians continue to die needlessly. Since the Commission ended in 1991 there have been at least 435 Aboriginal deaths in custody.

Tragically, lack of access to appropriate healthcare was a significant factor in many of these deaths. In 38% of these deaths, medical care was required but not given.^{xxvi}

Mental health or cognitive impairment was a factor in 42% of all deaths in custody; but Indigenous people with a diagnosed mental health condition or cognitive impairment received care in just 51% of cases. With regard to Indigenous women, research found authorities were less likely to have followed procedures in cases where an Indigenous woman died in custody and they were less likely to have received appropriate medical care prior to their death compared to men.^{xxvii}

The Royal Commission identified institutional racism within the criminal justice system as the key contributor to harm and avoidable deaths of Aboriginal and Torres Strait Islander people. This is still the case today.

Not a single police officer or prison officer has been held accountable for the deaths in custody. AMA NSW recommends there be independent oversight into all Aboriginal deaths in custody.

Yours Sincerely,

Dr. Danielle McMullen
President, AMA (NSW)

ⁱ Australian Bureau of Statistics, (2012). Corrective Services, Australia, March 2012. Catalogue No. 4512.0, Canberra.

ⁱⁱ https://www.sydneycommunityfoundation.org.au/wp-content/uploads/2020/04/KWOOP-Coalition_Profile-of-women-in-prison-in-NSW.-Executive-Summary.-Final-9-March2020.pdf

ⁱⁱⁱ <https://www.bocsar.nsw.gov.au/Publications/BB/Report-2016-Why-is-the-NSW-prison-population-still-growing-bb113.pdf>

^{iv} J Fitzgerald, (2009). Why are Indigenous imprisonment rates rising? Issue Paper no. 41, BOCSAR.

^v House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011). Doing time – time for doing – Indigenous youth in the criminal justice system. Commonwealth of Australia, Canberra.

^{vi} P Rysavy, T Cunningham, R O'Reilly-Martinez, (2011). Preliminary analysis of the Northern Territory's illicit drug court diversion program highlights the need to examine lower program completion rates for Indigenous clients. Drug and Alcohol Review 30(6):671-676.

^{vii} M Swartz, (2010). Building communities, not prisons: Justice reinvestment and Indigenous over-imprisonment. Australian Indigenous Law Review 14(1):2-17.

- viii Australian Institute of Health and Welfare [AIHW] (2011). The health of Australia's prisoners 2010. AIHW, Canberra.
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- xxiv https://ama.com.au/system/tdf/documents/2015%20Report%20Card%20on%20Indigenous%20Health_0.pdf?file=1&type=node&id=43233
- xxv <https://ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>
- xxvi <https://www.theguardian.com/australia-news/2020/jun/06/aboriginal-deaths-in-custody-434-have-died-since-1991-new-data-shows>
- xxvii Ibid.