Health Care in Custodial Settings

2023

Preamble

There is a strong association between incarceration and poor health. In comparison to the general population, people in custodial settings experience higher rates of chronic physical disease, mental ill-health, communicable disease, and addiction.[1] Current service delivery settings across Australian custodial settings do not always enable access to the same standard of health care that most Australians would expect. This position statement is exploring key policy areas that can be improved upon to enhance the quality of health care provided to people in custodial settings, noting that all people have a right to access safe and responsive health care, whether they are incarcerated or living in the community.

In Australia, there are disproportionately high numbers of Aboriginal and Torres Strait Islander men, women and children detained by the legal system. Despite the 339 recommendations of the *Royal Commission into Aboriginal Deaths in Custody* [2] released more than 30 years ago – this national failure persists, with Aboriginal and Torres Strait Islander people continuing to be caught in the system at far greater rates than non-Indigenous Australians. This cycle of incarceration deeply and adversely impacts Aboriginal and Torres Strait Islander equity, health and wellbeing. The necessary systemic reforms to redress this are long overdue.

While this position statement will focus specifically on the provision of health care in custodial settings, it is written with an acknowledgement that the social and cultural determinants play a significant role in the likelihood of contact with the legal system and the cycle of incarceration that can then eventuate.

The AMA affirms that…

- The fundamental human rights of people in custodial settings must be upheld in custodial settings, including through equity of access to safe and appropriate health care.
- The disproportionately high rates of incarceration of Aboriginal and Torres Strait Islander peoples in Australia must be redressed through fundamental policy and legislative reform, investment into community-driven diversionary and rehabilitation programs and informed by the recommendations of the *Royal Commission into Aboriginal Deaths in Custody*.
- Culturally safe health care is essential for custodial settings and must be prioritised through staff training and appropriate health programs at all stages of the custodial cycle.
- The impacts of systematic racism within the Australian legal system must be redressed, as well as more broadly across education, health, housing, employment, and land rights to ensure that Aboriginal and Torres Strait Islander peoples experience self-determination, good health, and equal opportunities.
- Health services in custodial settings should be resourced and designed to provide a level of care that is responsive to diverse and complex population health needs. They should also be of equivalent professional, ethical and technical standard to the wider Australian community.
- The concept of integrated care should be central to the design and delivery of custodial health services, ensuring coordinated and continuous health care from a person's first point of contact with the legal system through to reconnection with the community.

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Calls on the Commonwealth government to…

- Ensure people in custodial settings retain their entitlement to the Medicare Benefits Scheme (MBS) and the Pharmaceutical Benefits Scheme (PBS) throughout all stages of the custodial cycle to ensure access to appropriate health care and treatment.
- Implement the recommendations of the *Royal Commission into Aboriginal Deaths in Custody* – now more than 30 years old.
- Lead a whole-of-government approach to ensure best practice health service delivery that is patient-centred and needs-based across all custodial settings.
- Adopt a justice reinvestment approach to fund Aboriginal and Torres Strait Islander-led programs that support young people thrive and avoid the legal system.
- Substantially and meaningfully invest in the social and cultural determinants of health to increase equity of access to educational opportunities, secure housing, safety and security and good health, especially for the most disadvantaged groups in Australia.

Calls on State and Territory governments to…

- Commit to raise the age of criminal responsibility to a **minimum of 14 years of age**.
- Prioritise growth of the Aboriginal and Torres Strait Islander workforce across the legal system, including in health service delivery.
- Create responsive and appropriate services within custodial settings for people living with disability and appropriate linkages with the National Disability Insurance Scheme (NDIS).
- Ensure that health service delivery in custodial settings is independent and autonomous, free of interference or influence from correctional authorities.
- Adopt an integrated approach to reducing imprisonment rates and improving health through much closer integration of Aboriginal Community Controlled Health Organisations (ACCHOs), other services and prison health services across the pre-custodial, custodial and post-custodial cycle.
- Facilitate an adequately resourced whole-of-government approach for health service management and coordination across the legal system, improved data sharing and better integration of health and social support services.
- Implement the recommendations of the 2016 *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*.

Calls on health service providers in custodial settings to…

- Ensure provision of healthcare is autonomous, independent and free of interference.
- Commit to maintaining adequate, responsive and needs-based primary and specialist health care, including access to health screening and multi-disciplinary teams.
- Design health service delivery models appropriate for diverse populations including Aboriginal and Torres Strait Islander peoples, women and children, people living with a disability, people who identify as LGBTQIA+, and people of culturally and linguistically diverse backgrounds.
- Ensure mental health and suicide prevention services are adequately resourced, holistic and culturally safe to provide appropriate screening, treatment, addiction services, counselling and follow up for diverse population cohorts.
- Ensure mental health care is also responsive to diverse spiritual and cultural needs.
- Commit to minimising periods in isolation – in the interests of maintaining mental and physical health, and positive social and emotional wellbeing.

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- Develop a suicide prevention strategy, which is supported by appropriate training for all staff to effectively monitor and implement across all facilities.
- Commit to further assisting people being reintegrated into the community through targeting areas such as comprehensive release plans, social service integration through primary health care providers, housing and homelessness, and linkages with family and community.
- Commit to actively working towards decreasing criminalisation and recidivism rates by detecting individuals with health issues that could put them at risk of imprisonment while in the community and working with them to treat those issues to prevent potential offending/reoffending.

Explanatory Notes

1. Human Rights are fundamental

The AMA strongly advocates a human rights-based approach for people who have contact with the legal system. This is consistent with Australia's obligations as a signatory to the *United Nations Universal Declaration on Human Rights* (UDHR) and our legal obligations as a signatory to the *International Covenant on Civil and Political Rights* (OHCHR). [3,4,5,6,7]

2. Snapshot of incarceration data

According to the Australian Bureau of Statistics, there were 40,627 people in custody in the June quarter of 2022, which was an increase of 297 people since the previous quarter.[8]

The national imprisonment rate was 202 persons per 100,000 adult population.[9]

The imprisonment rate for the Aboriginal and Torres Strait Islander adult population was 2,315 persons per 100,000 population for the same reporting period.[10]

The Aboriginal and Torres Strait Islander male imprisonment rate was 4,261 per 100,000 adult male Aboriginal and Torres Strait Islander population.[11]

The Aboriginal and Torres Strait Islander imprisonment rate for female prisoners was 423 persons per 100,000 adult Aboriginal and Torres Strait Islander population.[12]

As at June 2021, the total population of Aboriginal and Torres Strait Islander people was 984,000, or 3.8% of the total population.[13]

As at June 2021, Just under 1 in 3 (30%) of prisoners in Australia were Aboriginal or Torres Strait Islander.[14]

(As at 2018) people with disability comprised around 18% of the Australian population, but almost 50% of the adult prison population.[15]

2.1 Youth detention statistics

According to the Australian Institute of Health and Welfare (AIHW) on an average night in the June quarter of 2021, of the young people in detention, there were 677 children between the ages of 10-17 in detention facilities – the remaining 17% were ages 18 or over.[16]

Between the June quarters of 2017 and 2021, detention rates for individuals aged 10-17 have decreased (from 817 in 2017 to 677 in 2021), while rates for individuals aged 18 or over remained stable. This represents a rate of 27 per 100,000 population of young people aged 10-17. Of this age group, 54% were Aboriginal and Torres Strait Islander.[17]

Nationally, 250 per 100,000 Aboriginal and Torres Strait Islander children (aged 10-17) were in detention in comparison to 13 per 100,000 non-Indigenous children.[18]

2.2 Age of criminal responsibility

Currently, in Australia children aged 10 can be charged, prosecuted, and imprisoned. This is one of the lowest ages of criminal responsibility in the world and disproportionately impacts on Aboriginal and Torres Strait Islander children, families, and communities.[19] The adverse health impacts of incarceration on children and young people are significant, along with the long-term developmental and mental health impacts.

The AMA maintains that detention is no place for a child, is harmful to health and wellbeing, and that the minimum age of criminal responsibility should be increased to a minimum of 14 years of age across all jurisdictions.[20] The AMA is a member of the Raise the Age Campaign.[21]

In November 2022, the Northern Territory Government passed legislative changes to raise the minimum age of criminal responsibility to 12 years of age. This signifies an awareness that something needs to change, but the AMA maintains this does not go far enough and will have little impact on removing children from custodial settings.

3. Access to Medicare Benefits Scheme (MBS) and Pharmaceutical Benefits Scheme (PBS)

Despite having a higher burden of complex and chronic illnesses than the wider population, people in custodial settings are excluded from Medicare and PBS subsidies under Section 19(2) of the *Health Insurance Act 1973 (Cwlth)*, which states that:

> *(2) Unless the Minister otherwise directs, a medicare benefit is not payable in respect of a professional service* that has been rendered by, or on behalf of, or under an arrangement with:*
> *a) the Commonwealth;*
> *b) a State;*
> *c) a local governing body; or*
> *d) an authority established by a law of the Commonwealth, a law of a State or a law of an internal Territory.*
> ** a service to which an item relates*[22]

The AMA understands that intent of this clause to avoid duplication of services and expenditure between the Commonwealth and states and territories, however this is premised on the assumption that an equivalence of health service is being provided by jurisdictions in custodial settings.

Indeed, Australia has committed to the provision of equivalent healthcare for people in prison and youth detention, by endorsing the United Nations Mandela Rules. Rule 24 states that:

> *1. The provision of health care for prisoners is a State responsibility. Prisoners should enjoy the same standards of health care that are available in the community, and should have access to necessary health-care services free of charge without discrimination on the grounds of their legal status.*
> *2. Health-care services should be organized in close relationship to the general public health administration and in a way that ensures continuity of treatment and care, including for HIV, tuberculosis and other infectious diseases, as well as for drug dependence.*

The AMA has previously advocated for retention of access to the Medicare Benefits Scheme (MBS) for people while they are in custodial settings.[23,24] This is to ensure continuity of care at all stages of a custodial journey, and access to a standard of health care that is comparable to the general community. The AMA supports the notion that a custodial healthcare service should provide services for medical treatment, mental health care, allied health and addiction services that are comparable in quality to those available to patients in the general community. These healthcare services should not only aim for equivalence of service quality but also equity in health outcomes.

Noting the various challenges faced by people when they are released into the community after serving a custodial sentence – having to reapply for Medicare access can present a significant barrier to health care to an already disadvantaged cohort. The AMA asserts that amending the current MBS provisions presents significant opportunity to enhance health outcomes by allowing continuity of access to the MBS at all stages of a custodial journey, including through transition back to the community.

3.1 Medication access - PBS

It is important that people seeking health care in custodial settings can access appropriate medications to support ongoing treatment for their physical and mental health. The AMA has also previously advocated for access to the PBS for people in custodial settings, which is underpinned by a fundamental commitment to equity of access to health care for all people, no matter where they are in the community.[25] While in theory, all medications available in the community should also be available through custodial health service providers, this is not always the case.[26]

The difficulties accessing medical records in and outside of custodial settings can lead also to delayed administration of medications and impact on continuity of care, particularly in the case of mental health treatment pathways. In our 2015 Report Card on Indigenous Health, the AMA noted that for all people reintegrating with the community, post-release is a time of significant health risk.[27] While managing effective reconnection with the community requires multiple community supports – being able to continue with the same medication to treat physical and mental health is one area that can support better health outcomes. Therefore, the AMA maintains it is so important for all people within custodial settings to be able to access PBS listed medications.

4. Aboriginal and Torres Strait Islander experiences with the legal system

The AMA recognises that cultural determinants play a strong and positive role in health and wellbeing, and this is relevant to health care and health outcomes across the entire spectrum of the legal system. Aboriginal and Torres Strait Islander knowledges, traditional community governance, capability and workforce have a central role to play to reduce incarceration, support people passing through the legal system and maintain strong integration to community and services after release.

Incorporation of cultural and social determinants of health across policy settings will forge better linkages between the legal system and good health outcomes. The AMA also recognises the importance of diversionary and justice reinvestment programs that are developed and led at local levels by Aboriginal and Torres Strait Islander communities to support young people thrive and avoid the cycle of incarceration.

The AMA reaffirms that within custodial settings, health services need to deliver a culturally safe and competent service by employing greater numbers of Aboriginal and Torres Strait Islander health professionals, as well as working in partnership with Aboriginal Community Controlled Health Organisations (ACCHOs) or other services.

4.1 Closing the Gap

The National Agreement on Closing the Gap (National Agreement) is a partnership between Aboriginal and Torres Strait Islander peak organisations and Australian governments.[28] The partnership has been established with a focus on redressing socio-economic inequalities impacting the life outcomes of Aboriginal and Torres Strait Islander peoples.

The National Agreement is framed around four Priority Reforms:

- formal partnerships and shared decision making,
- building the community-controlled sector,
- transforming government organisations, and
- having shared access to data and information at a regional level.

National Agreement on Closing the Gap justice targets

Outcome 10

Adults are not overrepresented in the criminal justice system

Target

By 2031 – reduce the rate of Aboriginal and Torres Strait Islander adults held in incarceration by at least 15 percent

Outcome 11

Aboriginal and Torres Strait Islander young people are not overrepresented in the criminal justice system

Target

By 2031, reduce the rate of Aboriginal and Torres Strait islander young people (10-17 years) in detention by 30 percent

The AMA welcomes the inclusion of national justice targets in the *National Agreement on Closing the Gap*, as a lever to engage all governments to work to reduce incarceration of Aboriginal and Torres Strait Islander adults and young people. Progress against each target area is mapped by the Productivity Commission. At the time of writing, target 10 was not on track to be met, however there was progress against target 11, with a reduction at the national level in the number of Aboriginal and Torres Strait Islander young people in custodial settings.

5. Models of health care service provision in custodial settings

The AMA supports the *Guiding Principles for Corrections in Australia* (2018), which stipulate that people in custodial settings are provided with respectful and culturally safe health care, and are provided a standard of health care that meets community expectations, and is responsive to their physical, mental and social care needs.[29] The AMA also supports the emphasis on public health being

a priority in custodial settings, with appropriate measures in place around prevention, infection control and risk management around illness outbreak.

Custodial environments themselves also impact on a person's health and wellbeing. This can include the built environment, access to fresh air and natural light, health hardware, access to fresh water, ability to exercise, privacy and personal space, nutritious food and opportunities to socialise. The AMA recommends that custodial settings consider how preventive health measures and promotion of good mental health can be incorporated into design and operations across all types of settings.[30]

5.1 Primary and specialist health care

As for the broader community, primary health care provision in custodial settings is fundamental to maintaining good health outcomes and ensuring that people are receiving appropriate treatment and referrals. The AMA reaffirms the importance of timely, culturally safe, and appropriate access to primary, acute care and hospital resources within custodial settings – particularly for Aboriginal and Torres Strait Islander peoples.[31]

The AMA notes the *Standards for health services in Australian prisons* (the Standards) is – at the time of writing – being updated by Royal Australian College of General Practitioners (RACGP).[32] Notwithstanding this revision process, the AMA notes the first edition of the Standards (2011) provides a framework for the provision of comprehensive primary care to people in custodial settings and received endorsement by all state and territory governments.[33] We strongly advocate for this level of national coordination to continue around the next issue of the Standards and encourage all governments to continue to prioritise custodial health and wellbeing in partnership with health peak organisations, Aboriginal and Torres Strait Islander community-controlled organisations, social services peak bodies and health service providers.

Access to comprehensive primary health care should be equitable at all stages of the custodial journey, including and especially at the time of release to ensure people have continuity of care, including sharing of patient health records, health summaries, and consultation notes between custodial and community health providers. Primary health care providers in custodial settings should also be resourced to support people on release connect with social services to ensure they can access housing, employment, income support, mental health and other health and welfare services.

The AMA recognises the need for culturally and age-appropriate primary health care in custodial settings. We recommend enhanced engagement with Aboriginal and Torres Strait Islander community-controlled health organisations to ensure health care is needs-based and appropriate, as well as ensure strong linkages are maintained with communities into custodial settings.[34] The AMA also encourages employment of Aboriginal and Torres Strait Islander peoples throughout the custodial workforce to ensure these environments are culturally safe. Due to the both the population diversity and complex medical and mental health needs of people in custodial settings – primary health care must be comprehensive, adaptable, needs-based, and patient-centred.

Specialist health care is imperative for managing chronic or high-risk medical conditions for people in custodial settings. As at 2018 – almost one in three (30%) of prison entrants had a history of one of the following chronic physical health conditions: arthritis, asthma, cancer, cardiovascular disease, or diabetes.[35] In addition to calling for MBS and PBS access to support better health outcomes, the AMA also supports team-based care models to support treatment of chronic and complex health conditions at all stages of the custodial journey. The AMA recommends that where possible, medical specialist and allied health services should be provided on site to minimise fragmentation of care. Where this is not possible, timely arrangements should be in place to facilitate patient transfers to clinics and

hospitals. Security measures during these transfers should be commensurate with risk and not compromise health or standards of clinical care.

5.2 Managing COVID-19 outbreaks

The AMA understands that correctional settings present additional public health challenges to infection control and pandemic preparedness. These include the proximity of people within custodial settings, people coming and going in and out of facilities, enhanced overall health vulnerabilities of incarcerated populations and greater risks of complications arising from infection of Covid-19.

The AMA supports enhanced prevention and preparedness measures to support infection control including provision of access to the Covid-19 vaccine to all people including staff in custodial settings and sustained availability of Rapid Antigen Tests to identify an outbreak at the earliest opportunity. It is understood that periods of isolation may be necessary during an outbreak of Covid-19, but it is important that these requirements are balanced with considerations of mental and emotional wellbeing in custodial settings. The AMA notes the *National Guidelines for COVID-19 Outbreaks in Correctional and Detention Facilities*[36] provides stepped guidance for facilities to manage infection control and Covid-19 outbreaks, as well as acknowledging the harms that can arise from prolonged isolation in custodial settings.

5.3 Mental health and suicide prevention

The AMA recognises that mental health and spiritual and emotional wellbeing is inherently connected to physical health and life outcomes. In 2018, the AIHW reported 2 in 5 (40%) of prison entrants reporting experiencing a mental health disorder in their lifetime.[37] Mental health service provision in custodial settings must be comprehensive and holistic, factoring in intersectional factors such as drug and alcohol dependence, trauma, social and cultural determinants of mental health and cultural needs. Treatment must be patient-centred and build necessary supports to minimise risks of reoffending and recidivism after the person is released from custody.

The AMA recommends that custodial health services ensure adequate resourcing across the mental health workforce, including psychiatrists, GPs, psychologists, mental health nurses and Aboriginal and Torres Strait Islander health workers to ensure ongoing, responsive, and multi-disciplinary mental health care is available at all stages of the custodial journey. This includes early assessment and screening, ongoing check-ups, and care through a period of custody and supports to ensure mental health and wellbeing is maintained on release into the community and beyond.

Suicide and self-harm prevention strategies are fundamental to custodial health care. All custodial settings must have a risk management framework to identify people who are at risk of self-harm, appropriately trained staff to identify and manage risk, and facilitate broader community and familial supports for people who are identified to be at risk of self-harm. It is imperative that mental health services, including preventive and early intervention measures are provided in a culturally safe manner, responsive to the diverse cultural and spiritual needs of the population.

6. Continuity of care, justice reinvestment and breaking the cycle of incarceration

Many people moving through the legal system experience ongoing and complex health issues attributable to broader social and cultural determinants of health. These include poverty, overcrowded and sub-standard housing, homelessness, lack of suitable employment, low education attainment, family violence and lack of connection to community. Returning to the community after a period of incarceration can be highly stressful. To support people post-release, governments and

service providers must provide coordinated and ongoing care and support to ensure that people leaving custody have the best chance of rebuilding a life underpinned by good mental and physical health. These supports are also necessary to support people break the cycle of incarceration, noting recidivism rates are on the rise. As at 2018 – almost 3 in 4 (73%) prison entrants reported they had previously been in an adult prison.[38]

Justice reinvestment and diversionary programs to prevent young people ever having contact with the legal system are a fundamental component of custodial health. Alternatives to prison designed for young and at-risk people are essential preventive measures to break the cycle of incarceration. Across Australia, communities are leading the way to support people with these alternative pathways.[39] The AMA calls on all governments to resource, engage and fund community-led alternatives to incarceration. We further emphasise the need for increased investment into Aboriginal and Torres Strait Islander community-controlled organisations to lead on program design that is appropriate for local needs, supports young people to grow and thrive and importantly – avoid entering the cycle of incarceration.

The AMA thanks the medical, legal and criminal justice expert group who provided oversight to the development of this position statement.

We respectfully acknowledge Aboriginal and Torres Strait Islander peoples as the Traditional Owners of the lands and seas across Australia.

See also:
AMA Position Statement on Cultural Safety 2021
AMA Position Statement on Social Determinants of Health 2020
AMA Position Statement on Medical Ethics in Custodial Settings 2013 (amended 2015)
AMA Position Statement on Mental Health 2018

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