AIDA 25 YEARS

AUSTRALIAN INDIGENOUS DOCTORS' ASSOCIATION

Celebrating the past challenging the future

Incarceration: the disproportionate impacts facing Aboriginal and Torres Strait Islander people

Incarceration: the disproportionate impacts facing Aboriginal and Torres Strait Islander people

The Australian Indigenous Doctors' Association (AIDA) is the peak body representing Aboriginal and Torres Strait Islander doctors and medical students in Australia. Our purpose is to grow ethical and professional Aboriginal and Torres Strait Islander doctors who will lead and drive equitable and just health outcomes for all our people. Our vision is for Aboriginal and Torres Strait Islander people to have self-determination and equitable health and life outcomes in a culturally safe health system.

Introduction

Incarceration is a cross-cutting issue; it is a social justice issue, a legal issue, but it is also a health issue. Aboriginal and Torres Strait Islanders are over-represented in correctional settings, and this intersects with other poorer health outcomes facing Aboriginal and Torres Strait Islander people. Incarceration rates are directly linked to the social determinants of health, which broadly refers to the circumstances in which people live, grow, work, and age.[1] This can also include housing, employment, education, general access to services, and environmental factors. For Aboriginal and Torres Strait Islander people, this definition should connect with a strengths-based approach and be further expanded to include cultural factors including identity, ceremonial activities, and family, as well as connections to Country and community.[2] These are all important determinants of Aboriginal and Torres Strait Islander health and wellbeing and are fundamental to better health outcomes for our people.[3]

Cultural determinants such as identity, connections to family and community, kinship, language, culture, and Country are vitally important for the health and wellbeing of Aboriginal and Torres Strait Islander people. The cultural determinants inform Aboriginal and Torres Strait Islander people how to live our lives, how to connect to each other and how to stay strong in culture. Incarceration often does not allow for cultural connection – most people are taken away from kinship relationships, Country, and language.

Many of these social determinants of health intersect with other areas of social wellbeing, and compound with other issues such as housing, employment, education. It is crucial that these factors be assessed and understood to best address the health gap between Aboriginal and Torres Strait Islander and

[1] World Health Organisation, "Closing the Gap in a Generation: Health Equity through Action on the Social Determinants of Health - Final Report of the Commission on Social Determinants of Health" (Geneva, 2008), https://www.who.int/publications-detail-redirect/WHO-IER-CSDH-08.1.

[2] Summer May Finlay, Megan Williams, and Melissa Sweet, *#Justjustice: Tackling the Over-Incarceration of Aboriginal and Torres Strait Islander Peoples* (Cygnet: Croakey, 2017); William Fogarty et al., "Deficit Discourse and Strengths-Based Approaches: Changing the Narrative of Aboriginal and Torres Strait Islander Health and Wellbeing" (Melbourne: The Lowitja Institute, 2018), https://www.lowitja.org.au/page/services/resources/health-policy-and-systems/health-policy/deficit-discourse-strengths-based

[3] Australian Institute of Health and Welfare, "Australia's Welfare 2017," Australia's Welfare Series (Canberra: AIHW, 2017), https://www.aihw.gov.au/reports/australias-welfare/australias-welfare-2017/contents/summary.

non-Indigenous Australians.[4] In this context, incarceration should be seen as a product of these social determinants of health, thus access to culturally safe healthcare and closing the gap on health outcomes can be seen as preventative strategies for incarceration. Increasing the quality of healthcare provided to Aboriginal and Torres Strait Islander people and ensuring it is culturally safe to those in correctional settings can positively contribute to better health and social outcomes. Any efforts on this front need to be steeped in self-determination; the governance of Aboriginal and Torres Strait Islander people over decisions that affect their community.

AIDA advocates for the provision of culturally safe and appropriate healthcare for incarcerated Aboriginal and Torres Strait Islander people, including access to Aboriginal and Torres Strait Islander healthcare professionals, and culturally appropriate health assessments and treatments. This includes consulting with community Elders, Aboriginal Community-Controlled Health Organisations (ACCHOs), and Peak Aboriginal and Torres Strait Islander health bodies such as AIDA and those represented in the Coalition of Peaks. This is in line with Priority Reform Two of the National Agreement on Closing the Gap, which sets the target for building the community-controlled sector to deliver high quality services to meet the needs of Aboriginal and Torres Strait Islander people. The community-controlled sector "implicitly recognises the strength, the expertise and the right to self-determination by Indigenous communities" and is key to achieving better health outcomes for Aboriginal and Torres Strait Islander people.[5]

Australia has a reputation as the 'Incarceration Nation', but this doesn't need to be the case. Over-representation in custody has many causes, but not all are situated within the judicial system; other social, economic, and historic factors also contribute:

> [t]he bigger picture cannot be ignored: the history of colonisation and dispossession has had enduring effects on Aboriginal and Torres Strait Islander communities and individuals. For example, there is a strong correlation between having a family member removed and arrest and incarceration. The high rate of imprisonment is occurring in the context of poor health, inadequate housing, high levels of family violence, and high levels of unemployment.[6]

This highlights the intersection between incarceration, social justice issues, incarceration, health, and broader challenges facing Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander health can be best characterised as the intersection between the physical, emotional, social, and cultural wellbeing "of the whole community in which each individual is able to achieve their full potential thereby bringing about the total wellbeing of their community".[7] It is therefore critical that any discussions around the incarceration of Aboriginal and Torres Strait Islander people acknowledge the pervasive and ongoing

---

[4] Australian Health Ministers' Advisory Council, "Aboriginal and Torres Strait Islander Health Performance Framework 2017 Report" (Canberra: AHMAC, 2017), https://www.aihw.gov.au/reports/indigenous-australians/health-performance-framework-2017-sa/contents/table-of-contents; Australian Institute of Health and Welfare, "Australia's Health 2018," Australia's Health Series (AIHW, 2018), https://www.aihw.gov.au/reports/australias-health/australias-health-2018/contents/table-of-contents; Alison L. Booth and Nick Carroll, "Economic Status and the Indigenous/Non-Indigenous Health Gap," *Economics Letters* 99, no. 3 (June 1, 2008): 604–6; Michael Marmot, "Social Determinants and the Health of Indigenous Australians," *Medical Journal of Australia* 194, no. 10 (May 16, 2011), https://www.mja.com.au/journal/2011/194/10/social-determinants-and-health-indigenous-australians.

[5] 'Priority Reforms | Closing the Gap', accessed 17 May 2022, https://www.closingthegap.gov.au/national-agreement/priority-reforms.

[6] Aboriginal and Torres Strait Islander Social Justice Commissioner, "Submission No 5 to Senate Finance and Public Administration References Committee," Inquiry into Aboriginal and Torres Strait Islander Experience of Law Enforcement and Justice Services (Canberra: The Senate, 2016), Australia, https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Finance_and_Public_Administration/Legalassistanceservices/Report.

[7] The National Aboriginal Community Controlled Health Organisation, "Constitution for the National Aboriginal Community Controlled Health Organisation" (NACCHO, 2011), 12.

impacts of colonisation and systemic, institutionalised racism,[8] and that these discussions do not deflate the scope and enormity of the problem, but also do not perpetuate a deficit discourse.[9]

Many of these social, economic and health issues are recognised in national targets such as 'Closing the Gap' targets and the Productivity Commission report, *Overcoming Indigenous Disadvantage: Key Indicators 2016*.[10] A holistic approach is necessary to address the root causes and impacts of incarceration; we have an opportunity as a nation to address the systemic and institutionalised racism that has led to poor health outcomes for Aboriginal and Torres Strait Islander people, and ensure that incarceration is never the first line of action.

Incarceration

Aboriginal and Torres Strait Islander people are vastly over-represented in all systems of incarceration in Australia. Even though Aboriginal and Torres Strait Islander people make up approximately 3.3% of Australia's population, they comprise 27% of the national adult prison population.[11] As of 30 June 2021, Aboriginal and Torres Strait Islander prisoners made up 30% of all prisoners, with 78% experiencing prior adult imprisonment.[12] For young Aboriginal and Torres Strait Islander Australians (aged 10–17), they were 20 times as likely as young non-Indigenous Australians to be in detention on an average night in the June quarter 2021. This number fluctuated and was 16–25 times the non-Indigenous rate over the four-year period.[13] Aboriginal and Torres Strait Islanders are also vastly over-represented in deaths in custody; in 2020–21 there were 82 deaths in custody, and 66 in prison custody, with the rates of 15 out of 82, and 12 out of 66 Aboriginal and Torres Strait Islander deaths to non-Indigenous deaths respectively (a rate of 18% Aboriginal and Torres Strait Islander).[14]

Whilst there have been two Royal Commissions relating to the incarceration of Aboriginal and Torres Strait Islander people between 1987 and 2016, very little progress has been made in the years since. In 1991, the final report of The Royal Commission into Aboriginal Deaths in Custody (RCIADIC) found that Aboriginal and Torres Strait Islanders were grossly over-represented in both police and prison custody, and "is it this fact that provides the immediate explanation for the disturbing number of Aboriginal deaths in custody".[15] The

[8] Yin Paradies, "Colonisation, Racism and Indigenous Health," *Journal of Population Research* 33, no. 1 (March 1, 2016): 83–96.
[9] Fogarty et al., "Deficit Discourse and Strengths-Based Approaches."
[10] Council of Australian Governments, "National Indigenous Reform Agreement (Closing the Gap)" (2008); Steering Committee for the Review of Government Service Provision, "Overcoming Indigenous Disadvantage: Key Indicators 2016" (Canberra: The Productivity Commission, November 17, 2016), https://www.pc.gov.au/research/ongoing/overcoming-indigenous-disadvantage/2016.
[11] "Estimates of Aboriginal and Torres Strait Islander Australians, June 2016 | Australian Bureau of Statistics," August 31, 2018, https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/estimates-aboriginal-and-torres-strait-islander-australians/latest-release; "Prisoners in Australia, 2021 | Australian Bureau of Statistics," April 13, 2022, https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release.
[12] "Prisoners in Australia, 2021 | Australian Bureau of Statistics."
[13] "Youth Detention Population in Australia 2021, Summary," Australian Institute of Health and Welfare, accessed April 13, 2022, https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/contents/summary.
[14] Australian Institute of Criminology, "New Deaths in Custody Report Released," Australian Institute of Criminology, accessed April 13, 2022, https://www.aic.gov.au/media-centre/news/new-deaths-custody-report-released-0.
[15] Patrick Dodson et al., "Royal Commission into Aboriginal Deaths in Custody: Final Report," Report (Canberra: Australasian Legal Information Institute, Government of Australia, April 15, 1991), 9.4.1, Australia, https://apo.org.au/node/30017.

RCIADIC identified a range of social indicators of disadvantage as a cause for this over-representation and identified structural causes including dispossession of land, with one of the key recommendations to provide better healthcare in prisons for incarcerated Aboriginal and Torres Strait Islanders[16]. The RCIADIC also identified further indicators which intersect with health issues; economic position and income, housing, employment, education, health, and alcohol and other drug use.[17] The RCIADIC found that the root causes of the over-representation of Aboriginal and Torres Strait Islander people in custody were situated *outside* of the social justice system, not *within.*[18] This further highlights the need for the inclusion of the social, economic and health circumstances and disadvantages that can lead to incarceration, as well as the system-level barriers such as systemic and institutionalised racism. This intersection between the social determinants of health and incarceration highlights the need for a holistic approach steeped in self-determination to address the many issues at play to achieve more equitable outcomes for Aboriginal and Torres Strait Islander people.

Self-determination needs to be central to any discussions or decisions regarding Aboriginal and Torres Strait Islander health and welfare. A report completed by the Australian National University reviewing the RCIADIC 30 years on has found that overall, the government has failed to deliver on the recommendations from the Royal Commission.[19] They highlight that the government relies on reporting by Deloitte to measure its progress and success on the implementation of the recommendations, and this should be reevaluated. They argue that "the scope and the methodology of the Deloitte review misrepresents governments' responses to the RCIADIC, and has the potential to misinform policy and practice responses to Aboriginal deaths in custody."[20] They further suggest that any reviews should be led by Aboriginal and Torres Strait Islander people to ensure that there are strong terms of reference that draw on community concerns, and that the methodology is based on input from Aboriginal and Torres Strait Island people. This ensures that self-determination is built into the design, control, and assessment of reviews and subsequent policies, which is necessary for equitable outcomes. This should be the baseline across all engagements relating to Aboriginal and Torres Strait Islander health; self-determination is crucial and should always be central to inform policy decisions to create equitable outcomes and work towards closing the gap.

Raising the age of criminal responsibility

In 2021, over thirty countries in the United Nations (UN) renewed their calls for Australia to heed their 2019 recommendation to raise the age of criminal responsibility to 14 years old.[21] A similar recommendation had already been made in the 2017 report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory. Yet, despite those recommendations, at the time of publication, a ten-year-old child in Australia can still be sentenced to serve time at a juvenile detention

[16] Megan Williams, "Comprehensive Indigenous Health Care in Prisons Requires Federal Funding of Community-Controlled Services," The Conversation, accessed June 15, 2021, http://theconversation.com/comprehensive-indigenous-health-care-in-prisons-requires-federal-funding-of-community-controlled-services-158131; Dodson et al., "Royal Commission into Aboriginal Deaths in Custody," 1.4.2.
[17] Dodson et al., "Royal Commission into Aboriginal Deaths in Custody," 1.3.6.
[18] Australian Law Reform Commission, *Incarceration Rates of Aboriginal and Torres Strait Islander Peoples*, Discussion paper No 84, 2017.
[19] Thalia Anthony et al., "30 Years on: Royal Commission into Aboriginal Deaths in Custody Recommendations Remain Unimplemented," Working paper (Centre for Aboriginal Economic Policy Research (ANU), April 15, 2021), Australia.
[20] Anthony et al., 16.
[21] United Nations, "Concluding Observations on the Combined Fifth and Sixth Periodic Reports of Australia," Convention on the Rights of the Child, 2019.

centre, defying international standards and practice.[22] The Don Dale Youth Detention Centre in Darwin has for some years now been the focus of many claims of abuse, neglect, and mistreatment at the Royal Commission, who demanded its immediate closure, and made national headlines for its treatment of Aboriginal and Torres Strait Islander young people including the use of restraints, torture, and solitary confinement.

Children do not belong in the juvenile justice system, but rather should remain connected to family, community, and Country. In 2020, close to 600 children between 10 and 13 years old were incarcerated, with 65% of them being Aboriginal or Torres Strait Islander children.[23] The rate of supervision in custody for Aboriginal and Torres Strait Islander children aged 10-17 is 16 times higher than the non-Indigenous rate.[24] In these age groups, especially under the age of 13, children have not yet fully developed abstract thinking and reasoning skills, as well as their sense of justice, morals, empathy, patience, tolerance, and responsibility – skills that need positive role models and supportive environments to grow strong, not prisons.[25]

Incarceration, but especially youth incarceration, leads to poorer health outcomes and compounds with other social determinants of health such as education, employment, and development. Raising the age of criminal responsibility is also critical to ensuring the Closing the Gap targets are met.[26] As the The Royal Australasian College of Physicians (RACP) summarises:

> Incarcerated adolescents are more likely to experience poorer health and life outcomes and disproportionately high levels of disadvantage over that of the general population. … interactions between disadvantage, incarceration, poor health and well-being and life outcomes are complex.[27]

Alongside other peak organisations, including the Australian Medical Association, the Law Council of Australia, and the Australian Law Reform Commission, AIDA is a key supporter of the Raise The Age campaign. This campaign advocates for the increase of the age of criminal responsibility to at least 14 years old in Australia. In 2019, just over half (53 per cent) of young people in detention were Aboriginal or Torres Strait Islander young people.[28] Similarly, in 2018-19,

> on average, Indigenous young people entered youth justice supervision at a younger age than non-Indigenous young people. 38 per cent of Indigenous young people under supervision were first supervised when aged between ten to thirteen, compared with 15 per cent of non-Indigenous young people.[29]

Justice supervision of Aboriginal and Torres Strait Islander children and young people results in denial of connection to culture, changes in familial structures, underdevelopment and failure to thrive, and the child entering a cycle of trauma and re-traumatisation.[30] The health impacts of youth incarceration have been

---

[22] Sophie Trevitt and Bill Browne, "Raising the Age of Criminal Responsibility" (Canberra: The Australian Institute, Change the Record, July 2020), https://australiainstitute.org.au/report/raising-the-age-of-criminal-responsibility/.
[23] "Youth Justice in Australia 2019-20, Summary," Australian Institute of Health and Welfare, accessed May 17, 2022, https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2019-20/contents/summary.
[24] "Youth Justice in Australia 2019-20, Summary."
[25] Amnesty International Australia, "A Brighter Tomorrow: Keeping Indigenous Kids in the Community and out of Detention in Australia." (Broadway: Amnesty International Australia, 2015), https://www.amnesty.org.au/report-brighter-tomorrow/.
[26] "#RaiseTheAge Is Critical for Closing the Gap Targets: Senior Paediatrician," *Croakey Health Media* (blog), July 31, 2020, https://www.croakey.org/raisetheage-is-critical-for-closing-the-gap-targets-senior-paediatrician/.
[27] The Royal Australasian College of Physicians, *The Health and Well-Being of Incarcerated Adolescent* (Sydney, 2011), 4.
[28] "Youth Detention Population in Australia 2021, Summary."
[29] Australian Institute of Health and Welfare, "Youth Justice in Australia 2018–19," 2020, https://www.aihw.gov.au/getmedia/a5a364b9-fe69-4d02-9c93-1965a69a3d93/aihw-juv-132.pdf.aspx?inline=true.
[30] Judy Atkinson et al., "Addressing Individual and Community Transgenerational Trauma," in *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*, 2nd ed. (Commonwealth of

well-documented; an increased rate of health concerns such as mental illness, substance abuse, sexually transmitted infections occur with incarceration, and this impact is even more significant on younger children.[31] AIDA strongly advocates for the age of criminal responsibility to be raised to at least 14 years old, in line with international standards.[32]

It is vital that the juvenile justice system works together with communities to stop this cycle of trauma and instead instill strength in young people's wellbeing, identity, and sense of purpose to protect against, and divert from, a future of crime. Incarceration places an undue burden on families and adds complexity to family and community relationships**.** This is particularly true for Aboriginal and Torres Strait Islander families for whom familial relationships are central in defining identity and a sense of connectedness to kinship and culture. Aboriginal families are pivotal to the wellbeing of Aboriginal and Torres Strait Islander communities and their culture and survival.

In addition, there is a strong correlation between young people in out-of-home care and those subject to youth justice supervision. Out-of-home care is seen as a contributing factor to youth incarceration; according to Victoria Legal Aid, young people in out-of-home care are almost twice as likely to face criminal charges as those who remain with family. In addition, a family history of incarceration is seen as a contributing factor to incarceration (1 in 5, or 18% of prison entrants had a parent incarcerated when they were a child) and is more prevalent among Aboriginal and Torres Strait Islander entrants (31%).[33] This highlights the intricate relationship between the social determinants of health, incarceration, intergenerational trauma, and adverse health outcomes facing Aboriginal and Torres Strait Islanders, and reinforces the need to address the root causes of incarceration in order to break these cycles of disadvantage.

National Agreement on Closing the Gap

The two Closing the Gap targets set under the National Agreement most directly related to incarceration are Targets 10 and 11 (see table below), however all Targets and Priority Reforms critically need to be met to achieve equitable health, social, and economic outcomes for Aboriginal and Torres Strait Islanders.

The National Agreement on Closing the Gap target states that "by 2031, [Australia will] reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by 30 per cent".[34] However, in the four-year period to 2019, the rate of Aboriginal and Torres Strait Islander young people in detention fluctuated at 19 to 26 times the rate of non-Indigenous people.[35] The higher rates of detention for Aboriginal

Australia, 2014), 373–82, https://indigenouspsyched.org.au/resource/addressing-individual-and-community-transgenerational-trauma/.

[31] The Royal Australasian College of Physicians, *The Health and Well-Being of Incarcerated Adolescent*.

[32] "Australia Urged to Follow UN Advice and Raise Age of Criminal Responsibility by Four Years," the Guardian, September 26, 2019, http://www.theguardian.com/law/2019/sep/26/australia-urged-to-follow-un-advice-and-raise-age-of-criminal-responsibility-by-four-years.

[33] "The Health of Australia's Prisoners 2018, Summary," Australian Institute of Health and Welfare, accessed April 20, 2022, https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary.

[34] Council of Australian Government and Coalition of Peaks, "National Agreement of Closing the Gap."

[35] "Youth Detention Population in Australia 2019, Summary - Australian Institute of Health and Welfare," accessed February 8, 2021, https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2019/contents/summary.

and Torres Strait Islander young people means poorer health outcomes, including mental health and physical wellbeing,[36] and impacts on social and emotional wellbeing.[37]

	Outcome	Target	Progress at June 2020
Target 10	Aboriginal and Torres Strait Islander people are not over-represented in the criminal justice system. Target 10 is a measure of over-representation of Aboriginal and Torres Strait Islander adults in custody. It is the rate of Aboriginal and Torres Strait Islander adults incarcerated per 100,000 adult population.	By 2031, reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 per cent.	At 30 June 2020, the rate of Aboriginal and Torres Strait Islander prisoners was 2081 per 100,000 adult population, an increase from 2019, with the national target of a *'reduction of at least 15 per cent in the incarceration rate'* not on track to be met.[38]
Target 11	Aboriginal and Torres Strait Islander young people are not over-represented in the criminal justice system. This is measured by the rate of Aboriginal and Torres Strait Islander children aged 10-17 years in detention.	By 2031, reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 per cent	In 2019-2020, the rate of youth Aboriginal and Torres Strait Islander incarceration was 25.7 per 10,000 children, with the national target of a *'decrease of at least 30 per cent in the detention rate'* on track to be met.[39]

To improve progress against these outcomes, embedding cultural safety across the entire human service system is required. The effective delivery of health services for Aboriginal and Torres Strait Islander people hinges on this, and it starts in medical schools for our medical students and in other health settings where our doctors work. The Priority Reforms and Socio-Economic Outcomes underpinned by the National Closing the Gap Agreement are dependent on the provision of a culturally safe health system, which includes the interpersonal and internalised attributes of staff. Patient-centred, holistic healthcare must be central to the treatment of Aboriginal and Torres Strait Islander patients to best ensure a culturally safe approach to clinical practice.

[36] The Royal Australasian College of Physicians, "The Health and Wellbeing on Incarcerated Adolescents," 2011, https://www.racp.edu.au/docs/default-source/advocacy-library/the-health-and-wellbeing-on-incarcerated-adolescents.pdf.

[37] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, "Chapter 4 The Link between Health and the Criminal Justice System," in *Doing Time - Time for Doing - Indigenous Youth in the Criminal Justice System* (Canberra, 2011), 4, https://www.aph.gov.au/Parliamentary_Business/Committees/Committees_Exposed/atsia/sentencing/report/chapter4.

[38] Productivity Commission, "Closing the Gap Annual Data Compilation Report July 2021" (Productivity Commission, 2021), Australia.

[39] Productivity Commission.

Incarceration and the Social Determinants of Health

The rates of incarceration of Aboriginal and Torres Strait Islander adults are inseparable from the social determinants of health such as access to culturally safe healthcare, mental health and disability services, education, housing and homelessness, and employment. The links between poor health, employment opportunity, lack of educational attainment, insecure housing and homelessness, and subsequent entry into the criminal justice system are well established.[40] Succinctly put, "the role of the criminal justice system cannot be disentangled from the complex dynamics that sustain and compound high levels of disadvantage and in turn contribute directly to high levels of victimisation in many [Aboriginal and Torres Strait Islander] communities". [41]

The social and cultural determinants of health referred to above are vitally important for establishing a foundation for healthy lives. Addressing social determinants such as health, education, employment, and housing are imperative to providing alternatives to crime for children and young people. AIDA believes the most suitable place for Aboriginal and Torres Strait Islander children and young people to grow into healthy, independent adults, is with their community, learning through culture and family and being treated with respect. Aboriginal and Torres Strait Islander people with existing complex health needs, in particular Fetal Alcohol Spectrum Disorder (FASD), mental health conditions, and intellectual disabilities, are particularly vulnerable in the prison system and are key groups that are overrepresented and experience a lack of culturally appropriate support through the judicial process, and, particularly regarding sentencing.

Data collection remains an issue regarding the social determinants of health, and is captured in Priority Reform Four of the National Agreement on Closing the Gap.[42] The Australian Institute of Health and Welfare, who publish biennial reports on the state of Australia's health, have repeatedly highlighted the gaps and limitations with existing data collection and analysis. This has led to shortcomings on the monitoring of social determinants of health, as well as these impacts on equitable health outcomes in Australia.[43] As this data leads to health policy decisions, it is critical that the collection and analysis of the data is accurate, systematic, and captures the extent of various issues.[44] In particular, this is critical where two characteristics or issues intersect and have the potential to reinforce inequalities and adverse health outcomes.[45]

Aboriginal and Torres Strait Islander people with mental and cognitive disability are overrepresented in the prison system. In 2018, the likelihood of 'profound or severe' disability was particularly high among Aboriginal and Torres Strait Islander prisoners (48%).[46] Alarmingly,

> a Human Rights Watch analysis of coroners' inquest and media reports between 2010 and 2020 found that about 60 percent of adults who died in prisons in Western Australia had a disability,

[40] The Australian Law Reform Commission, "Pathways to Justice–Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples (ALRC Report 133)," 2017, https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/.
[41] The Australian Law Reform Commission, 62.
[42] Joanne Flavel, Martin McKee, Toby Freeman, Connie Musolino, Helen Eyk, Fisaha H Tesfay and Fran Baum, 'The Need for Improved Australian Data on Social Determinants of Health Inequities', *Medical Journal of Australia* 216, no. 8 (2 May 2022).
[43] Flavel, et al.
[44] Dharmenaan Palamuthusingam et al., 'Health Data Linkage Research in Australia Remains Challenging', *Internal Medicine Journal* 49, no. 4 (April 2019): 539–44.
[45] Joanne Flavel et al., 'The Need for Improved Australian Data on Social Determinants of Health Inequities', *Medical Journal of Australia* 216, no. 8 (2022).
[46] Australian Human Rights Commission, 'People with Disability and the Criminal Justice System Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability', (Sydney: Australian Human Rights Commission, 2020) https://humanrights.gov.au/sites/default/files/ahrc_2020_submission_to_disability_rc_-_criminal_justice_final.pdf.

including mental health conditions… and half of these deaths were of Aboriginal and Torres Strait Islander prisoners.[47]

Aboriginal and Torres Strait Islander young people involved in the juvenile justice system are shown to have high rates of health issues.[48] These health concerns can include poor mental health and cognitive disability such as depression, anxiety, and post-traumatic stress disorder. Children's brains are still developing well into their late teens and the effects of confinement in the judicial system can adversely affect their development.

Fetal Alcohol Spectrum Disorder and Mental Health

FASD is an invisible disability that presents itself in different ways in children who "will experience some degree of challenges in their daily living, and need support with motor skills, physical health, learning, memory, attention, communication, emotional regulation and social skills to reach their full potential".[49] FASD and other cognitive disabilities are often only diagnosed during screenings on entry to prison. However, subsequent treatment and access to services focuses primarily on the offending behaviour(s), rather than the "complex social disadvantage or disability, mental health or alcohol and other drug support needs".[50] The impacts of FASD may result in an increased risk of contact with the criminal justice system, and detainees with FASD may "have an impaired ability to navigate the system effectively, including diminished competence or capacity to stand trial".[51] One of the recommendations to come from the Senate Enquiry into Effective Approaches to Prevention, Diagnosis and Support for FASD 2020-2021 was the recommendation that "the Department of Health allocate specific funding aimed at supporting First Nations community-led projects to prevent and manage FASD",[52] further reinforcing that the community-controlled sector is best-placed to provide culturally safe and appropriate support and care to Aboriginal and Torres Strait Islander people. The over-representation of FASD in incarcerated Aboriginal and Torres Strait Islander people and the difficulties they face within the criminal justice system is yet another example of an intersection between incarceration and health, with an issue that requires tailored, culturally safe support and care.[53]

Mental health is another intersecting health issue; contact with the criminal justice system can adversely impact the mental health of individuals, their families, and their communities, but mental wellbeing can also

[47] 'Australia: Deaths of Prisoners with Disabilities', *Human Rights Watch* (blog), 15 September 2020, https://www.hrw.org/news/2020/09/15/australia-deaths-prisoners-disabilities. Accessed 7 April 2022.
[48] "National Data on the Health of Justice-Involved Young People: A Feasibility Study 2016–17 , Table of Contents," Australian Institute of Health and Welfare, https://www.aihw.gov.au/reports/youth-justice/health-justice-involved-youth-2016-17/contents/table-of-contents. accessed 2 May 2022,
[49] "What Is FASD?," *NOFASD Australia* (blog), , https://www.nofasd.org.au/alcohol-and-pregnancy/what-is-fasd/. accessed 1 May 2022.
[50] Ruth McCausland, "Indigenous People, Mental Health, Cognitive Disabilities and the Criminal Justice System," *Indigenous Justice Clearinghouse*, Brief 22, August 2017,.2. See also Eileen Baldry et al., 'A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System' (Sydney: UNSW, 2015).
[51] Department of Health, 'National Fetal Alcohol Spectrum Disorder Strategic Action Plan 2018–2028'. (Canberra: Commonwealth of Australia, 2018). Retrieved from www.health.gov.au/resources/publications/national-fetal-alcohol-spectrumdisorder-fasd-strategic-action-plan-2018-2028 , 30. See also: Natalie Novick Brown et al., 'Prenatal Alcohol Exposure: An Assessment Strategy for the Legal Context', *International Journal of Law and Psychiatry* 42–43 (December 2015): 144–48.
[52] The Senate Community Affairs References Committee, 'Effective Approaches to Prevention, Diagnosis and Support for Fetal Alcohol Spectrum Disorder' (Canberra: Commonwealth of Australia, 2021).
[53] See NACCHO's 2022/23 Budget Submission 'Proposal 6: FASD Workforce Development' for guidelines on best practice for culturally safe FASD support. Available at: National Aboriginal Community Controlled Health Organisation - 2022-23 Pre-Budget Submissions (treasury.gov.au). Accessed 1 May 2022.

be seen as a preventative strategy for incarceration.[54] Mental health is a fundamental part of the holistic understanding of wellbeing for Aboriginal and Torres Strait Islander people and so needs to be addressed at the forefront of decisions about incarceration. Improving mental health outcomes, in line with Target 14 of the National Agreement on Closing the Gap, can help minimise contact with the criminal justice system.[55]

Access to culturally safe healthcare and mental health services within prisons is vital to achieve better health outcomes for incarcerated Aboriginal and Torres Strait Islander people. Incidences of self-harm and attempted suicide are more prevalent in Aboriginal and Torres Strait Islander prisoners compared to non-Indigenous, and this is consistent for both adults and young people.[56] Prior mental health conditions are also less likely to be reported amongst the Aboriginal and Torres Strait Islander prisoners compared to non-Indigenous entrants; in an Australian Institute of Health and Welfare report, non-Indigenous prison entrants reported prior mental health conditions at a rate of 44% compared to Aboriginal and Torres Strait Islander prison entrants at a rate of 33%.[57] The 1991 Royal Commission found that mental health of offenders and over-criminalisation of Aboriginal and Torres Strait Islander people are key factors relating to suicide and deaths in custody. Since then, the mental health of Aboriginal and Torres Strait Islander prisoners has become a major public health concern.[58] These co-morbidities highlight the intricate relationship between health, incarceration, and how these issues compound with other social determinants of health, and all need to be addressed in synergy to ensure better health outcomes for all Aboriginal and Torres Strait Islander people.

Compounding issue areas

Housing

Housing and homelessness are key considerations in addressing the numbers of Aboriginal and Torres Strait Islander people in custody and the prison system. People experiencing homelessness are more likely to be involved in the prison system as it is often seen as a safer place than the streets as they receive accommodation, food, and medical treatment. However, there are also severe risks associated with incarceration for people experiencing homelessness such as high rates of mental health conditions, and high rates of experiencing violence. Conversely, when people suffer poor physical health and mental health, experience economic insecurity, have inadequate housing or they experience homelessness, the risk of contact with the criminal justice system increases. However, this presents an opportunity for positive change; access to affordable, appropriate housing can be a strong driver of social and economic health and well-being and intersects with better health outcomes generally. The National Agreement on Closing the Gap - Outcome 9 targets securing appropriate, affordable housing for Aboriginal and Torres Strait Islander people that is aligned with their priorities and need. Appropriate and affordable housing lines up with the social determinants of health and can be a strong preventative for contact with the criminal justice system.

[54] E. Heffernan, K. Andersen, E. McEntyre & S. Kinner 2014. Mental disorder and cognitive disability in the criminal justice system. In P. Dudgeon, H. Milroy & R. Walker (eds). *Working together: Aboriginal and Torres Strait Islander mental health and wellbeing principles and practice,* 2nd edn. 165-78 (Canberra: Australian Government, 2014).
[55] Matthew Willis, 'Justice Reinvestment in Australia: A Review of the Literature' (Canberra: Australian Institute of Criminology, 2018). See also Australian Institute of Health and Welfare, 'Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System', 2021.
[56] Willis, 8, 10.
[57] 'Adult Prisoners', Australian Institute of Health and Welfare, 16 September 2021, https://www.aihw.gov.au/reports/australias-welfare/adult-prisoners. Accessed 20 April 2022.
[58] Australian Institute of Health and Welfare, "Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System," 12.

The RCIADIC recognised housing and infrastructure as vital to address the custodial rates of Aboriginal and Torres Strait Islander people.[59] In addition, the Productivity Commission identified housing issues – particularly homelessness, inadequate housing, and overcrowding – as issues that disproportionately affect Aboriginal and Torres Strait Islander people.[60] Lack of secure, appropriate, and affordable housing has been identified as a key determinant of poor health outcomes faced by Aboriginal and Torres Strait Islander people, and compounds with other issues such as employment, education, and incarceration rates.[61] Stable housing is also a determining factor in bail arrangements, and the issue of secure housing for Aboriginal and Torres Strait Islander people can play a role in adverse bail decisions. Access to secure, affordable, and appropriate housing intersects with positive health outcomes, and reduced contact with the criminal justice system, and should be seen as a priority area.

Alcohol, tobacco, and other drugs

In a 2013 study on the use of alcohol, tobacco, and other drugs (ATOD) in male prison populations in New South Wales and Queensland, where 15 per cent of prisoners were Aboriginal and Torres Strait Islander people:

> Aboriginal male prisoners were more likely to smoke (83 per cent versus 71 per cent) than non-Aboriginal male prisoners … [s]ignificantly more Aboriginal prisoners had tried quitting in the past year by lowering tar or nicotine content of their tobacco (14 per cent versus 5 per cent) than non-Aboriginal prisoners.[62]

Alcohol, tobacco, and other drug use is an issue that presents prior to incarceration, during, and resultant of time spent in prison. Almost one in six (16%) of discharged inmates reported using illicit drugs in prison, and 1 in 12 (8%) said they had injected drugs in prison.[63] In one study, almost one in four young people (23%) received treatment for cannabis as their primary drug of concern, and one in 12 (8%) for alcohol in correctional facilities.[64] The corresponding amount for young Australians in the general population is less than 1%, highlighting the correlation between drug use and incarceration. Aboriginal and Torres Strait Islander young people were over-represented in this study, with three in ten young people receiving ATOD treatment identifying as Aboriginal and/or Torres Strait Islander. In addition,

---

[59] Commonwealth, Royal Commission into Aboriginal Deaths in Custody, National Report (1991) vol 2, [18.1.6] and vol 5, rec 73–6, 321–7.

[60] Productivity Commission, *Overcoming Indigenous Disadvantage: Key Indicators 2016—Report* (2016), 10.1.

[61] "Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples," ALRC, accessed April 20, 2022, https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/; 'Social Determinants of Incarceration', Australian Law Reform Commission, accessed 17 May 2022, https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/2-context/social-determinants-of-incarceration/; House of Representatives Standing Committee on Indigenous Affairs, Parliament of Australia, *Alcohol, Hurting People and Harming Communities: Inquiry into the Harmful Use of Alcohol in Aboriginal and Torres Strait Islander Communities* (2015) 8-9.

[62] Robyn L. Richmond et al., 'Smoking and Other Drug Characteristics of Aboriginal and Non-Aboriginal Prisoners in Australia', *Journal of Addiction* 2013 (2013): 516342.

[63] "The Health of Australia's Prisoners 2018, Summary," Australian Institute of Health and Welfare, accessed April 20, 2022, https://www.aihw.gov.au/reports/prisoners/health-australia-prisoners-2018/summary.

[64] '1 in 3 Young People under Youth Justice Supervision Receive Treatment for Alcohol and Other Drug Use', Australian Institute of Health and Welfare, accessed 20 April 2022, https://www.aihw.gov.au/news-media/media-releases/2018/july/1-in-3-young-people-under-youth-justice-supervisio.

Indigenous young people were also over-represented among the 'dual-service' client population. During the 4-year period, Indigenous young people were 14 times as likely to experience both youth justice supervision and drug and alcohol services as their non-Indigenous counterparts.[65]

Substance use and abuse is a major issue for Aboriginal and Torres Strait Islander young people who have been involved in the juvenile prison system. During the four years prior to June 2016, one in three young people under youth justice supervision receive treatment for alcohol and other drug use and were "30 times as likely to receive an alcohol or other drug treatment service as young Australians generally".[66] These co-morbidities further highlight and reinforce the intersection between the social determinants of health and incarceration.

Alcohol and other drug use programs should be targeted at Aboriginal and Torres Strait Islander people in prison to improve their health and wellbeing. Programs must be culturally safe and employ Aboriginal and Torres Strait Islander health professionals to facilitate and support the programs and the inmates. Programs need to be holistic to reflect the cultural needs of Aboriginal and Torres Strait Islander inmates – encompassing the physical, social, emotional, cultural, spiritual, and ecological wellbeing aspects of the person and their community.[67] Programs and health services should be underpinned by a strong commitment to self-determination and cultural safety, and ensure engagement with local communities as well as the Aboriginal Community-Controlled sector and Aboriginal Medical Services and Health Workers is strengthened, in line with the Priority Reforms of the National Agreement.

Healthcare in correctional settings

AIDA supports the following principles as the best practice for the treatment of incarcerated Aboriginal and Torres Strait Islander people.

- **Self-determination -** Aboriginal and Torres Strait Islander self-determination is vital in developing and facilitating programs and approaches to diversionary, sentencing, post-release, and healing stages. Self-determination is imperative in providing culturally safe methods throughout the incarceration process. AIDA advocates for engaging Aboriginal and Torres Strait Islander health practitioners, particularly Aboriginal and Torres Strait Islander doctors, as key to supporting these approaches and working from community-led, strengths-based, and culturally safe perspectives.

- **Cultural Safety -** AIDA highly values cultural safety for Aboriginal and Torres Strait Islander patient, as well as for our health professions. [68] This includes culturally safe healthcare for Aboriginal and Torres Strait Islander people in custody and in prison, as well as after release. Access to Aboriginal and Torres Strait Islander health professionals such as doctors and healthcare workers, as well as traditional healers, are essential in providing culturally safe care. Moreover, access to appropriately timed care is vital to keeping Aboriginal and Torres Strait Islander people who are incarcerated safe and healthy, so that deaths in custody and prisons are eliminated.

[65] Australian Institute of Health and Welfare.
[66] Australian Institute of Health and Welfare.
[67] See AIDA's submission regarding the Alcohol and Other Drug workforce here: AOD Workforce Strategy Submission (aida.org.au)
[68] Australian Indigenous Doctors' Association, 'Position Statement – Cultural Safety'. Released 28 September 2021, Available at AIDA-Position-Paper-Cultural-Safety-Final-28-September-Word.pdf. Accessed 27 April 2022.

- **Social Determinants of Health, Cultural Determinants of Health, drivers of incarceration** - The rates of incarceration of Aboriginal and Torres Strait Islander adults are inseparable from the social determinants of health such as access to culturally safe healthcare, mental health and disability services, education, housing and homelessness, and employment. This extends to post-release as well, and a holistic strategy of prevention, care during time incarcerated, and post-release support is necessary to ensure better health outcomes for Aboriginal and Torres Strait Islander people.

Adherence to these three principles, along with an increase in Aboriginal and Torres Strait Islander representation in the medical workforce in prisons can help ensure culturally appropriate, holistic, patient-centred healthcare for incarcerated Aboriginal and Torres Strait Islander people. Aboriginal and Torres Strait Islander people in prison have been found to have the highest complex needs and that many of the prisoners are imprisoned for less serious offences, while also spending more time in custody without being charged or receiving necessary assistance.[69] In one study, Aboriginal and Torres Strait Islander people reported seeking access to more health services while in prison than in the community, which highlights an opportunity for better and more culturally appropriate healthcare while incarcerated. [70] However, the accessibility and the provision of culturally safe services remains a challenge and needs to be prioritised as a matter of urgency.

There is significant room for improvement in the prison healthcare system, and one way to ensure the provision of culturally safe healthcare is to increase Aboriginal and Torres Strait Islander representation in the medical workforce in prisons, including through the ACCHO sector and with Aboriginal Health Workers. Any engagement with the community-controlled sector needs to be from a strengths-based approach; building rather than displacing Aboriginal ownership, design, and control. However, there is limited data available regarding Aboriginal and Torres Strait Islander representation of healthcare workers within prisons, and this reflects a broader trend in the medical workforce.

Despite the proportion of Aboriginal and Torres Strait Islander people represented in Australia's population at 3.3%, the number of Aboriginal and Torres Strait Islander doctors is only 0.51%, with Aboriginal and Torres Strait Islander representation in the overall healthcare sector at 1.8%.[71] One of AIDA's main goals is to grow the Aboriginal and Torres Strait Islander medical workforce, as this leads to culturally safe healthcare and better health outcomes for Aboriginal and Torres Strait Islander people. AIDA strongly endorses the Aboriginal and Torres Strait Islander ownership and community control of health services for Aboriginal and Torres Strait Islander people, ensuring culturally safe, patient-centred healthcare rooted in self-determination.

To ensure the best, culturally safe healthcare for incarcerated Aboriginal and Torres Strait Islander people, healthcare needs to be holistic, and incorporate pre-release screening and post-release healthcare support,[72]

---

[69] McCausland, "Indigenous People, Mental Health, Cognitive Disabilities and the Criminal Justice System," 3.
[70] Azar Kariminia, Tony Butler, and Michael Levy, 'Aboriginal and Non-Aboriginal Health Differentials in Australian Prisoners', *Australian and New Zealand Journal of Public Health* 31, no. 4 (August 2007): 366–71.
[71] 'Australia Launches First Ever Indigenous Health Workforce Plan', Indigenous.gov.au, 13 March 2022, https://www.indigenous.gov.au/news-and-media/announcements/australia-launches-first-ever-indigenous-health-workforce-plan. Accessed 28 April 2022.
[72] Wendy Dyer and Paul Biddle, 'Prison Health Discharge Planning – Evidence of an Integrated Care Pathway or the End of the Road?', *Social Policy and Society* 12, no. 4 (October 2013): 521–32.

ideally facilitated through the ACCHO sector.[73] Aboriginal and Torres Strait Islander people disproportionately represent numbers of incarcerated people and are exposed to a higher level of blood-borne viruses (BBVs) and sexually transmitted infections (STIs) in prison settings. There needs to be a more structured process at time of release from prison, including targeted pre- and post-release health screenings.[74] If this does not happen, a person released from prison may unknowingly transmit BBVs and STIs back into their community, furthering the spread of infection.

An example of where this is being successfully addressed through additional health measures is through Winnunga Nimmityjah Aboriginal Health and Community Service (Winnunga), an ACT Aboriginal Community Controlled Organisation providing bulk-billed healthcare for Aboriginal and Torres Strait Islanders in the ACT.[75] Winnunga provides culturally safe and holistic health services, including outreach for people in custody at the Alexander Maconochie Centre through the Winnunga 'Holistic Health Care Prison Model'.[76] This program could be replicated, rolled out and funded by the Australian Government to provide culturally safe services across Australia, and is commended by AIDA as a best practice model for targeted pre and post-release healthcare in incarcerated Aboriginal and Torres Strait Islander health services.

One significant impediment to providing culturally safe healthcare for incarcerated individuals is the lack of access to Medicare. Prison healthcare services are funded by states and territories, not from the Commonwealth, meaning Medicare benefits cannot be accessed within the current model.[77] The intention is to avoid 'double-dipping' of healthcare funds, but given the "underinvestment in prison health services by some Australian jurisdictions means that prisoners miss out on some treatments and medications available to the wider community",[78] including the Aboriginal and Torres Strait Islander Health Check. This is often a significant barrier for ACCHOs to provide healthcare in prison because they cannot claim expenses back from Medicare, therefore having to rely on state funding if and when available. This has significant implications for the provision of culturally safe medical care for Aboriginal and Torres Strait Islander prisoners.[79]

The Royal Australian College of General Practitioners has argued that the lack of access to Medicare in prisons is widening the existing healthcare gap between Aboriginal and Torres Strait Islander and non-Indigenous Australians, and have called on the Federal Ministers for Health and Indigenous Health to allow a partial exemption under the *Health Insurance Act 1973 (Commonwealth)* to allow prisoners to access a limited number of Medicare item numbers and services while in prison and immediately

[73] Alex Brown et al., *Aboriginal Community Controlled Health Organisations in Practice: Sharing Ways of Working from the ACCHO Sector* (South Australian Health & Medical Research Institute, 2020); Jane E. Lloyd et al., 'The Role of Primary Health Care Services to Better Meet the Needs of Aboriginal Australians Transitioning from Prison to the Community', *BMC Family Practice* 16 (22 July 2015): 86

[74] Anthea Susan Krieg, 'Aboriginal Incarceration: Health and Social Impacts', *Medical Journal of Australia* 184, no. 10 (15 May 2006).

[75] Nerelle Poroch and Kacey Boyd, *We're Struggling in Here! The Phase 2 Study into the Needs of Aboriginal and Torres Strait Islander People in the ACT Alexander Maconochie Centre and the Needs of Their Families* (Narrabundah, A.C.T: Winnunga Nimmityjah Aboriginal Health Service, 2011).

[76] Heidi Shukralla et al., 'Australian First in Aboriginal and Torres Strait Islander Prisoner Health Care in the Australian Capital Territory', *Australian and New Zealand Journal of Public Health* 44, no. 4 (2020): 324. See also Nerelle Poroch and Julie Tongs. *You do the crime, you do the time: Best practice model of holistic health service delivery for Aboriginal and Torres Strait Islander inmates of the ACT prison*. Winnunga Nimmityjah Aboriginal Health Service, 2007.

[77] Craig Cumming et al., 'In Sickness and in Prison: The Case for Removing the Medicare Exclusion for Australian Prisoners', *Journal of Law and Medicine* 26, no. 1 (2018): 140–58.

[78] Stuart A. Kinner et al., 'Prisoner and Ex-Prisoner Health - Improving Access to Primary Care', *Australian Family Physician* 41, no. 7 (July 2012): 535–37.

[79] Anthony et al., "30 Years On", 12.

post-release. There are currently several Medicare items available to support community-based health services to perform annual preventative health checks for Aboriginal and Torres Strait Islander people and for nurses and Aboriginal health practitioners to follow up identified health needs: items 715 and 10987, and these could be amended to "support in-reach by Aboriginal community-controlled health organisations to Aboriginal and Torres Strait Islander people in prison".[80] The RACGP further argue that access to some Medicare items under this exemption will result in

> increased capacity and funding for the provision of high quality, culturally appropriate care for Aboriginal and Torres Strait Islander people in prison. This will ensure that Indigenous prisoners can access appropriate healthcare with improved continuity of care after release into the community.[81]

AIDA strongly supports this position and supports its capacity to improve health and other social outcomes for Aboriginal and Torres Strait Islander people. Post-release healthcare remains crucial in addressing the breaking the cycle of disadvantage for Aboriginal and Torres Strait Islander people.[82] Through engagement within local communities with the ACCHO and ACCO sectors, compounding issue areas such as employment, housing, and reintegration to family and community can lead to overall better health outcomes.[83] These efforts need to come from a place of mutual trust, and cultural safety is paramount.

A study funded by the Commonwealth Government, *Returning Home*, looked at the post-prison release support services for Aboriginal women. One of the key factors for success in these programs was ensuring a working relationship between these services and the women whilst they were in prison. The relationships needed to begin while the women were still incarcerated, to build trust and to best identify the individual needs of the women. This helps ensure release and post-release plans are individualised and tailored to each person's specific needs. Programs such as this need to have cultural safety, mutual trust, self-determination, and be individualised to ensure success. Following through with post-release healthcare can help avoid or reduce the incidence of reincarceration, through targeting root causes of incarceration by addressing the social determinants of health in a supportive, community-based way. This also ensures that the complex health and social needs of formerly incarcerated Aboriginal and Torres Strait Islander people and their families received appropriate care, including for mental health and substance concerns.

Structural reforms

Any initiatives aimed at reducing the rates of Aboriginal and Torres Strait Islander incarceration through addressing the social determinants of health need to be rooted in self-determination, be community-led and -controlled, and be driven by the goal of closing the gap between Aboriginal and Torres Strait Islander and non-Indigenous people. Data collection and analysis needs to be accurate and consistent, as it is "essential

[80] Royal Australian College of General Practitioners, 'Submission - Access to Medicare in Prison' (East Melbourne, 10 August 2017), https://www.racgp.org.au/FSDEDEV/media/documents/RACGP/Reports%20and%20submissions/2017/RACGP-Submission-Access-to-Medicare-in-prison.pdf. Accessed 1 May 2022.
[81] Royal Australian College of General Practitioners.
[82] Penelope Abbott et al., "Supporting Continuity of Care between Prison and the Community for Women in Prison: A Medical Record Review," *Australian Health Review: A Publication of the Australian Hospital Association* 41, no. 3 (July 2017): 268–76.
[83] Komla Tsey et al., 'Empowerment-Based Research Methods: A 10-Year Approach to Enhancing Indigenous Social and Emotional Wellbeing', *Australasian Psychiatry: Bulletin of Royal Australian and New Zealand College of Psychiatrists* 15 Suppl 1 (2007): S34-38.

for identifying the causes of offending and for monitoring the effectiveness of programs in reducing offending".[84] Combined, these elements are crucial for long-term positive outcomes.

Several key structural reforms are central to ensuring the incarceration gap is closed, and that the health outcomes of Aboriginal and Torres Strait Islander people are consistently improved. These include targeting racism in the healthcare and criminal justice systems, addressing key causal factors of incarceration, including the previously discussed social determinants of health, raising the age of criminal responsibility, and strengthening the ACCHO and ACCO sectors. In addition, justice re-investment initiatives show promise in tackling the over-representation of Aboriginal and Torres Strait Islander people in custody settings.

Justice reinvestment

Justice reinvestment broadly refers to the reallocation of funding that would typically go into the criminal justice system into community-based programs that address the underlying causes of crime and social justice issues. The ultimate goal of justice reinvestment is to reduce re-offending and reincarceration.[85] Justice reinvestment initiatives have been successfully piloted in the United States and taken up in the United Kingdom, with several trials taking place in Australia in communities with high rates of incarceration and a high Aboriginal and Torres Strait Islander population. The Maranguka Justice Reinvestment Project in Bourke is the most advanced initiative to date. In 2016-2017, the savings generated by the programs run within the project stood at "$3.1 million – two-thirds in justice savings and one-third broader economic impact to the region".[86]

There is a strong case for justice reinvestment initiatives to address and improve Aboriginal and Torres Strait Islander health while simultaneously reducing Aboriginal and Torres Strait Islander incarceration. Justice reinvestment programs bring together a range of organisations aimed at addressing the root causes of incarceration, by focusing on these social determinants of health and the health of the community, per the definition above. There is a solid argument for justice reinvestment to address the over-representation of Aboriginal and Torres Strait Islander people incarcerated, as it seeks to address the root cause of incarceration, as well as advocating for a (re)connection to community, Country, and culture. It also has a strong economic argument and draws off Recommendation 188 of the RCIADIC which ensures that self-determination is embedded through the engagement and strengthening of the Aboriginal Community-Controlled sectors.[87] Incarceration rates keep going up, so an alternative approach is needed. AIDA advocates for approaches that are based on community-driven initiatives, incorporating self-determination, and supported by sound and ongoing government funding to improve the living conditions of Aboriginal and Torres Strait Islander people, and justice reinvestment is an instrumental tool to achieving this.

[84] Tom Calma, 'Justice Reinvestment: Key to Reducing Indigenous Incarceration', *Australian Lawyers Alliance* (blog), 6 June 2019, https://www.lawyersalliance.com.au/opinion/justice-reinvestment-key-to-reducing-indigenous-incarceration. Accessed 27 April 2022

[85] Melanie Schwartz, David Bentley Brown, and Chris Cunneen, 'Justice Reinvestment', *PerIndigenous Justice Clearinghouse, UNSW Law Research Paper* 18: 8 (28 August 2017); Kathryn Thorburn and Melissa Marshall, 'The Yiriman Project in the West Kimberley: An Example of Justice Reinvestment?', *Indigenous Justice Clearinghouse* Current Initiatives Paper 5 (July 2017): 1-8.

[86] Australian Lawyers Alliance, *Justice Reinvestment*: *Key to Reducing Indigenous Incarceration*.

[87] Anthony et al., "30 years on", 16.

Conclusion

The causes and impacts of incarceration cannot be disentangled from the social determinants of health. This is particularly evident in the context of the incarceration of Aboriginal and Torres Strait Islander people and illustrates the urgency of addressing the health gap between Aboriginal and Torres Strait Islander and non-Indigenous people. The over-representation of Aboriginal and Torres Strait Islanders in the criminal justice system leads to poorer outcomes and intersect with other areas of disadvantage. There is ample evidence that grief, stress, and trauma contribute to ill health and incidents such as ongoing deaths and over-representation in custody further add to the burden of health and disadvantage. Racism and unconscious bias - institutional, systemic, and individual – is an unacceptable fact of life for Aboriginal and Torres Strait Islander people. Culturally safe services can support service providers to confront and understand cultural difference and deliver effective and safe services to our people.

AIDA calls on all governments – both the federal and state/territory governments - to accept and to address racism and unconscious biases that are embedded in police, prison, legal, and health systems. The RCIADC report addressed issues such as education, employment, poverty, housing, child removal and family violence. These social determinants of health – and of incarceration – remain as urgent today as they were in 1991. If we are to close the health gap, we must ensure that the over-representation of Aboriginal and Torres Strait Islander people in custody is addressed. The provision of culturally safe healthcare in prisons and post-release care must be ensured to achieve equitable health outcomes, and to work towards achieving the targets and Priority Reforms of the National Agreement.

AIDA urges an understanding of the importance of cultural determinants such as connection to language, culture and Country which can strengthen our resilience as individuals, families, and communities. AIDA supports the broad range of actions which can potentially address the continuing over-representation of Aboriginal people, and deaths in custody. These include government commitment to justice reinvestment, commitment to changing laws so that young children are not sent to prison, changing mandatory laws, addressing racism and commitment to the social and cultural determinants of health and incarceration. A holistic approach steeped in self-determination that acknowledges the health and social impacts of institutionalised racism is necessary to fully address the root causes and impacts of incarceration, and to ensure that imprisonment is never the first line of action.

Recommendations

AIDA strongly states that if we are to reach Targets 10 and 11 of the National Agreement of Closing the Gap, achieve the Priority Reforms, and to ensure all Aboriginal and Torres Strait Islander people can live healthy lives, the Australian Federal Government alongside State and Territory jurisdictions must commit to the below recommendations.

AIDA calls for:

- The Australian Government to work with the jurisdictions and Peak Aboriginal and Torres Strait Islander groups to close the health gap for Aboriginal and Torres Strait Islander people, to reduce the rates of imprisonment of Aboriginal and Torres Strait Islander people in Australia. This means appropriately funding community-led initiatives to address the social determinants of health, including housing,

education and employment for parents and young people to support them in avoiding contact with the justice system.

- Jurisdictions to implement all recommendations from the Royal Commission into Aboriginal Deaths in Custody, and The Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, with the aim of eliminating deaths in custody and improving the health and wellbeing of all Aboriginal and Torres Strait Islander people involved in the judicial system.
- Reform of the judicial and healthcare systems to support the work of Aboriginal and Torres Strait Islander health professionals, particularly Aboriginal and Torres Strait Islander doctors, to improve the health and wellbeing of Aboriginal and Torres Strait Islander prisoners both whilst in jail and custody, as well as post release.
- The age of criminal responsibility to be raised to at least 14 years old nationally across all States and Territories as called on by the United Nations and other OECD countries.
- For healthcare systems and services within prisons to be offered in a culturally appropriate and safe way, to provide the best care to Aboriginal and Torres Strait Islanders in custody. This also means growing the Aboriginal and Torres Strait Islander medical workforce within prisons, working with the Aboriginal Community-Controlled Health Organisations, and Aboriginal Health Workers to ensure the provision of culturally safe healthcare.
- Strengthening engagement with the Aboriginal Community-Controlled sector, in line with Priority Reform Two of the National Agreement on Closing the Gap. Any engagements with the Aboriginal Community-Controlled sector needs to be strengths-based, focus on building Aboriginal and Torres Strait Islander capacity and control, and must be co-designed and led by the Community.
- Engagement with Aboriginal and Torres Strait Islander communities, stakeholders, and governments, and develop a focus on justice reinvestment for Aboriginal and Torres Strait Islander communities, their families, and their children.
- The Federal Government to legislate a partial exemption under the *Health Insurance Act 1973* to allow prisoners to access a limited number of Medicare item numbers and services while incarcerated, to ensure that the healthcare provided in prisons is the same that would be received in the community, through community health services. Equitable access to healthcare in prison is essential for meeting the National Agreement targets and help with successful reintegration into the community post-release.
- To ensure the continued progress towards the three critical 10-year strategies addressing Aboriginal and Torres Strait Islander health and shortages in Aboriginal and Torres Strait Islander medical workforce: the *National Medical Workforce Strategy 2021-2031*, the *National Aboriginal and Torres Strait Islander Health Plan 2021-2031*, and the *Aboriginal and Torres Strait Islander Health Workforce Strategic Framework and Implementation Plan 2021-2031*.
- Adequate funding to be allocated and released to AIDA and all Aboriginal and Torres Strait Islander organisations implementing Government plans that improve life outcomes for Aboriginal and Torres Strait Islander people.