

Incarceration of Aboriginal and Torres Strait Islander People

Policy Position Statement

Key messages:

Aboriginal and Torres Strait Islander imprisonment rates are among the highest in the world - 12.7 times that of other Australians, reflecting broader social issues.

Prison health is public health because most people are in prison for short periods, and many cycle through prison and the community multiple times.

People in prison should have equivalent access to Australia's universal health care as other Australians have in the community. As prisoners generally have poorer health than that of other Australians, additional resources are needed to adequately address their health care issues.

Key policy positions:

1. Raise the age of criminal responsibility to 14 years.
2. Implement all recommendations of the Australian Law Reform Commission's *Pathways to Justice* report to reduce discrimination, support community alternatives to prison, and address social determinants of health.
3. Ensure health services in prisons are provided by the relevant health department, and are equivalent to services available in the community.

Audience:

Federal, State and Territory Governments, policymakers and program managers, PHAA members, media.

Responsibility:

PHAA Aboriginal and Torres Strait Islander Health Special Interest Group

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Policy position statement

This policy is underpinned by the *United Nations Declaration on the Rights of Indigenous Peoples*¹ and the ‘Mandela Rules’ – the *United Nations Standard Minimum Rules for the Treatment of Prisoners*.² It should also be read in conjunction with PHAA’s Aboriginal and Torres Strait Islander Health policy position statement.

PHAA affirms the following principles:

1. The Public Health Association of Australia recognises the over-imprisonment of Aboriginal and Torres Strait Islander people.
2. High incarceration rates of Aboriginal and Torres Strait Islander people are symptomatic of wider social issues in the community, and caused by many historical, political, economic and social factors. Therefore, solutions must take a social determinants approach.
3. Investment in interventions to prevent offending and subsequent imprisonment could provide significant social and economic benefits.
4. Prisoners have greater health needs than the general Australian population.³
5. PHAA endorses the goal in the Implementation Plan for the Aboriginal and Torres Strait Islander Health Plan– *“The Australian health system is free of racism and inequality and all Aboriginal and Torres Strait Islander people have access to health services that are effective, high quality, appropriate and affordable. Together with strategies to address social inequalities and determinants of health, this provides the necessary platform to realise health equality by 2031.”*⁴

PHAA notes the following evidence:

Incarceration

6. Aboriginal and Torres Strait Islander persons comprise 3.3% of the Australian population⁵, but make up more than a quarter (27%) of the prison population.⁶
7. Three quarters (75%) of Aboriginal and Torres Strait Islander prisoners have previously been in prison, compared with 50% of non-Indigenous prisoners.⁶
8. The rate of female incarceration has increased by 55% since 2008, and about one-third (34%) of all women in prison in Australia are Aboriginal and Torres Strait Islanders.⁶
9. Over the past 20 years the proportion of the prison population who are on remand (awaiting trial or sentencing) has increased from 14% in 1998 to 32% in 2017.^{6,7}

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10. Aboriginal and Torres Strait Islander youth are 26 times as likely as other young Australians to be in detention in a youth justice facility.⁸ Contact with the juvenile justice system is a strong predictor of later adult incarceration.⁹
11. More than one third (36%) of youth in a detention centre, almost three quarters (74%) of whom were Aboriginal, were diagnosed with Foetal Alcohol Spectrum Disorder.¹⁰

Cultural background

12. The forced removal of Aboriginal and Torres Strait Islander young people from their families and communities has caused dislocation from culture and impacted their health and wellbeing.¹¹
13. The high rate of Aboriginal and Torres Strait Islander incarceration is caused by many historical, political, economic and social factors requiring a social determinants approach to solutions.¹²

Health impacts

14. The health of people in prison is poorer than that of the general population. Key differences include higher rates of mental health and substance use issues, disability, communicable disease, acquired brain injury, chronic diseases such as type 2 diabetes, poorer dental health^{3,13} and fetal alcohol spectrum disorder.¹⁰
15. Consistent with their complex health needs, former prisoners access general practitioners at twice the rate of the general population.¹⁴ However, the rates were lower among Aboriginal and Torres Strait Islander former prisoners, reflecting difficulties in accessing culturally appropriate primary care services, despite a high level of need.¹⁴
16. Aboriginal and Torres Strait Islander people are at particularly increased risk of death from alcohol-related causes after release from prison.¹⁵
17. Around half of Aboriginal and Torres Strait Islander prison entrants link their offending to alcohol and/or substance misuse.¹⁶
18. Almost half (47%) of Aboriginal women entering prison have children who were dependent on them for their basic needs,³ and these Aboriginal mothers in prison have significant health needs associated with physical and mental health, and psychological distress.¹⁷

Public finance

19. Imprisonment costs \$302 per day per adult prisoner.¹⁸ This clearly indicates that investment in interventions to prevent imprisonment would provide significant financial and economic benefits.
20. Incarceration for non-payment of fines incurs costs far in excess of the fine values, without reclaiming the money from the unpaid fines.

Sustainable development

21. Implementing this policy would contribute towards the achievement of [UN Sustainable Development Goals 3 – Good Health and Wellbeing](#) and [10 – Reduced Inequalities](#).

PHAA seeks the following actions:

Incarceration policy

22. Raise the age of criminal responsibility in all jurisdictions to 14 years.
23. A national focus by all Australian governments on the over-incarceration of Aboriginal and Torres Strait Islander people, and a comprehensive Closing the Gap Justice target to be set by COAG.¹⁹
24. Implement the recommendations of the Australian Law Reform Commission's 2017 report *Pathways to Justice* to promote substantive equality before the law and fairer enforcement of the law; provide effective and culturally appropriate diversion, support and rehabilitation programs and alternatives to prison; promote justice reinvestment through redirection of funding and focus from incarceration to prevention, rehabilitation and support; and to ensure Aboriginal and Torres Strait Islander leadership in policy and program development and delivery.²⁰
25. A new Royal Commission to investigate the lack of implementation of the findings of the 1991 Royal Commission into Aboriginal Death in Custody, with almost half (46%) of recommendations not yet fully implemented, particularly those relating to self-determination, alternatives to custody and cycle of offending.²¹
26. Continue to fully fund and operate the Custody Notification Services set up after the 1991 Royal Commission in every Australian state and territory.
27. When incarceration is mandated, Aboriginal and Torres Strait Islander prisoners should be housed as close to their family/community of residence as possible.
28. The Human Rights and Equal Opportunity Commission to monitor compliance of the Australian Government and subsidiary States and Territories with the Mandela Rules.²

Health care

29. Consistent with the Mandela Rules, all federal state and territory governments should ensure that prisoners have the same standards of health care available in the community,² including access to selected items available through Medicare and the Pharmaceutical Benefits Scheme.
30. Aboriginal and Torres Strait Islander prisoners to have access to Aboriginal Community Controlled Health Services, to enhance provision of culturally appropriate services and continuity of care between custody and community.
31. Health care services in prison should be operated by jurisdictional health departments and not correctional service departments. In jurisdictions where this is not the case a transition to this approach should commence immediately.
32. Strengthen community health measures and funding of Aboriginal Community Controlled Health Services to address primary health, mental health and substance dependence problems.
33. All young people entering custody to be screened for Fetal Alcohol Spectrum Disorder, and if diagnosed, be held in appropriate mental health facilities for people with cognitive disabilities, not juvenile detention.
34. Greater investment in screening programs for cognitive disabilities (e.g. dementia) to ensure individual needs are being met.

PHAA resolves to:

35. Advocate for the above steps to be taken based on the principles in this position statement.
36. Work in partnership with the relevant Aboriginal and Torres Strait Islander organisations on advocating for prevention and reduced incarceration of Aboriginal and Torres Strait Islander peoples as well as improved health outcomes.

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(Adopted 2006, revised 2007, 2010, 2016)**

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