

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

Organisation: Public Service Association of NSW
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Public Service Association of NSW

General Secretary Stewart Little **President** Kylie McKelvie

160 Clarence Street, Sydney NSW 2000 GPO Box 3365, Sydney NSW 2001

☎ 1300 772 679 📠 (02) 9262 1623 ✉ psa@psa.asn.au 🌐 www.psa.asn.au **ABN** 83 717 214 309

SL:MG

11 September 2020

Adam Searle
Chair
Select Committee on the High Level of First Nations
People in Custody and Oversight and Review of
Deaths in Custody

First.Nations@parliament.nsw.gov.au


Dear Mr Searle

Please find attached the submission of the Public Service Association of NSW and Community and Public Sector Union to the Select Committee on the High Level of First Nations People in Custody and Oversight and Review of Deaths in Custody.

The Association/CPSU would like to express its appreciation on behalf of its members for both the Committee's work and the opportunity to make a submission.

I would also like to thank the PSA Aboriginal Council members for their work in compiling this important submission.

If there are any other queries with which the Association may be able to assist, I can be contacted through Ms Sandra Lockey at

Yours faithfully

Stewart Little
General Secretary

SUBMISSION



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



160 Clarence Street, Sydney NSW 2000 GPO Box 3365, Sydney NSW 2001

☎ 1300 772 679

✉ psa@psa.asn.au

🌐 www.psa.asn.au

📘 @psansw

☎ (02) 9262 1623

✉ cpsu.nsw@psa.asn.au

🌐 www.cpsunsw.org.au

📘 @cpsunsw

Executive Summary

The Public Service Association and Community and Public Sector Union welcomes this inquiry into First Nations incarceration.

We welcome the new commitment to broadened Close the Gap targets by the NSW Government. This is a critical time where these commitments can be addressed through an increase in focus on early intervention, and programs that can reduce the unacceptable experience of First Nation incarceration rates in Australia.

We also have to address the chronic under-funding of agencies that are aimed at reducing First Nations incarceration, including current budget austerity measures that hinder meeting these targets. Our agencies are at a critical point where further cuts will lead to a cycle of reductions in programs and a failure to address the incarceration rates.

We also recommend a significant shift to “up stream” causal factors for incarceration including adequately addressing the other closing the gap targets and implementing a targeted early intervention approach to crime prevention.

Who is the Public Service Association of NSW and Community and Public Sector Union of NSW

The Public Service Association of NSW (PSA) & Community and Public Sector Union NSW (CPSU NSW) represent over 39000 members who work in all government agencies, state owned and privatised corporations, the disability sector, education and vocational training, NSW Aboriginal Land Council, utilities and universities. Thousands of these members are First Nation workers, and the PSA in 2017 formed our inaugural PSA/CPSU NSW Aboriginal Council. The PSA/CPSU NSW Aboriginal Council guides the PSA/CPSU NSW on policies and campaigns to better support PSA Aboriginal members and also enhances the public services delivered to our First Nation communities.

The CPSU (NSW) is the federally registered counterpart to the Public Service Association of NSW.

Throughout this submission we have referred to First Nations and Aboriginal people interchangeably. Several referenced reports also refer to indigenous people. Whilst we are aware that there are sensitivities with the use of these words, they have been used in the context of the original source reference.

Recommendations

Recommendation

The Public Service Association recommends that all of the RCIBDIC should be implemented.

Recommendation

Self-determination should be adopted as a key aspect for realising the goals of closing the gap.

Recommendation

That employment in government agencies such as Youth Justice, Corrective Services and Community Services where the client base is disproportionately Aboriginal, should be increased until we get to the level of Aboriginal employment of the Aboriginal cohort of the client base.

Recommendation

Identified Senior Executive Service roles should be increased to ensure that First Nations people become decision makers for policy that affects Aboriginal people.

Recommendation

Aboriginal employment policies in Government agencies should be regularly audited, reported on and reviewed as far as the success of programs and processes involved.

Recommendation

That all government agencies establish Aboriginal networks and mentoring programs for all Aboriginal employees.

Recommendation

That circle sentencing be acknowledged as providing a successful outcome for those communities that have endorsed it by reducing recidivism and incarceration, and that Department of Communities and Justice work with local Aboriginal communities to increase the number of Local Government Areas where circle sentencing is available to Aboriginal offenders.

Recommendation

A supported process similar to the Local Court led circle sentencing be developed as an alternate to court appearances, supported by local Aboriginal communities, that provides an alternate pathway for Police utilising their discretionary powers.

Recommendation

Circle Sentencing should be made available for youth offenders.

Recommendation

That Aboriginal specific programs that operate for offenders, including those that address violence and Alcohol and Other Drugs, are provided to communities and schools as part of an early intervention process.

Recommendation

That dedicated Aboriginal programs are selected, developed, reviewed by Aboriginal workers, Community and Aboriginal management.

Recommendation

That budget austerity measures such as the 3% annual efficiency dividend budget cut, the labour expenses cap be removed from agencies that deliver outcomes for the Closing the Gap targets for reduced incarceration, including Community Services, Housing, Legal Aid, Corrective Services and Youth Justice.

Recommendation

The approach adopted during the COVID-19 pandemic of weighing the relative severity of the crime, and the risks not only of COVID-19 but other factors such as the physical and psychological health of First Nations people in granting of bail during remand and sentencing could be a consideration for future judicial law reform.

Recommendation

In the context of many inmates on remand spending significant number of months in custody, a review into education and work for inmates on remand should be conducted that investigates options for Aboriginal inmates to undertake greater education and

Recommendation

The Association submits that now that the NSW and Commonwealth governments are in agreement about reducing First Nation incarceration rates, an increase in funding for Aboriginal in custody and in community programs and education for offenders is supported to reduce the recidivism cycle.

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The Association submits that now that the NSW and Commonwealth governments are in agreement about reducing First Nation incarceration rates, an increase in funding for Aboriginal programs is supported to reduce the recidivism cycle.

Recommendation

That the appropriate diversionary principles and sentencing guidelines are adopted to increase the "Age of Criminal Responsibility" to 15.

Recommendation

An audit is conducted across NSW Correctives of inmates risks of self-harm and suicide and establish an appropriate number of observation cells in each centre.

Recommendation

That the Oversight agencies that deal with Aboriginal incarceration and deaths in custody are exempted from government budget cuts measures and that the funding is restored to real 2011 levels.

Recommendation

With the adoption by NSW of the Close the Gap targets through the intergovernmental agreement, that the NSW Government consider utilising a panel of First Nations with expertise to guide oversight agencies in undertaking their roles and functions.

Terms of Reference

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,

Royal Commission into Black Deaths in Custody

Despite over three decades passing since the release of this report, implementation of recommendations still remains inconsistent in NSW. For example, the prioritisation of diversionary programs has not occurred especially with the increase in prison population.

The Public Service Association recommends that all of the RCIBDIC should be implemented.

Closing the Gap

The Public Service Association of NSW welcomes the expansion of the scope of the Closing the Gap targets and incorporation of states' responsibilities. Whilst we believe the targets are not ambitious enough as far as timeframes, the incorporation of greater responsibility with different tiers of government is a welcome accountability.

The agreement to include targets for reduced incarceration of First Nation people coming out of the 2019 COAG intergovernmental agreement are welcome and should progress the removal of the anchor to the progress First Nations people, of over-representation in the criminal justice system.

First Nations incarceration rates, like alcohol and other drug use, we say are symptoms and not the cause. There can always be different treatments for different symptoms which will work differently with different people.

The COVID-19 pandemic has seen one of the most dramatic reductions in First Nations incarceration numbers in many years. This is due to a combination of factors including the Commissioner of Corrective Services being granted the discretion to release inmates under COVID-19 amendments to the Crimes (Administration of Sentences) Act 1999 if they meet criteria regarding offence risk, and also COVID-19 risk factors and vulnerabilities. These reductions have been realised when combined with court procedures weighing up likely sentences, risk profile and risk of being in custody during the pandemic. This has included a combination of reductions in bail refused remand inmates, and greater numbers of inmates being discharged or released on community detention ordersⁱ. This has included a 11% reduction in overall Aboriginal inmate reductions (February to May- 3739-3315)ⁱⁱ. Despite this temporary reduction in absolute numbers which is a good outcome, the incarceration rates (and gap) remain virtually the same as prior to the pandemic, due to similar reductions in the overall prison population, where the incarceration rates are higher for Aboriginal people (highest for children) and Aboriginal women are the category of largest growth in our prison system.

The following tabled information on current prison numbers will likely have been submitted in numerous other submissions to this inquiry but demonstrate the gravity of the problem that we face.

Number of Adult inmates (a)	12703
Number of Aboriginal adult inmates (a)	3184
Percentage of Aboriginal adult inmates to inmate population (a)	25%
Number of Juvenile inmates (a)	195
Number of Aboriginal Juvenile inmates (a)	77
Percentage of Aboriginal juvenile inmates to inmate population (a)	39.5%
Aboriginal population in NSW (b)	265685
Percentage of Aboriginal people/population (b)	3.4%

Source a) BOSCAR: NSW Custody Statistics June 2020

b) NSW Department of Aboriginal Affairs website

NB: COVID has seen a significant reduction in remand and sentenced inmates/detainees.

Therefore, as of June 2020, incarceration rates for First Nations people are approximately in multiples of 12 for juveniles, and almost 8 for adults. Nationally this sits at 12.5 times for Aboriginal people compared to non-indigenous people, and 21.2 times the rate for Aboriginal women compared to non-indigenous womenⁱⁱⁱ, whilst 28 times nationally for juvenile offenders^{iv}.

Closing the Gap

“Progress in overarching life expectancy target is dependent not only on further progress in health, but also in other outcomes such as education, employment, housing and income.”^v

The rates of First Nation incarceration rates are too high in both Youth Justice and also Corrective Services. Many of our members are responsible for reducing incarceration rates and reducing recidivism. The Association submits that the focus of this inquiry should not just be on the criminal justice system but look at the root causes of the extreme incarceration levels of First Nations people.

It is however, an intergenerational problem that we are many decades behind, which has resulted from the policies of dispossession of land, dispossession and theft of family, forced migration, unequal access to education, housing, employment, health, unequal focus and treatment in the legal system and social justice measures. Additionally, but just as important, remains the lingering undermining effects of racism that allows prejudice to undermine people in achieving equality because of the way they look or their cultural background. The Association recommends an approach that incorporates self-determination as a key aspect for all approaches to closing the gap.

Closing the Gap

PSA/CPSU NSW members actively support the Closing the Gap targets across a range of target areas.

Education

95% of all indigenous four year olds enrolled in early childhood education (by 2025):

PSA members support this outcome through the work of School Support Staff, School Learning Support Officers, Aboriginal Education Officers and Aboriginal Community Liaison Officers for the state run pre-schools available across locations in NSW and our members in the Department of Education who support all pre-schools in NSW.

Close the gap between Indigenous and non-Indigenous school attendance within five years (by 2018)

Halving the gap for indigenous children in reading, writing and numeracy (by 2018)

Halve the gap for Indigenous Australians aged 20-24 in Year 12 Attainment or equivalent (by 2020) : PSA members work as Aboriginal Education Officers, ACLOs, and School Learning Support Officers, School Psychologists, General Assistants as well as School Administration Staff. These occupations are vital in our school system to support Aboriginal students by working with the school and the Aboriginal community, by providing special learning support, and the guidance and support necessary to close this gap.

By 2031, increase the proportion of Aboriginal and Torres Strait Islander people aged 25-34 years who have completed a tertiary qualification (Certificate III and above) to 70 per cent:

CPSU NSW members assist the achievement of this outcome through the work of non-teaching staff in NSW TAFE Commission and support and professional staff throughout the eleven NSW Universities.

Halve the Gap in employment outcomes between Indigenous and non-Indigenous Australians within a decade (by 2018): PSA/CPSU NSW members work in a variety of government and non-government agencies to assist address this outcome. This includes members working for NSW Department of Customer Service to support business and industry, NSW Aboriginal Land Council that assists Aboriginal Controlled businesses develop including the new Western Sydney employment hub, NSW Aboriginal Affairs Department, Regional Development as part of Regional NSW, as well as a number of other agencies.

The PSA has developed the PSA Aboriginal Council Aboriginal Employment Strategy. This strategy has as one of its key principles, expansion of Aboriginal employment in government agencies that can make a difference to Aboriginal communities. Rather than a target of 3.5% which is the percentage of the population that identifies as Aboriginal, the PSA recommends that government employment in agencies such as Youth Justice, Corrective Services and Community Services where the client base is disproportionately Aboriginal, should be increased until we get to the level of Aboriginal employment of the Aboriginal cohort of the client base.

This goal provides the opportunity for greater employment, greater skills development and importantly an understanding of culture and provision of community mentors when sometimes harsh decisions are made affecting Aboriginal families. The NSW Government at approximately 400,000 employees remains the largest employer in NSW and Australia and should be leading by example.

Additionally, the Public Service Commission has identified the Government's failings in incorporating Aboriginal employees into the leadership with additional targets to get Aboriginal employees into SES positions. Currently there are complaints that Aboriginal workers are required to deliver programs for Aboriginal people that are selected by non-Aboriginal executive. This needs to change with identified positions being incorporated into the SES of these agencies so that the close the gap targets can be lead and delivered by Aboriginal people.

Housing

By 2031, increase the proportion of Aboriginal and Torres Strait Islander people living in appropriately sized (not overcrowded) housing to 88 per cent: PSA members work for both Housing NSW and Aboriginal Housing Office. This is a key gap area with Housing stock significantly low, waiting lists high, but Housing being essential to reduce negative health effects (including drug use and abuse). This is a key gap area that needs to be addressed with urgency through a large State and Commonwealth injection of funding into public housing capital works which will also have a significant benefit to the NSW Economy. This target also has an effect of reducing recidivism by provision of households that do not have people who are associated with the offending behaviour.

Health

Close the Gap in life expectancy within a generation, by 2031.

By 2031, increase the proportion of Aboriginal and Torres Strait Islander babies with a healthy birth weight to 91 per cent: PSA members work for the Ministry of Health to support the NSW Health Districts and dedicated Aboriginal health providers, achieve these targets. These workers have played a key role in assisting at risk Aboriginal communities plan to avoid COVID-19 pandemic.

Child Protection and Family Violence

By 2031, reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45 per cent.

A significant and sustained reduction in violence and abuse against Aboriginal and Torres Strait Islander women and children towards zero: PSA members in Community Services, Corrective Services and Youth Justice support early intervention programs, community education and case management to assist at risk families maintain custody of their children. Case Workers (Aboriginal) work for Community Services who respond to child at risk reports, have a specific role to work with Aboriginal families and act as a consultant for other case workers to ensure that children remain safe and minimise the risk of children being removed to out of home care. Community Services also utilises psychologists and other professionals to assist children at risk.

Youth Justice Workers in the community assist young people by providing access to early intervention programs to ensure better decision making with regards to health, drugs and alcohol, violence, family planning and offending.

Aboriginal Services and Programs Officers and Community Corrections officers assist Aboriginal people minimise re-offending by getting access to treatment and programs that assist Aboriginal people reduce violent behaviours and risks of re-offending. Whilst these

programs are detailed below, Corrective Services works to meet the out of home care target by programs such as the Jacaranda program for Aboriginal mothers at Emu Plains. Incarceration of parents is a leading cause of Out of Home Care (fostering and adoption), and this program enables minimum security Aboriginal mothers to remain in a communal setting in custody with their children whilst still experiencing programs to assist them with parenthood and reducing the risk of re-offending.

This target remains a key target for reducing incarceration as violence against a family member remains one of the highest causes of incarceration of First Nations people, with First Nations people likely to be hospitalised 12.5 times the average due to violence.^{vi}

Changes in recent years to Community Services have seen a change in focus from this target in NSW. Aboriginal Intensive Centres have closed under the pretext of generalising these practices into the whole of NSW. Similarly, however, Aboriginal Case Work roles remain vacant with a great reduction in Aboriginal roles in Community Services over the last decade.

At the time of print the PSA had sought details to Aboriginal employment numbers in Community Services.

New and Revised Targets for Criminal Justice

By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.

By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent:

As stated above, the PSA submits that the most beneficial approach to reducing incarceration rates will be to address the socio-economic issues of education, employment and health outcomes, which will in turn lead to long term sustainable reductions in incarceration. There are however, several fundamental issues that arise in the criminal justice system as a result of these socio-economic issues permeating into the justice system which amendments could assist in reducing incarceration.

The PSA/CPSU NSW has significant involvement with the criminal justice system, with our members critically involved in the entire process.

Criticisms that arise are that these Aboriginal workers have to implement systems that are in the context of a non Aboriginal system, having to be accountable for policies and programs that are decided by non-Aboriginal people.

Other criticisms that arise relate to the focus being at the wrong end of the system. For example, in order to get access to many programs, Aboriginal people must offend, however, many of these programs if brought forward into our schools and communities would have the beneficial effect of reducing offence.

Police and Court Systems

NSW Police

The Public Service Association of NSW has coverage of all non-sworn police staff for the NSW Police Force, including ACLO- Aboriginal Community Liaison Officers who are responsible for work with established Aboriginal communities and youth and to establish diversionary strategies.

The Public Service Association of NSW was recently asked to consult on an Aboriginal Employment Policy for NSW Police Force. Greater Aboriginal employment in the NSW Police and other law enforcement areas is a key to addressing Aboriginal incarceration. Apart from the economic benefits, the provision of Aboriginal role models in community is an important aspect for youth to look up to when making decision regarding their own career trajectory. It is also fundamental to have Aboriginal people in roles that have the ability to understand community networks and support, and also any customary punishment systems, when utilising what are often discretionary powers of law enforcement for many smaller offences.

Aboriginal employment in law enforcement increases community knowledge of the legal system and also normalises the legal framework in communities.

From our industrial consultations with NSW Police, we are aware of the efforts that parts of Police are undertaking to bring a level of cultural awareness to all police officers. However, we are also aware of the extremely difficult position of Aboriginal employees to work in environments such as law enforcement due to the immense pressure placed on these officers both at work and in the community. For example, in Community Services there is a pressure placed on individual Case Workers (Aboriginal) to take all Aboriginal children at risk in their case load, which can create unmanageable workloads in some locations. Additionally, in some communities, roles in law enforcement can put the worker and their family at risk of victimisation or being ostracised from their community because of interactions that individuals in that community have had with the law enforcement agency. For example: Police and Community Services have been involved in removal of children in the past including for the Stolen Generations for what now is clearly identified as a racist and unjustified policy. Despite there now being a developed child safety framework for child removal, including an Aboriginal Child Placement Policy, understandably there is resentment from any parent to having their child removed, which can be focused on individual workers if they participate in this process. This is made worse when there are clear deviations from these practices due to resourcing issues, and decisions made in Government to enshrine forced adoptions.

There needs to be strong networks both within the law enforcement agency and from community leaders to support and mentor all Aboriginal workers who take on these conflicted roles such as Police, Prison Officers, Child Protection workers and other occupations.

Court System

The Public Service Association of NSW also has coverage of court staff, sheriff officers, public prosecutors, legal aid, private solicitors, youth officers and corrective officers who all currently undertake work in the criminal justice system that impacts on First Nations incarceration rates. The Association does not have constitutional coverage of the judiciary,

but our members work heavily with them with Associates, and tipstaffs, as well as the other support officers for Justice that operate to assist the court system including BOSCAR and NSW Law Reform Commission.

There are a number of research papers that indicate poorer outcomes in the criminal justice system for First Nations people. Snowball (BOCSAR)^{vii} when comparing indigenous and non-indigenous juvenile offenders in three states found:

- Indigenous offenders were considerably more likely to be referred to a court than non-indigenous offenders.
- Indigenous offenders were also more likely to be referred to a conference in NSW rather than cautioned, which was the reverse outcome of what is more likely for non-indigenous offenders.
- There were statistically significant differences between indigenous and non-indigenous offenders towards diversion.

Whilst the above findings on court referrals may be the result of previous offences and interactions, it appears to be a critical point of interaction that should be addressed.

Due to the socio economic scenarios discussed above, the higher incarceration rates, the needs based criteria for representation, it is often Legal Aid that supports First Nations people in the criminal justice system. There are two main forms of representation through Legal Aid including direct representation from a Legal Aid solicitor or through solicitors and barristers through contracted out legal services.

All Legal Aid solicitors are professional and strive to do their best for their clients. There are however, fundamental flaws for Legal Aid in representing clients mainly surrounding resource levels and caseload. They have a typically different role in the legal system than a typical private practice. They regularly set up a consultation process for listing dates where there is no opportunity for prior research or understanding of the cases, they are required to attend to inmates on remand in custody, and generally have a significant caseload. Additionally, what has made the role for Legal Aid solicitors more difficult in recent years has been austerity measures or budget policies that limit the growth of positions despite increasing workload. The current budget employment policies include the labour expenses cap and also the efficiency dividend which has seen caps on employment of staff and also reductions in budget provision.

Whilst there is dual funding from the Commonwealth and NSW Governments, the workload overflow has traditionally been absorbed by provision of a percentage of cases to private sector solicitors and barristers. This is at risk as the rate per hour for this work being contracted out has not been indexed since 2007.

The ability of these hard working lawyers to provide the best representation when they have limited resources and significant caseload could only lead to poorer outcomes for their First Nations clients.

There is definitely a case to recommend the removal of these budget cutting measures to support the work that Legal Aid does to reduce First Nations incarceration now that there is an intergovernmental agreement between state and federal governments.

Re-offending

BOCSAR provides statistics on reoffending based on whether a convicted offender receives a penalty of prison or other than prison, and their re-offence rates.

Re-offending rates- sentencing	2016	2017	2018
General Population			
Adults-Non Prison penalty	20.8%	20.5%	21.0%
Adults- Prison Penalty	39.3%	40.5%	42.2%
Juveniles- Non Prison penalty	41.7%	44.0%	40.8%
Juveniles- Prison Penalty	63.4%	63.9%	64.2%
Aboriginal Population			
Adults-Non Prison penalty	38.2%	36.8%	39.0%
Adults- Prison Penalty	49.4%	52.2%	53.6%
Juveniles- Non Prison penalty	50.8%	55.2%%	50.4%
Juveniles- Prison Penalty	67.1%	63.8%	68.9%
Non Aboriginal Population			
Adults-Non Prison penalty	20.6%	20.4%	20.8%
Adults- Prison Penalty	33.3%	33.1%	33.1%
Juveniles- Non Prison penalty	37.4%	38.7%	38.1%
Juveniles- Prison Penalty	39.8%	39.3%	40.5%

Table: Re-Offence rates within 12 months if penalty is served in prison ^{viii}

These figures clearly indicate a higher rate of re-offence for people who receive a custodial sentence, and a higher rate for Aboriginal people. This does not however, compare the severity of the crime. Aboriginal people still appear to be over-represented with crimes causing injury to people (often family) causing additional difficulties for sentencing judges, who need to assess the risks of placement in community, combined with the lack of diversionary programs available.

COVID-19

The prison population in NSW has seen an overall reduction due to changes in sentence administration and also how the courts have operated.

Whilst several of the court changes have been delays to ensure courts do not become hot spots for COVID-19 such as

- Suspension of new jury trials in the District Court from 15 March
- Postponement of defended hearings, and sentencing matters likely to result in a custodial penalty in the Local Court from 30 March
- Suspension of new judge alone trials, sentencing hearings, Local Court appeals, arraignments and readiness hearings in the District Court for defendants awaiting their court appearance in the community from 1 April

This led to court finalisations being delayed and is likely to take some time to reduce the back log in the system for remand inmates.

However, what was changed to deal with the COVID-19 pandemic was that the potential impact on inmates on remand was considered incorporating the high risk nature of close physical contact correctional centres for COVID-19 infection, the Local Court considered release applications from inmates on remand who might ultimately spend more time on remand than the duration of their custodial penalty if found guilty. In other words, this reversed the long trend to bail refuse inmates on remand for what might be considered crimes of the lower end of severity.

Whilst the delay in court finalisations is now being addressed with courts resuming, the approach adopted in weighing the relative severity of the crime, and the risks not only of COVID-19 but other factors such as the physical and psychological health of First Nations people in granting of bail and sentencing could be a consideration for future judicial law reform.

Circular Sentencing

Circle Sentencing has been in operation in 12 Local Courts in NSW. It was introduced in NSW in 2002, and now operates in the following local courts: Nowra, Dubbo, Brewarrina, Lismore, Bourke Kempsey Armidale, Walgett, Mt Druitt, Nambucca, Blacktown, and Moree and is available to Aboriginal offenders.

Circle Sentencing is a form of Restorative Justice which currently involves a magistrate led discussions between the victim, the offender's family, Aboriginal elders and respected community members to determine appropriate sentencing.

BOSCAR conducted research on circle sentencing and found that:

- offenders participating in Circle Sentencing are 9.3 percentage points less likely to receive a prison sentence.
- When compared to the rate at which offenders undergoing Traditional Sentencing are incarcerated, this equates to a relative decrease of 51.7 per cent.
- Among offenders not sent to prison, offenders undergoing Circle Sentencing are 3.9 percentage points less likely to reoffend within 12 months.
- When compared to the 12-month reoffending rate of offenders undergoing Traditional Sentencing, this equates to a relative decrease of 9.6 per cent.
- Finally, among offenders that do reoffend, those undergoing CS take an additional 55 days longer to reoffend than their traditionally sentenced counterparts.^{ix}

This appears to have a beneficial approach when compared to traditional sentencing (English traditional law). This approach should be adopted in a broader catchment than the current local areas.

Circular Sentencing however, as established above has drawn some criticism from the Aboriginal Community.

Firstly, circular sentencing requires interactions with the court system, and this has risks that as detailed above include greater risk of incarceration and recidivism. A similar process being made available with community involvement prior to court appearances should be explored, including giving options for Police to explore these as alternative discretionary pathways where the community can facilitate these alternatives.

There also needs to be accountabilities with all involved in circular sentencing to enable it to be successful.

Youth Koori Court

The Youth Koori Court has been established since 2015 at Parramatta and now at Surry Hills.

The Court attempts to work with young offenders 10-17 to connect them with family, community and culture to attempt to stop re-offending in programs that participation and performance determines sentences. It has led to reduced time in detention for many offenders.

A criticism that has arisen is that the 12-month timeframe enables some young people to remain connected with the court system for too long, requires a guilty plea, when if they have a minor offence and challenge it they may be more likely to get a shorter suspended sentence or no sentence.

Youth Koori Court whilst a restorative justice program is not circle sentencing and circle sentencing is not available for youth offenders.

Custodial Sentence Programs and Education

Both Corrective Services and Youth Justice operate a range of programs for inmates and detainees. There are also several programs specifically targeted at Aboriginal inmates and detainees. When the legislators and judiciary strike a balance between community safety of the offender being in the community and the provision of a custodial sentence, it is important that the offender whilst in custody is supported to gain life and work skills that will allow the offender to make meaningful contributions to their community when they are released with a reduced likelihood of re-offending.

Early Intervention

Many of the programs offered require an offence to occur prior to provision of access. If the programs were offered ahead of an offence to First Nation communities who are inherently at risk, then these programs could reduce incarceration rates and the chronic presentation of First Nation people into the criminal justice system.

Examples of where this could work are programs such as My Journey My Life which addresses violence related offences, and an Aboriginal Specific Drug and Alcohol Program that operate in Youth Justice. If these were incorporated into communities and education in schools, this could significantly reduce the presentations of First Nations people into the court and custodial systems.

Corrective Services

Corrective Services runs a number of programs both in custody and the in the community (Community Corrections). These programs designed to address offending behaviour and reduce recidivism include:

There are a number of population wide programs that operate to assist inmates address their offending behaviour, with the recent approach in gaols utilising High Intensity Program Units to address issues such as Domestic Violence and other violent behaviour, alcohol and other drug programs. Programs also such as Sober Driver, violence prevention programs also occur. These programs are offered to sentenced and remand inmates.

Additionally, there are education programs that up skills literacy and vocational programs to provide work readiness skills. A number of these programs have been temporarily curtailed due to the agreed restrictions on external programs to reduce the risk of COVID infection in gaols.

Corrective Services has relatively small Aboriginal Strategy and Policy Unit with roughly 7 persons operating the programs. The Aboriginal Strategy and Policy Unit to oversight Aboriginal cultural programs and also developing and managing training and mentoring for Aboriginal staff

Dedicated Aboriginal Services and Programs Officers run and coordinate Aboriginal programs and mainstream programs inside the correctional centres. There also are responsible for facilitating programs including group programs, providing access to different services and programs. Their role also involves assessment, case planning and case management.

Regional Aboriginal Project Officers (4 in the state) liaise with Correctional Centre management, other staff, offenders and local Aboriginal communities.

Dedicated Aboriginal programs such as work readiness operating out of Emu Plains Female and Male work readiness out of Wellington Correctional Centre operate, but there are few dedicated programs. Work readiness programs “pathways for the future” is a 40-hour job readiness program, which includes self-esteem, report writing, trigger points, how to resolve issues, skills of interviews. Emu Plains also operates milk production and white card courses.

Birth certificate program also operates, Aboriginal parenting programs (men and women), and am Out of Dark program (survivor of domestic abuse, are amongst the programs operating.

Muswellbrook (St Helliers) operates a building program (Gundi program) where they make buildings for communities.

Limitations on Programs

For people on remand, they are not permitted to be in a work program and this limits much of the vocational skills that they can undertake. With the length of some remand periods, it

may be worthwhile to review whether this rule can be exempted for volunteer remand inmates.

Dedicated Aboriginal facilities such as Brewarrina and Ivanhoe have been closed in recent months. These facilities operated dedicated facilities and programs to assist Aboriginal inmates re-integrate into the community, by supporting local community through livestock production and sporting organisations, whilst providing a cultural therapeutic approach to assist the inmates.

Programs such as MSPC4 (Long Bay) "Never Going Back" working with Police in Redfern and Waterloo have been placed on hold due to COVID-19.

Formerly there operated a mentor program for Aboriginal inmates but this has been absent. There have been not enough mentors to run these programs, and the Department needs more mentors. We believe that the Department is looking to re-introduce this program at selected locations for offenders.

Community Corrections

Community Corrections works to case manage and case plan for supervised offenders, parole orders and good behaviour bonds.

Aboriginal Client Service Officers are designated positions that work with Aboriginal people in programs such as the Men's shed, and other program in the community to meet their criminogenic needs. These programs include Sober Driver, violence prevention programs, Alcohol and Other Drugs. There are minimal dedicated programs in the community for Aboriginal offenders. Community Corrections also undertakes assessments for Pre-release, including suitability of accommodation, and the risk of re-offending, and operate half way houses such in Western Sydney.

The Association submits that now that the NSW and Commonwealth governments are in agreement about reducing First Nation incarceration rates, an increase in funding for Aboriginal programs is supported to reduce the recidivism cycle.

First Nations Delivered Dedicated Programs

One of the complaints from members in Department of Communities and Justice is that they are often required to deliver, coordinate or facilitate First Nations programs that are decided by non-First Nations management as appropriate. Whilst there are good intentions behind these decisions, an approach that involves Aboriginal workers, Aboriginal communities, and greater representation of Aboriginal management, could see programs selected that may be more productive in reducing First Nations incarceration rates.

Prison Benchmarking and Prison Bed Capacity

Over the last four years Corrective Services has pursued a path of benchmarking across NSW correctional centres. This has involved cost cutting and restructuring, through the reduction

in most centres of experienced staff, numbers of staff, but also the replacement of experienced custodial staff with “baggies” or entry level correctional officers. This approach has also been adopted in non-custodial areas also including Offenders Services and Programs where Key Performance Indicators or targets are increased often with less staff, whilst continuation of the programs is linked to the success of the program. The benchmarking process has been run in parallel with threats of market testing and privatisation, despite constant examples of failure in private prisons.

There has been a significant expansion of the bed capacity of gaols in NSW with significant capital works for new gaol wings and new gaols. The model has seen a number of smaller and older gaols closed this year, due to the efficiencies of scale and a reverse in the upward trend in prison population.

Amongst the gaols closed, were two gaols that were designed to run Aboriginal programs in Brewarrina and Ivanhoe Correctional Centres. With the closure of these gaols, which often contributed significantly to the local town economies, we have also lost dedicated facilities that are dedicated to assist Aboriginal inmates.

Youth Justice

Youth Justice offers detainees receive education whilst in custody and can access vocational training through TAFE. There is limited cultural education for First Nations detainees. There are programs in custody and in the community, but members state that this is targeted too late in the cycle. Many detainees state that their first involvement with cultural education, and other education with the rules and laws is when they enter custody. This suggests that early intervention programs in communities and schools may be a better mechanism to address First Nations incarceration.

Sentencing-Age of Criminal Responsibility

In NSW the Age of Criminal Responsibility is 10 years old if it can be proved that the child knew what they were doing was wrong. This issue is subject to a national and a state review^x but the Attorney General in NSW and the rest of Australia (Council of Attorney Generals) are yet to make a decision on this issue and will delay until next year.^{xi}

This issue a key issue for reducing the rates of Aboriginal incarceration, not only because of the mental and physical effects on First Nation children’s health, but that there is significant evidence that references to custody as a juvenile being highly predictive of future periods of incarceration.

Whilst there has been some progress on a national level to increase the Age of Criminal Responsibility, it is disappointing for First Nations people that there has been no agreement and a postponement to next year for reform in this area. As First Nations juvenile offenders make the majority of detainees in the Youth Justice system, this delay impacts most heavily on this and future generations of First Nations people.

Most developed nations around the world have increased their age of criminal responsibility to 15. Several have established a framework around diversionary programs prior to custody, limitations on sentence for juveniles and several have also included exceptions for certain crimes of the most severe nature.

Despite there being only single digit detainees in NSW of this age cohort in current custody, these low numbers and generally lower numbers of juvenile detainees in custody at present provide the financial opportunity to develop the diversionary programs and diversionary sentencing guidelines, that often are seen as prohibitive to adoption of such models.

Our members in Youth Justice and Community Services already undertake a range of diversionary programs for at risk and released First Nation detainees. These include residential programs with NGO's, educational programs, cultural programs, health programs and programs to assist with AOD addictions.

The following case study is a result of a brief study tour into several New Zealand juvenile justice system facilities over several days last year to support our submission into Shearer review into Youth Justice, where this case study is extracted from. It covers the adoption of diversionary programs and facilities and the change to the sentencing for children 14 years and under.

Case Study: The New Zealand Model

In August 2019 the Association visited New Zealand to learn about the country's unique youth justice system.

After addressing significantly high level of violence among youths through major reform, New Zealand now has a youth justice system to be envied by the world. The reforms have included early intervention by Police Liaison type workers with the Maori and specific centres for different crime (sex offenders) and interventions with traditional cultural programs. The early reports are that with the additional programs as an incentive, violence levels have been significantly reduced.

During the recent visit, the Association visited two centres on the North Island, Palmerston North Youth Residence and Napier Correctional Centre Youth Wing and can confirm that it appears that they are moving in the right direction and would recommend that the government also visit and consult with their New Zealand counterparts.

The laws regarding youth justice in New Zealand are enshrined in the Children Young Persons, and Their Families 1989 (Oranga Tamariki) Legislation Act. New Zealand's four youth justice residences house about 150 teenagers, who are generally aged 14 to 18. The Oranga Tamariki Act 1989 recently extended the "young person age" from 17 and under to instead include 17 year olds up until their 18th birthday. This change has applied since 01 July 2019.

The New Zealand Youth Justice system is designed to keep as many young people out of the official youth justice residences as possible, through rehabilitative treatment programmes.

There are nine specialist community treatment programmes for adolescents who sexually offend and one residential unit.

The only offences that children under 14 can be charged with are murder and manslaughter. Otherwise, children aged 10 to 13 are called child offenders and may be dealt with by police warning or Child Youth and Family Services intervention.

As at 30 June 2018 there were 220 young people in youth justice custody. About 40 per cent of youth offenders will have repeat visits to youth justice residences.

New Zealand's youth justice residences are designed with a community-minded, rehabilitation approach.

The following is a structured day in one of the residential centres¹:

A typical day at Korowai Manaaki (Youth Correctional Centre)

Weekdays

7am-7.30am: Wake up, shower, breakfast (toast, cereal or porridge and a hot drink).

Teens are on a chore roster that can include setting tables and washing dishes.

8.45am: School, which follows NCEA curriculum. Tablets with internet access are available under strict monitoring.

Midday: Lunch (for example, spaghetti carbonara with garlic bread, battered hot dogs with fries and tomato sauce).

3pm: School finishes. After-school courses include sport, cultural activities, life and vocational skills and chores.

5pm-6pm: Dinner (for example, sweet and sour pork with vegetable fried rice or roast beef with honey-roasted potatoes and vegetables).

6pm-8pm: More courses and two hours free time to make phone calls from communal phone (no internet or cell phones allowed), play chess or cards, and write letters. Special behaviour earns privileges such as playing approved music, or approved DVDs.

8.30pm: Teens go to their rooms.

9pm: Lights out. Good behaviour means being allowed out of room until 9.30pm.

Weekend

Teens can use gym and sports facilities and do art, model-making, song-writing and Māori or Pasifika cultural programmes. The girls' unit may do a make-up programme.

School holidays Emphasis on vocational skills such as driver licences, fork hoist or barista programmes.

¹ The NZ Herald, 29 April 2019, https://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=11975422

Recommendation

The Public Service Association recommends that all of the RCIBDIC should be implemented.

Recommendation

Self-determination should be adopted as a key aspect for realising the goals of closing the gap.

Recommendation

That employment in government agencies such as Youth Justice, Corrective Services and Community Services where the client base is disproportionately Aboriginal, should be increased until we get to the level of Aboriginal employment of the Aboriginal cohort of the client base.

Recommendation

Aboriginal employment policies in Government agencies should be regularly audited, reported on and reviewed as far as the success of programs and processes involved.

Recommendation

Identified Senior Executive Service roles should be increased to ensure that First Nations people become decision makers for policy that affects Aboriginal people.

Recommendation

That all government agencies establish Aboriginal networks and mentoring programs for all Aboriginal employees.

Recommendation

That circle sentencing be acknowledged as providing a successful outcome for those communities that have endorsed it by reducing recidivism and incarceration, and that Department of Communities and Justice work with local Aboriginal communities to increase the number of Local Government Areas where circle sentencing is available to Aboriginal offenders.

Recommendation

A supported process similar to the Local Court led circle sentencing be developed as an alternate to court appearances, supported by local Aboriginal communities, that provides an alternate pathway for Police utilising their discretionary powers.

Recommendation

Circle Sentencing should be made available for youth offenders.

Recommendation

That dedicated Aboriginal programs that operate for offenders, including those that address violence and Alcohol and Other Drugs, are provided to communities and schools as part of an early intervention process.

Recommendation

That dedicated Aboriginal programs are selected, developed, reviewed by Aboriginal workers, Community and Aboriginal management.

Recommendation

That budget austerity measures such as the 3% annual efficiency dividend budget cut, the labour expenses cap be removed from agencies that deliver outcomes for the Closing the Gap targets for reduced incarceration, including Community Services, Housing, Legal Aid, Corrective Services and Youth Justice.

Recommendation

The approach adopted during the COVID-19 pandemic of weighing the relative severity of the crime, and the risks not only of COVID-19 but other factors such as the physical and psychological health of First Nations people in granting of bail during remand and sentencing could be a consideration for future judicial law reform.

Recommendation

In the context of many inmates on remand spending significant number of months in custody, a review into education and work for inmates on remand should be conducted that investigates options for Aboriginal inmates to undertake greater education and

Recommendation

The Association submits that now that the NSW and Commonwealth governments are in agreement about reducing First Nation incarceration rates, an increase in funding for Aboriginal in custody and in community programs and education for offenders is supported to reduce the recidivism cycle.

Recommendation

The Association submits that now that the NSW and Commonwealth governments are in agreement about reducing First Nation incarceration rates, an increase in funding for Aboriginal programs is supported to reduce the recidivism cycle.

Recommendation

That the appropriate diversionary principles and sentencing guidelines are adopted to increase the "Age of Criminal Responsibility" to 15.

Terms of Reference

(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,

The workers in Corrective Services and Youth Justice have pride in running a professional and experienced corrective system. They support better outcomes for inmates and the community including reduced recidivism and are also charged responsibilities for inmate and community safety. Deaths in custody are a traumatic time for the family of inmates, and are

also traumatic for custodial staff. The PSA welcomes the scrutiny placed by oversight bodies on the work of custodial staff, despite the significant stress this places on the individual staff involved in incidents, as these independent oversight bodies have significant influence to develop learnings and improve systems that will reduce the likelihood of future deaths in custody.

The Productivity Commission reports on deaths in custody from apparent unnatural causes by indigenous status. The numbers include 7 Aboriginal deaths in this category in NSW correctional centres in the last ten reporting years.

Table 8A.16 Deaths from apparent unnatural causes by Indigenous status, number and rate per 100 Aboriginal and Torres Strait Islander/non-Indigenous prisoners (a)

		<i>Unit</i>	<i>NSW</i>	<i>Vic</i>	<i>Qld</i>	<i>WA</i>	<i>SA</i>	<i>Tas</i>	<i>ACT</i>	<i>NT</i>	<i>Aust</i>
Rate per 100 prisoners											
Aboriginal and Torres Strait Islander prisoners											
2018-19	rate	0.0 3	—	—	0.04	—	—	—	—	—	0.02
2017-18	rate	0.0 6	—	—	—	—	—	—	—	—	0.02
2016-17	rate	—	—	0.0 4	0.08	—	—	—	—	0.07	0.04
2015-16	rate	0.0 3	—	0.0 4	0.14	—	—	1.09	—	—	0.06
2014-15	rate	—	—	0.0 9	0.05	0.17	—	—	—	—	0.04
2013-14	rate	—	—	0.0 5	—	—	—	—	—	—	0.01
2012-13	rate	—	—	—	0.05	—	—	—	—	—	0.01
2011-12	rate	0.0 5	—	0.0 6	—	—	—	—	—	—	0.03
2010-11	rate	0.0 4	—	—	0.06	0.21	—	—	—	—	0.04
2009-10	rate	0.0 4	—	—	0.05	—	—	—	—	0.11	0.04
Non-Indigenous prisoners											
2018-19	rate	0.1 0	0.08	0.0 7	0.09	—	0.19	—	—	—	0.08
2017-18	rate	0.0 7	0.08	0.0 3	—	0.04	—	—	—	0.36	0.05
2016-17	rate	0.1 2	0.06	—	—	—	—	—	0.29	—	0.06
2015-16	rate	0.0 5	0.02	0.0 4	0.08	0.09	—	—	—	0.37	0.05

2014-15	rate	0.0 2	0.05	0.0 2	0.06	0.15	0.51	–	–	0.05
2013-14	rate	0.0 5	–	0.0 4	0.17	0.11	–	0.38	0.49	0.06
2012-13	rate	0.1 1	0.06	0.0 7	0.03	–	–	–	–	0.07
2011-12	rate	0.0 7	–	0.0 3	–	0.06	0.23	–	–	0.04
2010-11	rate	0.1 3	0.05	0.0 8	0.04	0.07	–	–	0.48	0.09
2009-10	rate	0.0 5	0.10	0.1 0	0.14	–	–	–	–	0.08

Source: Table 8A.16, Productivity Commission, Report on Government Services 2020^{xii}

There are a number of oversight bodies that currently look into aspects of deaths in custody in New South Wales.

These include:

- Commonwealth- Productivity Commission- Report on Government Services- Corrective Services
- NSW Coroner- Similar to children, all inmate deaths in custody trigger a coronial inquiry and as such are treated like a crime scene.
- NSW Ombudsman- Deputy Ombudsman
- Inspector Custodial Services- Can review a range of systems and
- Independent Commission Against Corruption- have a broad investigative power across the public sector, and have in the past undertaken investigations into incidents of use of force, as well as other matters in the custodial setting in the past.
- NSW Police- Will undertake investigations into Corrective Services Officers and regularly charge these officers with assault during use of force or for other offences.
- NSW Crime Commission- can and do investigate organise crime in in gaols and community
- Law Enforcement Conduct Commission-mainly looks into police conduct
- Auditor General- look into overall efficiency and compliance with legislation, and policies.
- Corrective Services - Internal professional standards- there are two main groups that come under Assistant Commissioner and regularly refer matters of staff conduct to NSW Police for investigation if there is a potential crime committed or undertake civil disciplinary matters if there is no crime but misconduct.

It has often been reported about the difficulties of over-sight bodies operating under the current government austerity measures. ICAC and Ombudsman have been vocal about the effects of the efficiency dividend and other budget reductions requiring ongoing cuts and reduction of staff.^{xiii}

The Premier in response has asked for a NSW Auditor General audit to:

“Assess the effectiveness of the financial arrangements and management practices in four integrity agencies: the Independent Commission Against Corruption, the Law Enforcement

Conduct Commission, the NSW Ombudsman, and the NSW Electoral Commission. It will also consider the roles of the Department of Premier and Cabinet and NSW Treasury in these processes.

This will include assessing:

- *how the integrity agencies assess the funding requirements for meeting their legislative mandate*
- *whether the existing funding mechanisms effectively support integrity agencies to achieve their legislative mandate*
- *whether integrity agencies monitor the efficiency of their operations.”^{xiv}*

All of the above oversight bodies are currently seeing a minimum of 3% annual budget cuts to their organisations, with most having experienced efficiency dividend budget cuts for the last decade. All operate with a heavy reliance on labour costs to undertake the work they do, leading to job cuts as the most likely area that the cuts can be realised. The Association has anecdotally seen significant reports from the members in these agencies of increased workload. The Association whilst representing members has also observed greater reluctance for these oversight bodies to investigate some matters.

At Risk Inmates

“In the period 2012 to 2016, the suicide rate for Indigenous Australians was estimated to be 23.7 per 100,000 twice the rate [11.6 per 100,00] for non-Indigenous Australians”^{xv}

First Nations people are more at risk of suicide and the Royal Commission into Black Deaths in Custody highlighted this and several of the causes.

A further question relating to at risk inmates is the proliferation of larger gaols recently, but without what the PSA/CPSU NSW states are adequate facilities for at risk inmate’s welfare.

All inmates as they enter custody in a Correctional Centre need to undertake a RIT process (Risk Intervention Team) which is conducted between Justice Health and Correctives Services when the inmate enters the court cells custody and then a remand or sentenced gaol. The RIT process looks at a range of risk factors including associations or threats with other inmates such as gang associations and violence, risks to physical and mental health, drug and alcohol issues, and escape risks. The roles for conducting the RIT include senior custodial staff, Justice Health professionals and Offenders Services and Programs staff. If an inmate is considered at risk of harm to themselves or others, they are often triaged into an observation cell or segregation cell where there are regular checks on the inmate either by CCTV or regular inspections. Depending on the risk, the inmate may be allocated a cell with another compatible inmate to allow support for each other. A similar approach occurs in Youth Justice with regular checks depending on the risk level.

The problem with this process in recent times with the increase in inmates in the gaol system (i.e. 2014 to prior to COVID-19 pandemic), higher amounts of people with mental illness and drug addictions, combined with staffing reductions and not enough observation cells means that inmate’s risks are prioritised. This means that if a person is required to have an

observation cell one day due to the risk, but higher risk inmates enter the next day, once the observations cells are filled, and the inmates with relative lesser risk will be transferred into the general population wings, where this level of observation is more difficult.

AGY_LOC_ID	AGY_REPORT_LABEL	Segregation Cells/ MPU	PRNA Cells	Cells with CCTV	Comments
BER	Berrima Correctional Centre	0		1	Now Closed
BRE	Brewarrina (Yetta Dhinnakkal) Centre	1		0	Now Closed
BRO	Broken Hill Correctional Centre	1		3	
BTC	Bolwara House Transitional Centre	0		0	
BTH	Bathurst Correctional Centre	13		28	
CDT	Compulsory Drug Treatment Correctional Centre	2		0	
CES	Cessnock Correctional Centre	15		12	
CLA	Clarence Correctional Centre	45		113	Commences operations July 1
COO	Cooma Correctional Centre	2		3	
DDL	Dawn De Loas Correctional Centre	8		2	
DIL	Dilwynia Correctional Centre	5		6	
EMU	Emu Plains Correctional Centre	3		1	
GLB	Goulburn Correctional Centre	0		7	
GNS	Glen Innes Correctional Centre	4		5	
GRA	Grafton Correctional Centre	2		7	
HRM	High Risk Management Correctional Centre	15		6	
HUN	Hunter Correctional Centre	10		28	
IRC	Illawarra Reintegration Centre	0		1	Now Closed
IVA	Ivanhoe (Warakiri) Centre	2		2	Now Closed
JM1	John Morony Correctional Centre (I)	9		10	
JUN	Junee Correctional Centre	20		3	
KCC	Kariong Correctional Centre	4		2	
KIR	Kirkconnell Correctional Centre	2		2	
LBH	Long Bay Hospital	16		10	
LGW	Lithgow Correctional Centre	46	24	2	
MAN	Mannus Correctional Centre	2		1	
MBK	St Heliers Correctional Centre	4		0	
MCQ	Macquarie Correctional Centre	10		28	
MNC	Mid North Coast Correctional Centre	52		14	
MRR	Metropolitan Remand and Reception Centre	16	16	26	
MSP	Metropolitan Special Programs Centre	10		27	
MUL	Silverwater Womens Correctional Centre	4		49	
MWCC	Mary Wade Correctional Centre	0		15	
OBE	Oberon Correctional Centre	0		2	
OMPC	Geoffrey Pearce Correctional Centre	8		6	
PKA	Parklea Correctional Centre	36		20	
PTC	Parramatta Transitional Centre	0		0	
SHLD	Shortland Correctional Centre	19		13	
STHC	South Coast Correctional Centre	20		13	
TAM	Tamworth Correctional Centre	0		3	
WEL	Wellington Correctional Centre	12		19	

Definitions	
Segregation	An inmate can only be placed on a segregated custody direction if in the opinion of the governor (delegate) such segregation is necessary.
PRNA	Protection Non Association (PRNA) areas are single accommodation cells or group of cells used to accommodate an inmate(s) who cannot, for the time being, associate with any other inmate, as any such association is likely to constitute a threat to the personal safety of the inmate.
Cells with CCTV	A cell with one and / or more camera(s) that has the ability to monitor for surveillance / security purposes.

Note: This information is correct as of 23/06/2020 from information sourced from OIMS and the daily state sheet.

Source: GIPA Application by Public Service Association with Department of Communities and Justice.

The above table lists the types of protection and observation cells available for at risk inmates. This list may not be mutually exclusive for the categories listed in these centres. The increase in cells with CCTV in several of the gaols is more aimed at reducing staff levels and reducing the requirement for physical staff inspections of cells. The above numbers indicate an approximate maximum of 418 segregation cells, 40 PRNA cells and 490 cells with CCTV (The rapid build centres have CCTV in dormitory cells) with these numbers not being mutually exclusive.

Adequate observation cells regardless of whether they have CCTV or physical check requirements are necessary if we are going to reduce deaths in custody. However, these cells provide a complication for Correctives management as they require greater staffing levels on a 24-hour basis than the general population cells and are limited by the design of many

centres. Many members and delegates have complained that there are not enough these cells and the process of prioritising (juggling) higher risk inmates in both old and new centres.

There is a risk that with the increase in mental health and drug affected inmates in custody, that First Nation inmates may not get the interventions that they require. We are recommending that an audit is conducted across NSW Correctives of inmate's risks of self-harm and suicide and establish an appropriate number of observation cells in each centre.

Recommendation

An audit is conducted across NSW Correctives of inmate's risks of self-harm and suicide and establish an appropriate number of observation cells in each centre.

Recommendation

That the Oversight agencies that deal with Aboriginal incarceration and deaths in custody are exempted from government budget cuts measures and that the funding is restored to real 2011 levels.

(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,

Generally, there is not overlap, but instead complementary operation. For example, recently there was an ICAC report released that occurred regarding the use of force in a Correctional Centre. This occurred after the investigations Unit and Professional Standards Committee reviewed the matter and the NSW Ombudsman referred the matter to ICAC.^{xvi} This ICAC Report led to a review in professional standards practices and included a revision of the practices for use of force, and subsequent investigations. The inclusion of ICAC recommendation for systemic issues with reporting and integrity, and also led to the discipline of several prison staff.

Similar reviews into use of force systems have been conducted by the Inspector Custodial Services.^{xvii}

The NSW Coroner also holds mandatory inquiries and reports annually on all deaths in custody and with police.^{xviii}

(d) how those functions should be undertaken and what structures are appropriate, and

In May 2014 the NSW Ombudsman adopted a model that could be mirrored in other oversight organisations. The NSW Deputy Ombudsman (Aboriginal Programs) role was established to monitor and assess the delivery of designated Aboriginal programs in NSW.

The NSW Ombudsman Aboriginal Engagement and Programs Division came under this Deputy Ombudsman.

With the adoption through the COAG agreement of states adopting Close the Gap targets, Aboriginal expertise is required to assist all the oversight bodies. Consultation should occur with First Nations people, however, a model that includes a panel of Aboriginal experts being

established to provide guidance on processes and operations from a First Nations perspective could act in a similar way as the Deputy Ombudsman role in other agencies.

Recommendation

With the adoption by NSW of the Close the Gap targets through the intergovernmental agreement, that the NSW Government consider utilising a panel of First Nations with expertise to guide oversight agencies in undertaking their roles and functions.

(e) any other related matter.

The PSA supports the current advocacy to reduce Aboriginal incarceration, and the PSA Aboriginal Advisory Council has moved to support the Black Lives Matter movement. This support however, does not extend to small elements of the campaign that call for defunding of Police and Corrective Services.

This call is removed from practical realities of the issue. Where this approach of defunding has been adopted overseas through neo-liberal mechanisms, the opposite effect has occurred. Instead of seeing programs and treatment to stop offences and recidivism, state prisons that have seen funds cut have continued but with lesser quality and private gaols or super gaols which house thousands of inmates with only a few officers, and virtually no programs and education have proliferated. These examples have not provided good results for the offenders or the communities that the corrective system serve, with in custody crimes, recidivism and sentencing all increasing, as funding for services, treatments, interventions and programs being reduced to compensate for increased imprisonment levels.

The vexed issue of family violence is also a polarising issue for many First Nations people and their communities, with a number of the community wanting actions against the perpetrators to stop the harm to women and children. This issue is a priority, and there are many communities that have their own solutions, which do not see the perpetrator enter into a cycle of repeat offence and custody.

NSW should take the higher ground of adopting all the Royal Commission into Black Deaths in Custody recommendations by improving and increasing diversionary programs, stopping the cycle of violence against women and children, homelessness, and Out of Home Care.

ⁱ Chan Nicholas, The Bureau of Crime Statistics and Research, The impact of COVID-19 measures on the size of the NSW adult prison population, No 149, July 2020

ⁱⁱ Ibid. p 8

ⁱⁱⁱ The Australian Law Reform Commission, Disproportionate Incarceration Rate, Website, 9 January 2018

^{iv} The Senate, Select Committee on Regional and Remote Indigenous Communities, Indigenous Australian, Incarcerations and the Criminal Justice System, Discussion Paper, March 2010,

^v Commonwealth of Australia, Department of Prime Minister and Cabinet, Closing the Gap Report, 2020

^{vi} The Senate, Select Committee on Regional and Remote Indigenous Communities, Indigenous Australian, Incarcerations and the Criminal Justice System, Discussion Paper, March 2010, page i

^{vii} Snowball L., (2008) Diversion of Indigenous juvenile offenders, Trends & issues in crime and criminal justice no. 355 (Canberra), Australian Institute of Criminology

^{viii} Source BOSCAR website, Reoffending in NSW, webpage and dataset, https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx

^{ix} Yeong, S. and Moore, E., (2020). Circle Sentencing, incarceration and recidivism (Crime and Justice Bulletin No. 226).

Sydney: NSW Bureau of Crime Statistics and Research.

^x NSW Department of Justice Website, Review of the Minimum Age of Criminal Responsibility, https://www.justice.nsw.gov.au/justicepolicy/Pages/lpcld/lpcld_consultation/review-minimum-age-of-criminal-responsibility.aspx

^{xi} Ralston N., Whitbourn M., Age of Criminal responsibility to remain at 10 until at least 2021, Sydney Morning Herald, July 27 2020

^{xii} Report on Government Services 2020, Corrective Services, Productivity Commission

^{xiii} Visentin L., 'Smallest ICAC in history': Corruption watchdog warns of job cuts without more funding, , Sydney Morning Herald, <https://www.smh.com.au/politics/nsw/smallest-icac-in-history-corruption-watchdog-warns-of-job-cuts-without-more-funding-20191205-p53h4g.html>

^{xiv} NSW Audit Office Website, 4 November 2019, request by Minister for State, Don Harwin <https://www.audit.nsw.gov.au/our-work/requests-for-audit>

^{xv} Neelima Choahan, Suicide among Aboriginal and Torres Strait Islander people may be higher than reported, (2018), Royal College of General Practitioners

^{xvi} ICAC Report Investigation into the Conduct of the NSW Corrective Services Officers at Lithgow Correctional Centre, June 2019.

^{xvii} ICS Report, Use of Force, Separation Segregation and Confinement in NSW Juvenile Justice Centres

^{xviii} NSW Coroner Website, Deaths in Custody and Police Operations Annual Reports <https://coroners.nsw.gov.au/coroners-court/resources/publications/deaths-in-custody-and-police-operations-annual-reports.html>