

AUSTRALIAN MEDICAL ASSOCIATION REPORT CARD SERIES 2006 Aboriginal and Torres Strait Islander Health

UNDUE PUNISHMENT? ABORIGINAL PEOPLE AND TORRES STRAIT ISLANDERS IN PRISON: AN UNACCEPTABLE REALITY



INCARCERATION EQUALS DESPERATION FOR INDIGENOUS AUSTRALIANS

***“The vilest deeds like poison weeds
Bloom well in prison air:
It is only what is good in man
That wastes and withers there:
Pale Anguish keeps the heavy gate
And the Warder is Despair.”***

Oscar Wilde, The Ballad of Reading Gaol

While the conditions of Oscar Wilde’s imprisonment may be a world and an era away from those confronted by Indigenous Australians, the debilitating effects of prison on mind and body are universally grim.

When you add in the unique cultural, spiritual and tribal consequences of imprisonment on Aboriginal and Torres Strait Islander peoples, there is no such thing as a light sentence.

Just as the health and life expectancy of Indigenous Australians are far worse than the non-Indigenous population, the effects of prison on the Indigenous population are horrifying, and the statistics bear this out.

In previous Report Cards, the AMA has put the spotlight on low birth weight babies; the shortage of Indigenous doctors, nurses and other health workers; the inadequate funding our Governments channel into improving Indigenous health; and a study of how we as a nation address Indigenous health compared to Canada, the US and New Zealand.

Those Report Cards all served their purpose. They raised community awareness of one of Australia’s great failings as a nation – our continuing inability or unwillingness to help the first Australians enter the 21st century on an equal footing with other Australians, especially on health.

While there have been some welcome improvements in services, our Governments have a long way to go to stay still let alone approach equal health status.

In this report we draw attention to another area of tragic inequality and despair – prison and how it demoralises and destroys Indigenous Australians for the term of their natural lives, no matter how long their sentence and no matter how light or severe their crime.

There can be no argument that Indigenous Australians find their way into prison in greater numbers than other Australians – 1561 per 100,000 population compared with just 163 per 100,000 population.

Indigenous Australians make up 2.4% of the population of Australia, but 22 per cent of the prison population. An Aboriginal or Torres Strait Islander young person is 19 times more likely than a non-Aboriginal young person to be detained in a juvenile facility.

That is a criminal waste of life for many Aboriginal people, their families and their communities.

But it is much, much worse. In 2002, there were 14 reported Aboriginal deaths in custody.

The health statistics of Indigenous prisoners are appalling– the rates of smoking, alcohol abuse, illicit drug use, and violence and abuse are way over national rates and way over rates for the Indigenous community in general.

It’s the same for infectious diseases, chronic diseases, oral health and mental health, and the harm to the health of juvenile Indigenous offenders is with them for life.

This Report Card does not intend or pretend to pass judgement on the justice system through which Indigenous Australians find themselves in prison. That is a job for others.

Our intention is to draw together the facts and figures, the rights and wrongs, the problems and hopefully some solutions to address the chronic health problems that consume Indigenous Australians while in prison or juvenile detention.

At the same time, we hope to capture people’s attention and keep it focussed on the bigger picture of Australia’s unique lack of progress on Indigenous Health.

The Federal Treasurer Peter Costello in April 2006 was proclaiming Australia ‘debt free’, with a substantial budget surplus and that his Government would be putting money away for future needs. It is a fair suggestion that he should direct some of this new prosperity to the Australians who need it most. We can help him invest it wisely.

Just as Oscar Wilde’s fellow inmates at Reading Gaol looked wistfully ‘upon that little tent of blue which prisoners call the sky’, we want to provide some hope and optimism for better health and longer lives for all.

A handwritten signature in black ink, appearing to read 'Mukesh Haikerwal', written over a white background.

Dr Mukesh Haikerwal

President, Australian Medical Association
May 2006

ABORIGINAL AND TORRES STRAIT ISLANDER HEALTH

INDIGENOUS IMPRISONMENT - WHO IS LOCKED UP?

Adult Detention

On June 30, 2005, an Indigenous person was 12 times more likely to be behind bars than a non-Indigenous person. The 2005 Australian Bureau of Statistics (ABS) Prison Census also found that out of 25,353 prisoners, 5,656 were Indigenous (22% of the prison population).¹ Between 2000 and 2004 Indigenous women's imprisonment rates rose by 25%, while there was an 11% increase for Indigenous men.²

The majority of prisoners in the annual Prisoner Census were serving long-term sentences for serious offences, whereas the flow of offenders in and out of prisons consists of persons serving short sentences for lesser offences. Only about 10% of the prisoners would have received a sentence over six months, with the majority of remand prisoners released within three months. **It was estimated that almost 50,000 people were imprisoned in Australia in 2002, 10,000 of those would have been Aboriginal and Torres Strait Islander people.** This number includes people who had more than one imprisonment in that year.³ This number is about twice the Prison Census figure, which would mean **that about 3% of the adult Indigenous population are imprisoned in any one year compared to 0.3% of the non-Indigenous population.**

Women in prison

About 25% of all incarcerated women are Aboriginal and Torres Strait Islander individuals, with their rate of confinement doubling in less than 10 years.⁴ It is a normal part of life for many of these women to rotate through prisons and to have illicit drug problems, little material or social capital and to be at risk of dying from a drug overdose once released from jail.⁵

Repeat Offending

A 2003 study found that Aboriginal and Torres Strait Islander prisoners were significantly more likely to have a history of prior imprisonment than non-Indigenous prisoners.⁶

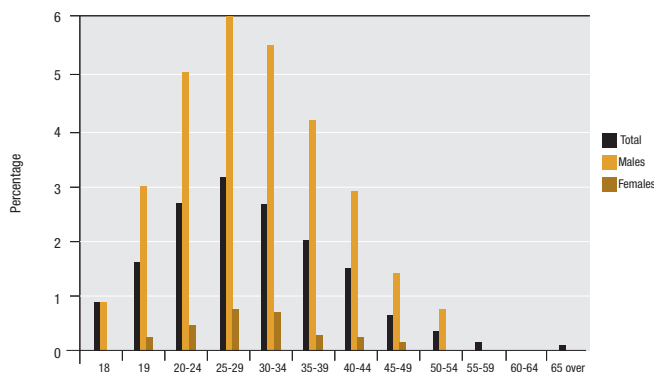
Juvenile Detention

A young Aboriginal or Torres Strait Islander is 19 times more likely to be detained in a juvenile facility than a non-Indigenous juvenile.

There is also disturbing evidence that contact with the juvenile justice system is a strong predictor of incarceration as an adult.⁷

Eighty six per cent of Aboriginal and Torres Strait Islander juvenile offenders entered the adult correction system (compared with 75% of non-Indigenous juvenile offenders) with 65% serving prison terms (compared with 41% of non-Indigenous juveniles). A further, and more disturbing, analysis of risk factors found that 91% of juvenile offenders who had been subject to a care and protection order progressed to the adult system.⁷ **It is increasingly obvious that the health system should regard juvenile offending as a significant population health issue that deserves a much stronger preventative focus.**

PERCENTAGE OF ABORIGINAL AND TORRES STRAIT ISLANDERS IMPRISONED BY AGE AND GENDER 2004 (SOURCE: ABS PRISONERS IN AUSTRALIA CENSUS, JUNE 30, 2005)



PRISON HEALTH SERVICES

While a prisoner remains in detention, the individual States and Territories are responsible for the provision of health services with the consequence that each jurisdiction provides health services through different government bodies. See table below. There is no national or uniform approach to assess or meet the health care needs of the Indigenous prison population. Many authors have referred to the conflicts between the custodial role and the health care role. There is a danger that custodial requirements will take precedence over the health care needs of prisoners leading to prisoners' health problems becoming subordinate to prison security issues.⁸

WHO IS RESPONSIBLE FOR PRISON HEALTH SERVICES?⁹

State	Service Provider
NSW	NSW Health Department provides the funding for the prison health services, administered by Justice Health (previously called the Prison Medical Service). All private prisons also receive a grant from the Health Department and are audited by Justice Health.
VIC	VIC Health Department is responsible for all prison health services. As over 50% of prison beds are privatised, the Health Department also provides a grant to private prisons, which are responsible for administering their own health services.
QLD	QLD Custodial Corrections Department provides prison health care, making the prison governor in effect the employer of prison health staff.
SA	SA Department of Human Services memorandum of understanding with Department of Corrections contracts responsibility for prison health to the Royal Adelaide Hospital.
NT	NT custodial services are responsible for health care provision and contract this provision out to the mainstream health service providers.
WA	The WA Custodial Corrections Department provides prison health care, making the prison governor in effect the employer of prison health staff
TAS	TAS custodial services are responsible for health care provision and contract this out to the mainstream health service providers.

* Situation in 2002 - some names of departments have changed since then but the nature of those responsible has not significantly altered.

1. Australian Bureau of Statistics. December 2005. *Prisoners in Australia, Census, June 30, 2005*. 2. The Steering Committee for the Review of Government Service Provision. Productivity Commission. July 2005. *Overcoming Indigenous Disadvantage Key Indicators 2005*. 3. Corrections Health Service. 2003. *Better Health Good Health Care. Annual Report 2002/2003*. 4. Cameron, M. 2000. *Women Prisoners and Correctional Programs*. 5. Baldry, E., McDonnell, D., Maplestone, P. & Peeters, M. 2003. *Ex-Prisoners and Accommodation: what bearing different forms of housing have on social integration, AHURI*. 6. Rawnsley, T. 2003. *Dynamics in Repeat Imprisonment*. 7. Lynch, M., Buckman, J. & Krenske, L. 2003. *Youth Justice: Criminal Trajectories*. 8. Wenitong, M. & Daniels, J. 2003. *Aboriginal PHC: an evidence based approach*. 9. Lewy, M. 2002. 'Prisoners' Right to Health and Safety' in David Brown and Meredith Wilkie (eds) *Prisoners as Citizens: Human Rights in Australian Prisons*.

THE HEALTH STATUS OF PRISONERS

There is no systematic collection of prisoners' health data. **Aboriginal and Torres Strait Islander prisoners' health data is almost non-existent, but Indigenous health inequalities are well documented. It is therefore reasonable to assume that Indigenous prisoners would exhibit a health status the same as or probably worse than that of the general prisoner population.** The 1996 and 2001 New South Wales' health inmate surveys provide the most comprehensive data on prisoners. The following data is from those sources and pertains to the general prison population unless it specifically states otherwise.¹⁰

Health Risk Factors

- More than 80% Aboriginal and Torres Strait Islander prisoners smoked;
- More than one third of women, and about half of all men in the general prison population drank hazardous or harmful amounts of alcohol;
- Illicit drug use was rife before prison, with 74% of women and 64% of men using drugs. More than half of these prisoners continued injecting drugs while incarcerated;
- Many inmates reported sexual abuse at a young age and many had experienced violent relationships;
- More than 30% of Aboriginal and Torres Strait Islander prisoners were taken from their parents as children, and a third of those were never returned. 31% of Indigenous women and 21% of Indigenous men in prison reported that their parents had been forcibly removed from their families as children;
- The literacy/numeracy assessment process applied to all prisoners in South Australia as they enter prison indicates that up to 60% are operating at a level of literacy ability below a functional standard.¹¹

General Health

In 2002, 14 Aboriginal deaths in custody were reported - eight in prison and six in police custody.¹²

Infectious diseases were common in the whole prison population, with a significantly higher proportion of Aboriginal and Torres Strait Islanders affected. Total prison population rates were:

- 64% of women and 40% of men were Hepatitis C antibody positive;
- 31% of women and 29% of men tested positive for Hepatitis B;¹³
- 14% of both men and women tested positive to skin testing for tuberculosis. Aboriginal and Torres Strait Islander inmates were twice as likely to have been exposed.¹⁴

As with infectious diseases, significantly higher number of Aboriginal and Torres Strait Islander people suffer from chronic diseases such as hypertension, diabetes and renal disease, than the rest of the prison population. However, overall figures are high with 95% of all women and 78% of all men in prison reporting at least one chronic condition.

Adult Mental Health

In 2003, a New South Wales Justice Health mental health study found substantial prevalence of mental illness amongst prisoners in the NSW correctional system. Almost half of those arriving in prison (46%) and over one third (38%) of sentenced inmates had suffered from a mental disorder (psychosis, affective disorder or anxiety disorder) in the previous 12 months. Female prisoners had a higher incidence of psychiatric disorder than their male counterparts. The correctional environment can exacerbate these conditions. Although arrest and detention could provide an opportunity for intervention and treatment, prisoners with mental illnesses are difficult to manage and require significant resources to address their unique needs.¹⁵

Juvenile Health Status

The NSW Department of Juvenile Justice, together with NSW Justice Health and the University of Sydney, surveyed 242 juvenile offenders in custody in 2003, 42% of whom were Indigenous. The social profiling reflected their vulnerability - 43% had a history of parental imprisonment and 11% had a parent currently in prison; 28% had a history of state care; 34% were not living in the family home prior to custody, and 10% were already parents themselves. Researchers concluded that the health needs of juvenile detainees were significant, with a high number engaging in risky behaviours:

- 9% of juvenile detainees were Hepatitis C antibody positive;
- 84% had reported symptoms consistent with a clinical disorder;
- 8% had symptoms of two or more personality disorders; and
- 19% of male and 24% of female detainees had considered attempting suicide in the past.¹⁶

COST

Not unlike the health system, the costs of interventions at the 'downstream' end of the criminal justice system are significant. It costs \$159 per day to house prisoners according to a 2004 Productivity Commission report. The daily cost of imprisonment for the 4,818 Aboriginal and Torres Strait Islander people, based on the June 30, 2003 Prison Census, was \$766,062. Given that occupancy rates are usually at capacity, the indicative cost of imprisonment for Aboriginal and Torres Strait Islander prisoners per year in Australia is nearly \$280 million. A mental health bed costs approximately \$550/day; therefore, it is more economical to admit mentally ill prisoners to jail rather than hospital.¹⁷ However, Benelong's Haven Family Drug and Alcohol Rehabilitation Centre calculates that it costs them \$42.50 a day to treat each client. Increased use of these types of services would represent a significant short- and long-term saving to the Departments of Corrective Services.

¹⁰. Butler, T., & Milner, L. 2003. *The 2001 New South Wales Inmate Health Survey*. ¹¹. Department of Justice Correctional Services and South Australian Government. 1997. *Offender Education Services Annual Report 1996 – 1997*. ¹². Collins L, & Ali, M. 2003. *Deaths in Custody in Australia: 2002*. ¹³. Butler, T., Spencer, J., Cui, J., et al.. 1999. *Seroprevalence of markers for hepatitis B, C and G in male and female prisoners*. ¹⁴. Levy, M. NSW Corrections Health Service. 1999. *Partnerships for Indigenous Health*. ¹⁵. Butler, T. & Allnutt, S. 2003. *Mental Illness Among New South Wales Prisoners*. ¹⁶. Bareja, M, & Charlton, K. 2003. *Statistics on Juvenile Detention in Australia 1981 – 2002*. ¹⁷. Productivity Commission. 2004. *Report on Government Services 2004*.

THE AMA CALLS ON THE FEDERAL GOVERNMENT TO:

1. KEEP THOSE OUT OF PRISON WHO SHOULD NOT BE THERE, PRINCIPALLY THOSE WITH MENTAL HEALTH AND SUBSTANCE ABUSE PROBLEMS.¹⁸

An unacceptable number of mentally ill Australians, including Aboriginal and Torres Strait Islanders, are in prison, rather than in treatment. **The AMA calls on all jurisdictions to make imprisonment the action of last resort for those with mental health or substance abuse problems and to set specific annual reduction targets for the number of individuals incarcerated with these problems.** The AMA wants all prisoners on remand and following sentencing to have a mental health team screening assessment within 48 hours.

- Those with mental health problems should be diverted to best practice treatment and support programs as an alternative to incarceration;

- Those with substance abuse problems should be offered effective treatment, including residential treatment, as an alternative to incarceration.

Adequate funding is essential to ensure the success of these initiatives.

At present there is limited data to assess the effectiveness of substance abuse rehabilitation programs. Effectiveness data collection and analysis is urgently needed to ensure good use of allocated resources.

The *Good News Stories* insert includes examples of Aboriginal and Torres Strait Islander specific programs that are good alternatives to incarceration for those with substance abuse problems.

2. ENSURE THAT HEALTH SERVICE PROVISION IN PRISONS IS THE BEST IT CAN BE—IN PARTICULAR, SUPPORTING INMATES TO TAKE CONTROL OF THEIR HEALTH AND THE DETERMINANTS OF THEIR HEALTH.¹⁷

The AMA calls upon the Federal, State and Territory Governments to adopt and actively implement the United Nations 1990 General Assembly Resolution on the *Basic Principles for the Treatment of Prisoners*. Article Nine of the Resolution states: “Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation”.¹⁸

The Standard Guidelines for Corrections in Australia sets only goals or outcomes for correctional services to achieve, as opposed to a set of enforced laws. They represent a statement of national intent around which each State or Territory jurisdiction must develop its own legislation and performance standards. The standards only require the provision of health services to be **comparable** to the general community, not the same as.¹⁹

The AMA considers that the health problems of prisoners cannot be adequately addressed until the Australian Government allows prisoners the same right of access to Medicare, the Pharmaceutical Benefits Scheme (PBS) and to the same health services as other citizens. To achieve this, the AMA believes five actions are required and that these would together significantly improve prisoners’ healthcare.

The AMA calls for:

1. The Federal Health Minister for Health and Ageing to immediately make an exception to clause 19 (2) of the Health Insurance Act so prisoners

can claim Medicare rebates for non-hospital health services, and to reinstate their eligibility for the PBS, including all safety net entitlements.

2. The Federal Government to require all States and Territories to implement the UN resolution on the *Basic Principles for the Treatment of Prisoners (1990)* and therefore to make the mainstream health system responsible for all aspects, including provision, of prison health services.
3. A revision of the Standard Guidelines for Corrections in Australia, to make them consistent with UN Resolution, Article 9.
4. Indigenous individuals to have full access to Aboriginal Medical Services (AMSs). This is imperative if there is to be a smooth transition of healthcare from within prison to external healthcare agencies, principally AMSs.
5. The Corrective Services Administrators Conference to ensure the following two documents comply with the UN resolution on the *Basic Principles for the Treatment of Prisoners (1990)* and as a matter of urgency for all Governments to fund the full implementation of the Operational Standards in all prisons once the documents are consistent and endorsed:
 - The Policy Guidelines for the Provision of Health Services to Aboriginal and Torres Strait Islander People in Custody; and
 - Guidance on Operational Standards for the Provision of Health Services to Aboriginal and Torres Strait Islander People in Custody.

“Those gentlemen who, when they are told of the misery which our prisoners suffer, content themselves with saying ‘let them take care to keep out...’, forget the vicissitudes of human affairs; the unexpected changes to which men are liable; and that those whose circumstances are affluent, may in time be reduced to indigence, and become debtors and prisoners”.

*John Howard, 1726–90, the father of prison reform, in his book *The State of Prisons in England and Wales 1777*.*

¹⁸. Australian Medical Association. 1998. *AMA Position Statement on the Health Care of Prisoners and Detainees 1998*. ¹⁹. United Nations General Assembly. Adopted 68th Plenary Meeting. 1990. *Resolution 45/111: Basic Principles for the treatment of prisoners*. The full resolution can be found at <http://www.un.org/documents/ga/res/45/a45r111.htm> ²⁰. Australian Institute of Criminology. 2005. *Standard Guidelines for Corrections in Australia*. 2005.