Public Health Association of Australia submission on incarceration rates of Aboriginal and Torres Strait Islander peoples

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**Introduction**

**The Public Health Association of Australia**

The Public Health Association of Australia (PHAA) is recognised as the principal non-government organisation for public health in Australia working to promote the health and well-being of all Australians. It is the pre-eminent voice for the public’s health in Australia. The PHAA works to ensure that the public’s health is improved through sustained and determined efforts of the Board, the National Office, the State and Territory Branches, the Special Interest Groups and members.

The efforts of the PHAA are enhanced by our vision for a healthy Australia and by engaging with like-minded stakeholders in order to build coalitions of interest that influence public opinion, the media, political parties and governments.

Health is a human right, a vital resource for everyday life, and key factor in sustainability. Health equity and inequity do not exist in isolation from the conditions that underpin people’s health. The health status of all people is impacted by the social, cultural, political, environmental and economic determinants of health. Specific focus on these determinants is necessary to reduce the unfair and unjust effects of conditions of living that cause poor health and disease. These determinants underpin the strategic direction of the Association.

All members of the Association are committed to better health outcomes based on these principles.

**Vision for a healthy population**

A healthy region, a healthy nation, healthy people: living in an equitable society underpinned by a well-functioning ecosystem and a healthy environment, improving and promoting health for all.

**Mission for the Public Health Association of Australia**

As the leading national peak body for public health representation and advocacy, to drive better health outcomes through increased knowledge, better access and equity, evidence informed policy and effective population-based practice in public health.

**Preamble**

PHAA welcomes the opportunity to provide input to the inquiry into incarceration rates of Aboriginal and Torres Strait Islander Peoples. The reduction of social and health inequities should be an over-arching goal of national policy and recognised as a key measure of our progress as a society. The Australian Government, in collaboration with the States/Territories, should outline a comprehensive national cross-government framework on promoting a healthy ecosystem and reducing social and health inequities. All public health activities and related government policy should be directed towards reducing social and health inequity nationally and, where possible, internationally.
PHAA Response to the discussion paper

2. Bail and the Remand Population

Proposal 2-2 State and Territory governments should work with peak Aboriginal and Torres Strait Islander organisations to identify service gaps and develop the infrastructure required to provide culturally appropriate bail support and diversion options where needed

PHAA supports this proposal to work with peak Aboriginal and Torres Strait Islander organisations to provide culturally appropriate bail support and diversion options. Aboriginal and Torres Strait Islander people, particularly young females, are more likely than others to experience short periods of time in prison on remand and short sentences. Increased availability of culturally appropriate bail support programs and diversion options would assist in decreasing these incidences of short stays in prison due to a lack of other suitable alternatives.

4. Sentencing options

Question 4-1 Noting the incarceration rates of Aboriginal and Torres Strait Islander people: (a) should Commonwealth, state and territory governments review provisions that impose mandatory or presumptive sentences?

PHAA supports the abolition of mandatory sentencing which has been widely condemned, has no evidence base for deterrence, rehabilitation or reducing recidivism, and has been consistently opposed by the Law Council of Australia. Mandatory sentences specifically prevent the consideration of personal circumstances and mitigating factors—the same underlying social issues which need to be addressed in order to actually reduce the risk of offending. Criticisms of mandatory sentencing include that it defies the separation of powers by compromising the independence of the judiciary, that they disproportionately affect Aboriginal and Torres Strait Islander people, that they risk non-compliance with international human rights laws, their arbitrary nature being in conflict with the rule of law, the increased risk of disproportionate sentences, and the resulting increase in prison populations. The risk that removing judicial discretion will reduce fairness in sentencing is recognised by the general community. As far back as 2008, the Sentencing Advisory Council in Victoria concluded that mandatory and presumptive sentencing are costly in both economic and social terms, and are unlikely to achieve their aims.

Question 4-2 Should short sentences of imprisonment be abolished as a sentencing option? Are there any unintended consequences that could result?

Proposal 4-1 State and territory governments should work with peak Aboriginal and Torres Strait Islander organisations to ensure that community-based sentences are more readily available, particularly in regional and remote areas.

For non-violent and non-sexual crimes, imprisonment should be the punishment of last resort for Aboriginal and Torres Strait Islander people. However, the abolition of short sentences of imprisonment as a sentencing option carries a high risk that offenders will simply be given longer sentences instead. Such a proposal could therefore only be successful in reducing overall imprisonment rates under strict conditions. Suitable community-based sentence alternatives would have to be available throughout the country, including in regional and remote areas. One of the negative consequences of prison stays, particularly for Aboriginal and Torres Strait Islander people, is being removed from your community and support networks. Visits from family are beneficial for prisoners and are related to reduced re-offending up to 5 years later. The distances to prison can often be prohibitive for families and loved ones, adding to the existing logistical and emotional difficulties involved in visiting prisoners. Replacing short sentences with suitable, local, and culturally
appropriate community-based sentencing options would help to alleviate the problems caused by the separations of families through imprisonment. If, however, the short sentences were replaced with longer ones because no suitable alternatives could be found, the problems would be exacerbated.

Early intervention programs, which identify and address social and health behaviours likely to lead to contact with the criminal justice system should be developed in each jurisdiction, particularly in the areas of mental health, substance use and dependence, and violence. Evidence based education and vocational programs targeting disaffected youth are required.

Culturally appropriate and effective alternatives to incarceration such as court diversion programs, Circle Sentencing, youth and adult drug courts and magistrates’ referrals into treatment should be implemented in each jurisdiction.

5. Prison programs, parole and unsupervised release

Proposal 5-1 Prison programs should be developed and made available to accused people held on remand and people serving short sentences

With Aboriginal and Torres Strait Islander people more likely than non-Indigenous people to be in prison on remand and on short sentences, they are disproportionately affected by the unavailability of prison programs for these categories of prisoners. Evidence-based programs designed to reduce risk factors for offending should be available to those in prison regardless of legal status, especially where they are addressing risk factors for mortality post-release from prison. For example, more than half of the Aboriginal and Torres Strait Islander people entering prison consume alcohol at risky levels, and around half link their offending to alcohol and/or substance misuse. They have different risk factors for alcohol dependence than non-Indigenous prisoners, indicating a need for culturally appropriate programs. However, Aboriginal and Torres Strait Islander ex-prisoners are at increased risk of alcohol-related mortality after release from prison, suggested that currently available alcohol treatment programs in prison are inadequate, and that continued support post-release is essential.

7. Justice procedure offences – Breach of Community-based Sentences

Proposal 7-1 To reduce breaches of community-based sentences by Aboriginal and Torres Strait Islander peoples, state and territory governments should engage with peak Aboriginal and Torres Strait Islander organisations to identify gaps and build the infrastructure required for culturally appropriate community-based sentencing options and support services

PHAA supports the proposal to work with peak Aboriginal and Torres Strait Islander organisations to increase the availability of culturally appropriate community-based sentencing options and support services. These programs and services should be available throughout the country so that there are locally available options, reducing the need for people to travel long distances to access them.

8. Alcohol

Question 8-2 In what ways do banned drinkers registers or alcohol mandatory treatment programs affect alcohol-related offending within Aboriginal and Torres Strait Islander communities? What negative impacts, if any, flow from such programs?

PHAA does not support Alcohol Mandatory Treatment (AMT) programs and encourages the development of better pathways to treatment. While the AMT program in the Northern Territory may have provided...
opportunities for people previously unable to access health care services, significant concerns remained in regard to criminalising a medical problem, the lack of demonstrated long-term health benefits, and the cost of implementing AMT. Alternative pathways to treatment are required with adequate treatment places and appropriate encouragement through a range of community support services.

PHAA supports Banned Drinker Registers (BDR), linked to identification scanning at the point of sale, as a less-racially driven and much more whole-of-community approach to limiting opportunities for people with alcohol-related problems to access alcohol. We encourage appropriate resourcing for a comprehensive evaluation of the BDR.

10. Aboriginal Justice Agreements

Question 10-1 Should the Commonwealth Government develop justice targets as part of the review of the Closing the Gap policy? If so, what should these targets encompass?

PHAA supports justice targets being added to the Closing the Gap targets, encompassing reducing the gap in incarceration rates between Aboriginal and Torres Strait Islanders and non-Indigenous Australians.

Conclusion

PHAA supports the broad directions of the consultation paper on the incarceration rates of Aboriginal and Torres Strait Islander peoples. We are particularly keen that the following points are highlighted:

- There needs to be a greater focus, in collaboration with Aboriginal and Torres Strait Islander organisations, on the underlying social issues which lead to the higher levels of incarceration
- A justice re-investment approach with investment in interventions to prevent offending and subsequent imprisonment could provide significant social and economic benefits
- A justice target on reducing the gap in incarceration rates should be added to the Closing the Gap targets

The PHAA appreciates the opportunity to make this submission and the opportunity to contribute to the consultation on incarceration rates of Aboriginal and Torres Strait Islander peoples.

Please do not hesitate to contact us should you require additional information or have any queries in relation to this submission.

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References