

Bridges and barriers

ADDRESSING INDIGENOUS INCARCERATION AND HEALTH

Revised Edition

National Indigenous Drug and Alcohol Committee

The leading voice in Indigenous drug and alcohol policy advice

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Revised edition 2013

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Published by the Australian National Council on Drugs

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The National Indigenous Drug and Alcohol Committee (NIDAC), a committee of the Australian National Council on Drugs (ANCD), provides advice to government on Indigenous alcohol and other drug issues.

The ANCD and NIDAC are supported by funding from the Australian Government Department of Health and Ageing.

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Introduction

Indigenous Australians make up just over one-quarter (26 per cent) of Australia's prison population (Australian Bureau of Statistics 2011), despite the fact that Indigenous Australians comprise around 2.5 per cent of Australia's entire adult population (Australian Institute of Health and Welfare 2011c). Over the past 20 years, Indigenous Australians have continued to fill our country's prisons at alarmingly disproportionate rates. The issues experienced by Indigenous offenders are significant and complex. The strong links between harmful substance use and Indigenous incarceration highlight an urgent need for government to address this disturbing problem.

For Indigenous Australians, the United Nations' impetus for countries to address equal rights for Indigenous people, and the Australian Government's 2008 commitment to close the 17-year gap in life expectancy within a generation,¹ provide welcome signs that Indigenous health equality is not only considered a basic right, but is also officially recognised as being achievable.

The National Indigenous Drug and Alcohol Committee (NIDAC) welcomes the Australian Government's commitment, through the Council of Australian Governments (COAG), to improve the social and/or structural determinants of Indigenous health. However, with the disproportionately large number of Indigenous Australians in our correctional systems, the social and health adversity incurred by their incarceration cannot be ignored.

The trauma and suffering that Indigenous people have experienced over generations have contributed to their burden of disease, harmful substance use and incarceration. Sadly, many Indigenous Australians in prison are themselves victims of harmful substance use or violent crime. Indigenous Australians have an indisputable right to access appropriate treatment and rehabilitation to address these underlying issues.

Now more than ever, there is an urgent need to reduce recidivism and the intergenerational effects of Indigenous incarceration by developing a national program that not only uniformly tackles the over-representation of Indigenous persons and health inequalities in our correctional system but is also responsive to strengthening the health and cultural wellbeing of Indigenous Australians. It is imperative that these targets be embedded in all State, Territory and Australian Government policies and programs.

Prisoner health is an important priority and NIDAC is determined to see young Indigenous people provided with opportunities away from a life of harmful substance use and crime. Hopefully through the recommendations of this paper the future of Indigenous families and their children may be secured within a nutritive and safe environment.

Background

For Indigenous and non-Indigenous prisoners, time spent in prison is fraught with many risks to their health and wellbeing. Offenders have disproportionately higher rates of serious mental illness (Ogloff et al. 2007) and substance use. While in prison, they are at increased risk of blood-borne virus (BBV) transmission, physical violence, sexual assault and isolation. Even upon release, numerous challenges remain, such as stigmatisation, social and cultural exclusion, and, frequently, inadequate access to support networks and to health and social services. The long-term impact of a criminal record on employment opportunities can often have lifelong consequences. Evidence also indicates that prisoners have higher mortality rates upon their release relative to the general population (Hobbs et al. 2006; Kinner et al. 2011).

All of these risks have particular relevance to the grossly over-represented population of Indigenous Australians within the correctional system who are already more likely to face greater health, social and economic challenges. As high levels of Indigenous imprisonment across Australia have continued since the 1991 report of the Royal Commission into Aboriginal Deaths in Custody, it is vital that strategies targeted towards improving the safety and lives of the Indigenous population include the correctional system.

¹ The gap between Indigenous and non-Indigenous Australians' life expectancy was recently estimated to be 10–11.5 years. However, this does not represent an improvement, but reflects changes in calculation methods (Thomson et al. 2011). See the Australian Institute of Health and Welfare (2011b) for further information.

Since health and wellbeing issues are closely linked to Indigenous violence, offending and incarceration, interventions that address harmful substance use have the potential to significantly reduce the over-representation of Indigenous Australians in our correctional system. This is especially true for those Indigenous offenders who may more frequently commit more serious alcohol- and other drug-related offences.

Prison-related health risks

Indigenous offenders with an existing substance use, mental health, or physical health problem often have complex needs. Separation from family and culture, together with a previous history of an undiagnosed or untreated health condition, places an Indigenous offender at great risk while in the correctional system. There is the danger of these issues, if left unattended, exacerbating or causing other health problems while an offender is in detention or in prison.

Blood-borne viruses (BBV)

High-risk behaviours for BBV transmission, such as injecting drug use, tattooing, physical violence, body piercing and unprotected sex, are more prevalent in prisons (Heale et al. 2003). The level of hepatitis C virus (HCV) among prisoners is over 30 times greater than in the general community (Butler et al. 2011b). The National Prison Entrants' Bloodborne Virus Survey 2010, which collected information from 811 prison entrants, revealed no cases of HIV and a 22 per cent prevalence of HCV. This is a decrease from less than 1 per cent (HIV) and 35 per cent (HCV) in 2007 (Butler et al. 2011b). Rates of HIV are in general very low in the Australian population (about 0.1 per cent) (Australian Institute of Health and Welfare 2011c). Rates of HCV were higher among injecting drug users in the survey sample (51 per cent), particularly among female injecting drug users (68 per cent compared with 49 per cent for male injecting drug users), while the proportion of those with HCV was similar for Indigenous and non-Indigenous persons (18 per cent and 23 per cent respectively) (Butler et al. 2011b). These figures are well above those for the general community and place those not infected with HCV at great risk while in prison.

Comorbidity

Comorbid substance use disorder and mental illness are common among offenders in custody. A recent study of comorbidity among Australian prisoners found that 43 per cent of subjects had suffered from a mental health disorder within the previous year, and 55 per cent had a substance use disorder in the previous year, with 29 per cent prevalence of comorbidity (Butler et al. 2011a). According to reports by the Human Rights and Equal Opportunity Commission's Joint Standing Committee on Mental Health and Human Rights, people with mental illness are consigned to incarceration, rather than treatment, because of the lack of appropriate mental health and associated services (Calma 2008).

Research has also demonstrated that male prisoners are at increased risk of suicide and death from overdose in the period immediately following their release (Kariminia et al. 2007b). A study of ex-prisoners from Western Australia reported that Indigenous male ex-prisoners demonstrated higher mortality rates relative to non-Indigenous male ex-prisoners (Hobbs et al. 2006). Data from New South Wales indicated that Indigenous women were 12.6 times more likely to die after release from prison, and Indigenous men 4.8 times more likely to die after release (Bartels 2010), than their non-Indigenous counterparts; and a recent meta-analysis found that 76 per cent of ex-prisoner deaths in the first two weeks after release were drug-related (Merrall et al. 2010). This evidence highlights the need for strategies implemented within the prison environment to also be available post-release, particularly for Indigenous prisoners. Undoubtedly strategies of this nature would also help to reduce the likelihood of re-incarceration.

Indigenous prisoners and detainees: trends and characteristics

Indigenous adults are over 14 times more likely to be imprisoned than other Australians (see Figure 1). The age-standardised national Indigenous imprisonment rate at June 2011 was 1868 per 100 000 adult Indigenous population compared with 130 per 100 000 adult non-Indigenous population (Australian Bureau of Statistics 2011).

The proportion of prisoners who are Indigenous varies across States and Territories. The Indigenous prisoner population in the Northern Territory comprises 82 per cent of the total prisoner population, while Victoria has the lowest proportion of Indigenous prisoners (6.2 per cent) (Australian Bureau of Statistics 2011). Notably in Western Australia in 2011, Indigenous Australians were 18.3 times more likely to be in prison than non-Indigenous Australians (see Figure 2).

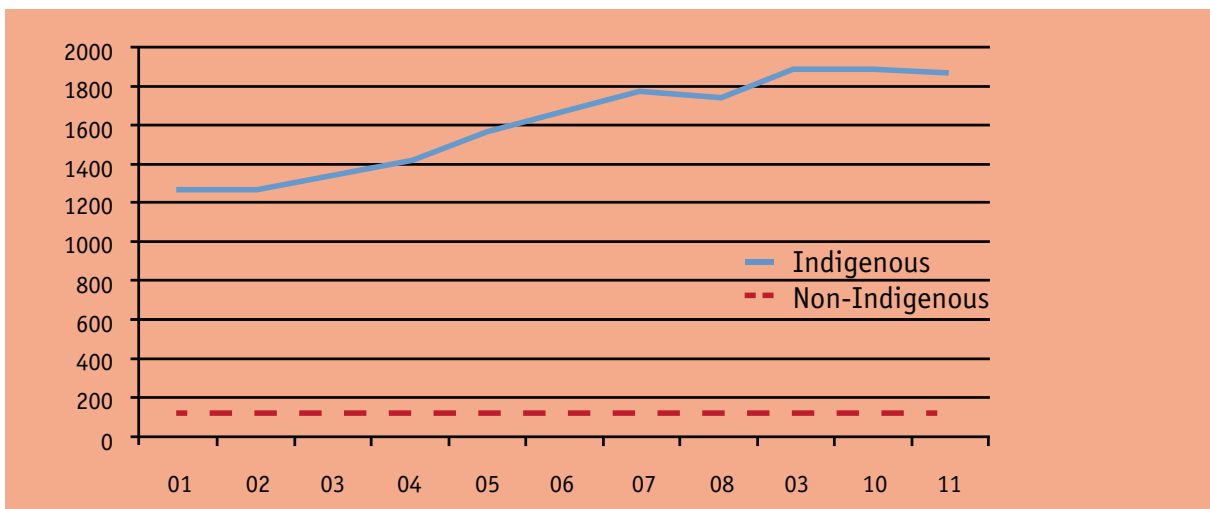


Figure 1: Indigenous and non-Indigenous prisoners, 2001–2011

(rate per 100 000 relevant persons)

Source: Australian Bureau of Statistics (2011), *Prisoners in Australia, 2011*

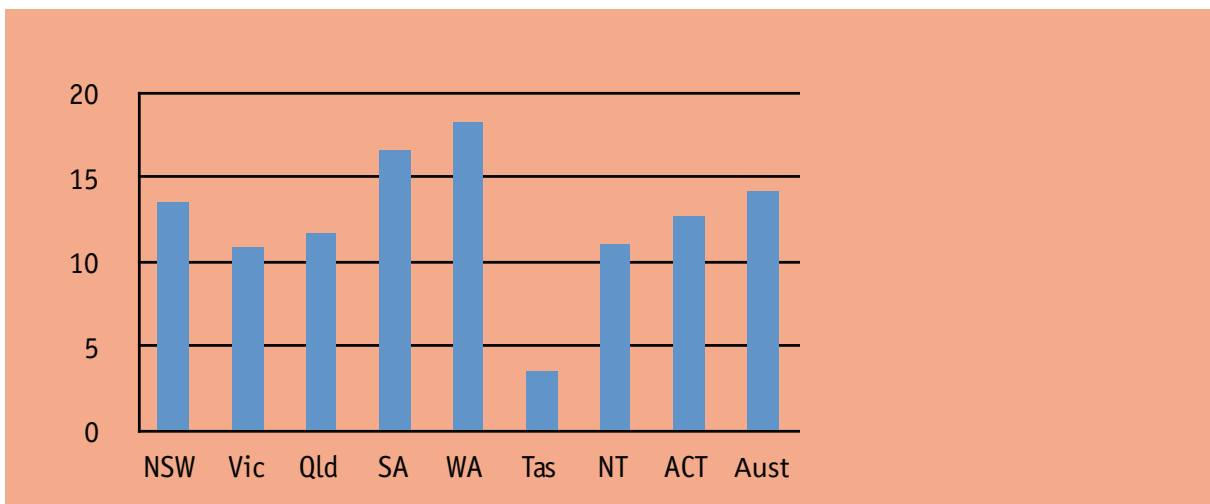


Figure 2: Ratio of Indigenous to non-Indigenous age-standardised rates of imprisonment, 2011^a

a. The ratio of Indigenous to non-Indigenous imprisonment rates is calculated by dividing the Indigenous rate by the non-Indigenous rate.

Source: Australian Bureau of Statistics (2011), *Prisoners in Australia, 2011*

Gender

In 2011, data recorded by the National Prisoner Census indicate that 30.7 per cent of female prisoners and 26 per cent of male prisoners were Indigenous, confirming that the overall trends are not restricted by gender (Australian Bureau of Statistics 2011). In fact, Indigenous females are between 9 and 16 times more likely to come into contact with police and have legal action proceeded against them than non-Indigenous women, in contrast to a rate of 8–10 times for Indigenous males (Bartels 2010). The number of Indigenous women in prison has increased dramatically since the 1991 Royal Commission into Aboriginal Deaths in Custody, despite its principle that ‘imprisonment should be utilised only as a sanction of last resort’. The rate per population of Indigenous women in prisons increased by over 10 per cent between 2006 and 2009 (Bartels 2010); and the number of Indigenous women in prison increased by 343 per cent between 1993 and 2003, from 111 to 381 women (Aboriginal and Torres Strait Islander Social Justice Commissioner 2005).

It is widely acknowledged that the needs of male and female prisoners are different. For example, female Indigenous prisoners experience greater rates of mental health issues and more extensive harmful substance use histories than male prisoners, and many enter prison following a history of sexual or physical abuse (Johnson 2004).

Indigenous youth

Unfortunately, the over-representation of Indigenous Australians within the prison system is not confined to adults: 49 per cent of people in juvenile corrective institutions in 2010–11 were Indigenous (Australian Institute of Health and Welfare 2012). The rate of Indigenous juveniles in detention has been increasing since 2001 despite the non-Indigenous juvenile detention rate remaining stable (see Figure 3).

Indigenous offenders are more likely to begin offending regularly at younger ages than non-Indigenous offenders, are more likely to be younger when they commit a property or violent offence, and therefore are significantly more likely to have a history of juvenile detention and incarceration as an adult (Joudo 2008).

According to the 1990 United Nations Convention on the Rights of the Child, many of the Articles that established the minimum standards of treatment for all children directly relate to children in conflict with the law. The leading principles relevant to juvenile justice and the United Nations Guidelines for the Prevention of Juvenile Delinquency (the Riyadh Guidelines) (1990) recognise the importance of rehabilitation and restorative justice objectives and the need for early intervention and diversionary options for all children, with particular attention to those vulnerable groups like Indigenous young people with cognitive disabilities or mental health issues. (Human Rights and Equal Opportunity Commission 1993)

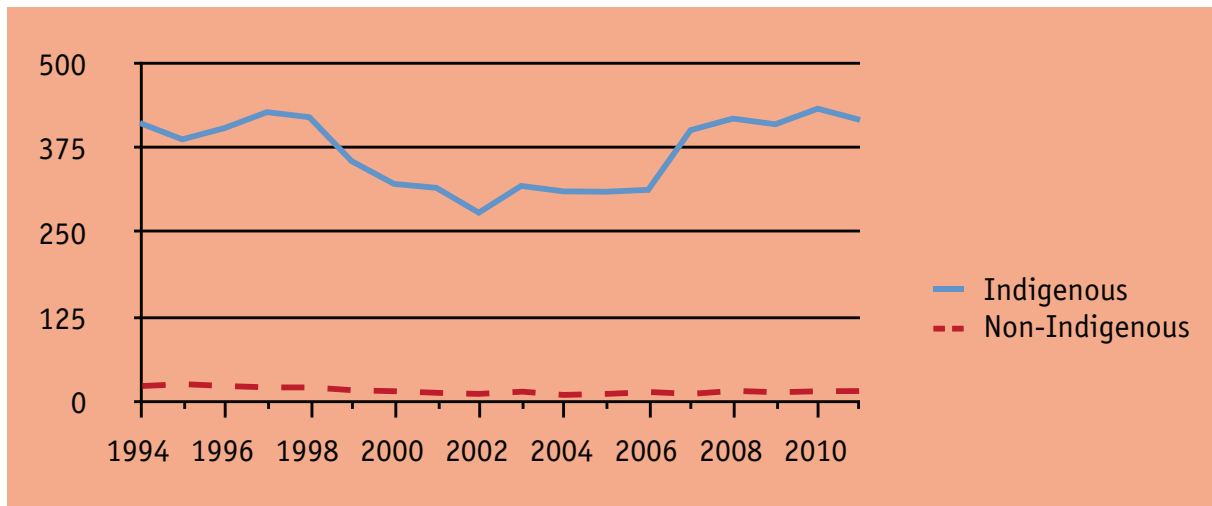


Figure 3: Rate of juveniles in detention per 100 000 population, 1994–2011, by Indigenous status^{a, b}

a. Excludes Tasmania for 1997–2002.

b. Note that calculation methods were altered in 2009. See Australian Institute of Health and Welfare (2012) for information on methodological changes and consequent limitations.

Source: Richards (2011b), *Trends in Juvenile Detention in Australia*; Australian Institute of Health and Welfare (2012), *Juvenile Detention Population in Australia 2011*.

Harmful Indigenous substance use issues

Even though data and records have documented substance use among prisoner populations, there is only limited research that differentiates between Indigenous and non-Indigenous prisoners.

The Australian Government recognises that Indigenous health status is generally well below that of non-Indigenous Australians, and it is accepted that the health status of prisoners overall is well below that of the general community. Therefore, it is clear that the health status (including substance use-related health disorders) of Indigenous prisoners is likely to be far worse than in the wider community.

Within police custody

Data from the Drug Use Monitoring in Australia (DUMA) project² in 2010 reveal that over 74 per cent of Indigenous police detainees tested positive to a range of drugs, and just over 60 per cent self-reported they had consumed alcohol within the 48 hours prior to their arrest (personal communication, Drug Use Monitoring in Australia project, Australian Institute of Criminology 2012). This compares to 60 per cent of non-Indigenous detainees who tested positive to drugs, and 44 per cent of non-Indigenous detainees self-reporting alcohol use in the 48 hours prior to arrest (personal communication, Drug Use Monitoring in Australia project, Australian Institute of Criminology 2012).

The 2010 Prisoner Health Census found that 68 per cent of Indigenous prison entrants reported having used illicit drugs within the previous 12 months, a rate comparable to that of non-Indigenous prison entrants of 65 per cent. There were differences in use patterns by type of illicit drug, with Indigenous prison entrants more likely to have used cannabis, but less likely to have used ecstasy or amphetamines (Australian Institute of Health and Welfare 2011c).

² The DUMA project is funded by the Australian Government. The data used in this publication were made available through the Australian Institute of Criminology (AIC). These data were originally collected by the AIC by an independent data collector with the assistance of the New South Wales, Northern Territory, Queensland, South Australia, Victoria and Western Australia Police. Neither the collectors, the police, nor the AIC bear any responsibility for the analyses or the interpretations herein.

Self-reporting of prison entrants' usual alcohol consumption indicated that 73 per cent of Indigenous prison entrants consumed alcohol at high risk levels, compared with 48 per cent of non-Indigenous prison entrants (Australian Institute of Health and Welfare 2011c).

Limited data are available on the use of inhalants among detainees or prison entrants. The Drug Use Careers of Offenders study indicated that inhalant use was found equally among Indigenous and non-Indigenous offenders (Prichard and Payne 2005), though inhalant use is thought to be most prevalent among Indigenous youths overall (Midford et al. 2011; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

Within the correctional system

The likely severity of the issues being faced by Indigenous prisoners is highlighted by a recent study conducted in New South Wales prisons which found that 33.6 per cent of injecting drug users continued to inject while incarcerated (Dolan et al. 2010). Similarly, a study by the Burnet Institute of an Australian Capital Territory prison found that approximately one-third of prisoners reported having injected an illicit drug while in prison (cited in Moore 2011). While limited Indigenous-specific data are available, several studies indicate that the above figures also reflect Indigenous prisoner behaviour (Kratzman et al. 2011).³ The risks posed for a range of health disorders cannot be underestimated for the individual or for the family and community when the individual returns after release from prison. Despite this, and despite Australia's world leadership in instituting needle and syringe programs in the community, there are no programs running in Australian prisons to enable inmate access to sterile injecting equipment.⁴

The prevalence of tobacco smoking among Indigenous prison entrants in 2010 was lower than that for non-Indigenous entrants (74 per cent in comparison to 80–84 per cent), but is still much higher than that for the general population (Australian Institute of Health and Welfare 2011c).

Nicotine replacement therapy (NRT) can be obtained at no cost in some Australian jurisdictions. In others, NRT involves a cost, and ensuring the availability of NRT may not be a priority for all prison health clinics. Moves toward smoking bans in some prisons and jurisdictions will require increased levels of support for smoking cessation (Butler and Stevens 2011).

Reasons for over-representation of Indigenous Australians in the correctional system

Socioeconomic factors

Numerous social and economic factors contribute to the over-representation of Indigenous Australians within the prison system. Indigenous Australians have suffered a long history of social disadvantage, cultural displacement, trauma and grief, and poor health and living conditions. While some social and economic indicators point to improvement in Indigenous Australians' conditions (Productivity Commission Steering Committee for the Review of Government Service Provision 2007), it is apparent that Indigenous Australians remain seriously disadvantaged compared with other Australians. Indigenous Australians still suffer more ill-health, die at much younger ages, have lower levels of educational attainment and income, higher rates of unemployment and poorer housing conditions (Australian Institute of Health and Welfare 2011a).

Social disadvantage and a history of upheaval culminating in trauma and grief clearly contribute to the high level of imprisonment among Indigenous Australians. Data from the 2002 National Aboriginal and Torres Strait Islander Social Survey (NATSISS) indicate that respondents to the survey were more likely to have been imprisoned if they had not completed Year 12 education, were unemployed, experienced financial stress, lived in crowded conditions, were a member or had a relative who was a member of the stolen generation, lived in more remote areas or used substances at harmful levels (Weatherburn et al. 2006). In addition, contact with the justice and correctional systems can exacerbate pre-existing disadvantage, such as through increasing barriers to employment (Borland and Hunter 2000).

³ Kratzman et al. (2011) provide a detailed overview of patterns of injecting drug use and harms among Indigenous Australians.

⁴ The Australian Capital Territory Government announced in August 2012 that it will work towards introducing a trial needle exchange program at the Alexander Maconochie Centre.

Since Indigenous people are more likely to be disadvantaged in terms of known risk factors for offending, justice reinvestment is an important strategy for reducing the number of young people having contact with the justice and correctional systems. Justice reinvestment recognises the association between incarceration and disadvantage, and the role for the justice system of investing in communities. It includes targeted programs or interventions for communities identified as having high offender rates, to reduce offending and reoffending; for instance, programs and services to improve housing conditions, employment options, and access to services for harmful substance use. This approach has had demonstrable positive effects (Aboriginal and Torres Strait Islander Social Justice Commissioner 2010).

Once in the criminal justice system, language barriers and lack of funding for Indigenous-specific legal services pose further difficulties for Indigenous persons (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

Harmful substance use

Importantly one of the major issues confronting the criminal justice system is the strong link that harmful substance use has with the risk of imprisonment (Weatherburn et al. 2006). Alcohol is well known as a common precursor to offending among Indigenous Australians, with indications that it could be a factor in up to 90 per cent of all Indigenous contacts with the justice system (Hazelhurst (1987), cited in Forensic and Applied Psychology Research Group 2005). Additionally, Indigenous offenders are more likely to report being under the influence of alcohol at the time of the offence or arrest (Joudo 2008), and Indigenous male offenders are more likely to be dependent on alcohol than non-Indigenous male offenders (Putt et al. 2005).

These findings highlight the importance of implementing strategies to address harmful substance use as a means of diverting Indigenous offenders away from the criminal justice system and into education and treatment. Such a policy would also help to reduce the disproportionately higher re-offending and re-incarceration rates among Indigenous people.

Diversion barriers

In 1999, the Council of Australian Governments' Illicit Drug Diversion Initiative (IDDI) was implemented, and developed into a large and complex response to drug use — spanning the health, police and justice sectors and the alcohol and other drug networks. The initial IDDI framework focused on police diversion, and it was later adapted to include court diversion, which became a major component of the IDDI in practice (Australian Institute of Health and Welfare 2008). In 2009, funding previously administered under IDDI was incorporated into the National Healthcare Agreements to be administered on a State and Territory level. A range of police and court-based programs are now supported in different jurisdictions, although the impact of the funding change on diversion for substance use issues is not yet clear. Data about diversion programs currently in operation are needed to assess their effectiveness and appropriateness, but this information has become harder to obtain since the change in funding and administrative arrangements.

Although the IDDI was developed with an aim of addressing the needs of Indigenous offenders (Australian Institute of Health and Welfare 2008), there is evidence that Indigenous people are particularly disadvantaged in terms of accessing and completing diversion programs.

For Indigenous adults

The focus of many diversion programs on illicit drugs, and their exclusion of offenders who have any history of violent offences, continue to manifest exclusions made under the IDDI, which were widely viewed as having a disproportionately negative impact on Indigenous offenders. Licit drugs such as alcohol do play a role in a high proportion of offences (Sweeney and Payne 2012). Putt et al., reporting on 2002–03 data, found that 69 per cent of Indigenous male prisoners had used alcohol at the time of arrest or commission of the offence, compared with 27 per cent for non-Indigenous males (Putt et al. 2005). A number of Indigenous-specific court diversion programs are in place to address this issue, together with initiatives to identify a range of other barriers to Indigenous participation. However, the availability of suitable treatment options for Indigenous offenders remains a major obstacle (Australian Institute of Health and Welfare 2008).

Criteria excluding offenders from diversion programs if they have a previous offence of violence are significant for many Indigenous people. In 2009–10, 60 per cent of people detained for violent offences tested positive for drugs, and 45 per cent confirmed that the use of alcohol or drugs contributed to the offence (Sweeney and Payne 2012). These findings have significant repercussions for those Indigenous Australians most in need of diversion into substance use treatment programs. The other often-applied criterion that results in the exclusion of many Indigenous people from diversion programs is the requirement to admit to the offence (Joudo 2008). Indigenous people may be reluctant to talk to police or are advised to plead not guilty so as not to incur a criminal record (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

For Indigenous youth

Although statistics on Indigenous participation rates in diversion programs are difficult to obtain, anecdotal evidence and such statistical information as is available indicate that diversionary programs for juvenile offenders have had a greater impact on non-Indigenous than on Indigenous juveniles (Joudo 2008; Richards 2011b).

In Western Australia, Indigenous young people are five times more likely than their non-Indigenous counterparts to have had formal contact with the police and 29 times more likely to have been arrested (in the 10–14 year age group) (Loh and Ferrante 2003). After arrest, they are more likely to be convicted and to receive custodial sentences (Richards 2009). In New South Wales, Indigenous young people are more likely than non-Indigenous young people to be taken to court (64 per cent compared with 48 per cent) and less likely to be cautioned by police (14 per cent compared with 28 per cent) (Chan et al. 2004). In South Australia, Western Australia and New South Wales, Indigenous young people are more likely than non-Indigenous young people to be arrested rather than cautioned, are more likely to be sent to court, and tend to acquire a more extensive criminal record at a young age (Wundersitz and Hunter 2005; Snowball 2008; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011). The possession of a longer criminal record then increases their risk of detention or imprisonment when they reappear in the criminal justice system (Taylor 2006).

In addition, high percentages of Indigenous juveniles in detention are on remand. The Australian Institute of Health and Welfare reported that at least half of those in detention were unsentenced for most of the period between 2007 and 2011, in all jurisdictions except Victoria (Australian Institute of Health and Welfare 2012). Research indicates that a large proportion of these juveniles will never receive a sentence, with reports as high as 81.7 per cent of juveniles in detention in New South Wales in 2008 (Murphy et al. 2010). One study found that one-quarter of the increase in the Indigenous imprisonment rate in New South Wales from 2001 to 2008 was due to increases in the remanded, non-sentenced population (Fitzgerald 2009).

These figures are of serious concern given that time spent on remand is the most important predictor of recidivism (Murphy et al. 2010). Amendments to the New South Wales *Bail Act 1978* in 2007 have made bail eligibility conditions more stringent, resulting in higher detention rates and increasing time spent on remand, and this appears to inordinately affect Indigenous youth. A recent government report on Indigenous juveniles in the criminal justice system also expressed particular concern about Indigenous youths being detained in custody simply because they lack other accommodation, or accommodation with family was deemed unsuitable (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

Other issues including a history of distrust between police and Indigenous Australians, some over-policing of Indigenous communities, and lack of cultural training for police recruits contribute to increased arrests, cautions and other contact with the police system. Regional discrepancies in the use of diversionary options also raise questions about the use of police discretion (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

Fetal alcohol spectrum disorders and acquired brain injury

The term ‘fetal alcohol spectrum disorders’ (FASD) describes a range of disabilities that may result from prenatal alcohol exposure. Acquired brain injury (ABI) can occur as a result of damage to the brain through prolonged substance use following birth.⁵

5 For more detailed information on FASD in Australia, including its relation to the criminal justice system, see the National Indigenous Drug and Alcohol Committee’s position paper *Addressing Fetal Alcohol Spectrum Disorders in Australia* (2012).

Figures for the incidence of FASD and ABI in Australia and the proportion of people in contact with the correctional system who have FASD or ABI are not available, although research has estimated from international studies that 2 per cent of the population may be affected by FASD (Douglas et al. 2012). Research also shows that people with fetal alcohol syndrome (and those with ABI) may have social and behavioural problems that increase their propensity for contact with the justice and correctional systems (Douglas et al. 2012), and that people with FASD are more likely to have substance use issues (Streissguth et al. 2004). In addition, the 2010 National Prisoner Health census found that 41 per cent of female and 38 per cent of male prison entrants reported having sustained at least one head injury that led to loss of consciousness (Australian Institute of Health and Welfare 2011c).

Notably, the Victorian Government acknowledges that people with ABI are over-represented in the criminal justice system, while recent research in Queensland revealed a need for more recognition of, and pathways for dealing with, offenders who may be affected by FASD within the criminal justice system (Douglas et al. 2012).

Intervention opportunities within the criminal justice system

Given the strong links between harmful substance use among Australian prisoners and the proportionately higher risk pattern of substance use in the Indigenous population, the treatment of harmful substance use problems among Indigenous offenders provides an opportunity that could be of great benefit to individuals, their families and society. Since the Indigenous population profile is generally younger than the non-Indigenous population, diversionary success at an early stage could help to prevent an escalating increase in the numbers of Indigenous offenders (Victoria Department of Justice 2006). There are also enhanced benefits in providing a continuum of care as well as a comprehensive and holistic approach that addresses the complexities of Indigenous offenders' harmful substance use.

With imprisonment as the ultimate deterrent for offenders, the criminal justice system's crime prevention ability is limited. Although there are few Indigenous-specific programs available for police to divert Indigenous offenders away from the criminal justice system (Joudo 2008), opportunities to address harmful substance use exist at different levels of the criminal justice system, as outlined below.

Prevention

Reductions in offence rates among Indigenous youth have reportedly been achieved in some areas through formal and informal efforts to improve police relations with Indigenous communities. The development of Indigenous Liaison Officer programs in a number of States, and mentoring programs for Indigenous youth by police in Redfern, New South Wales, have both had reportedly positive effects (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011). These programs seek to address the factors mentioned above of ill-feeling between some Indigenous communities and police, and lack of cultural awareness by law enforcement agencies.

Pre-arrest and pre-trial

Offenders may be diverted away from the criminal justice system at the pre-arrest stage and avoid any ongoing contact with the criminal justice system; for example, through receipt of a police caution. At the pre-trial stage it is possible for offenders to be diverted away from the criminal justice system and into education and treatment by police and court officials. Some opportunities for diversion were available under the IDDI program funded by the Australian Government from 1999 to 2009, and currently under programs administered by States and Territories. These may include diversion into treatment for a harmful substance use issue as a condition of bail (Pritchard et al. 2007).

Pre-sentence

Pre-sentence diversion opportunities also exist within the court system. Primarily these are for first-time or early offenders and enable participants to avoid a criminal record and may involve referral to drug or alcohol courts or drug court programs. These are available in every jurisdiction in Australia, although they operate differently in different locations and typically require a guilty plea. Yet, even after conviction, a court can still grant diversion as part of the sentence; for example, into alcohol or other drug treatment.

Within prisons and detention centres

Many opportunities exist for interventions to improve the health of the offender, once incarcerated. In New South Wales, Indigenous inmates are reportedly more likely to have contact with health professionals in prison than in the community (Kariminia et al. 2007a), which has important implications for the ongoing continuum of health care. Health intervention in prison has significant potential to reduce the impact of chronic disease and mental health issues associated with harmful substance use. However, the health care system within prisons is separate from that in the general community. This can result in disparities in health care services within prisons, as well as in continuity of care (Australian Medical Association 2012).

Since harmful substance use can sometimes be a family or intergenerational problem for Indigenous prisoners or detainees, programs and/or treatment need to have the flexibility to be inclusive of family.

Current strategies to manage these complexities are often limited in scope and treatment, impacted by under-resourcing, restrictions on access, lack of available culturally appropriate services, and the often intimidating and violent environment of prisons.⁶

Post-release

The manner of release of a prisoner back into the community can represent one of the most critical factors for re-offending and community corrections services have a key role to play in reducing re-offending. Indigenous prisoners are nearly twice as likely as their non-Indigenous counterparts to be readmitted to prison within two years and more than twice as likely to return to prison for assault (Willis and Moore 2008). In the case of those with a history of harmful substance use, it is a time of great risk for substance use and overdose. One of the problems that Indigenous inmates also face is the loss of cultural identity and disconnection from their families. Therefore, connecting prisoners with their families and communities after release may be greatly beneficial in reducing the likelihood of re-offending.

Although there are a number of reasons for re-offending, a key theme that continues to emerge from many NIDAC stakeholder consultations is the need to improve support during transition back into the community, and the provision of increased capacity to undertake a continuum of care, especially in remote settings. Lack of employment and stable housing conditions can frustrate transition back into the community (Shinkfield and Graffam 2009). Measures that would support obtaining employment and stable housing, such as through reducing the barriers to employment associated with possession of a police record, may therefore have a positive impact on re-offending rates.

⁶ A more detailed discussion of demand and harm reduction strategies operating in Australia's prisons, as well as information on their use by the Indigenous prison population, is provided in *Supply, Demand and Harm Reduction Strategies in Australian Prisons: an update* (Rodas et al. 2012).

Issues for consideration

Diversion access

While there are numerous possibilities for addressing harmful substance use at various stages of the criminal justice system, the participation rate of Indigenous Australians in diversion programs is low (Pritchard et al. 2007; Australian Institute of Health and Welfare 2008). This is also true for Indigenous young offenders, who appear to be much less likely to be diverted into treatment than their non-Indigenous counterparts (Australian Institute of Health and Welfare 2008; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

As described above, research has demonstrated that Indigenous offenders are more likely to face numerous barriers to diversion programs, contributing to their low participation rate. These barriers stem from, but are not limited to, Indigenous offenders being more likely to have multiple charges, previous criminal convictions, harmful substance use problems which are not within the scope of most diversion programs (such as alcohol or inhalant use problems),⁷ or co-existing mental illness, coupled with the eligibility requirement of an admission of guilt. Furthermore, Indigenous offenders are more likely to have been convicted of a serious violent offence (Snowball and Weatherburn 2007). Unfortunately, one of these issues can often exclude offenders from most diversion programs due to their strict eligibility criteria.

Changes in the eligibility criteria to enable greater Indigenous participation rates in diversion programs would provide an effective way to address the over-representation of Indigenous Australians in prison. A 2008 report on the effectiveness of IDDI programs in remote areas found that the most effective court diversion programs were those that ‘allowed drug diversion for alcohol as the primary drug of concern’ (Australian Institute of Health and Welfare 2008). Such programs are still of limited availability (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011). Changes to the eligibility criteria would also be likely to have a positive impact on the health of communities, recidivism rates and the social and economic disadvantages that are prevalent among Indigenous people (and compounded by time spent in prison).

In addition, suitable treatment options are not always available in areas where they are most required — even where eligibility criteria would allow for diversion into treatment. Lack of access to diversion programs in remote areas might be addressed by increased funding for programs such as residential rehabilitation or forum sentencing in these areas (Australian Institute of Health and Welfare 2008; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

Another barrier to diversion opportunities for Indigenous offenders is a mistrust of the police and the legal system (Joudo 2008). The mistrust apparent among many Indigenous offenders may reflect past experiences and needs to be addressed over the long term.

Health access

Indigenous Australians already receiving medical care or treatment prior to incarceration or detention require ongoing access to their medical service or practitioner, as these services can offer a valuable insight into the clients’ health care and continuum of care on release. On release and in community-based diversionary programs, Indigenous offenders should be able to continue working with their health service. However, such access is limited in some jurisdictions, which can be detrimental to any improvement in a client’s health.

The provision of ‘one health service fits all’, as is the case for many in the correctional system, creates a disjointed and unsuitable approach to addressing the complex issues of harmful substance use among Indigenous offenders. Limited access currently exists for offenders to engage with Indigenous-specific alcohol and drug programs. In areas where there are Aboriginal community-controlled health services or Aboriginal alcohol and drug services, there are opportunities to involve these services in the health care of offenders and in their ongoing care post-release.

It is equally important that treatment programs include a holistic range of treatment options that are well suited to, and responsive in, treating Indigenous offenders (and their families) with substance use-related problems. In many instances, Aboriginal community-controlled health services, Aboriginal alcohol and drug services and others

⁷ There are exceptions, such as the Queensland Indigenous Alcohol Diversion Program which commenced in July 2007 and the Alcohol Court in the Northern Territory (see Joudo 2008).

that are best placed to address Indigenous health and wellbeing can provide continuity in the type of holistic care required for Indigenous offenders.

A 2010 report on Indigenous-specific alcohol and other drug intervention projects found 340 projects nationally, including 30 residential rehabilitation programs, 52 non-residential programs, and a range of harm-reduction, prevention, support and referral, and other projects. These were primarily funded by the Australian Government or by State and Territory governments (Gray et al. 2010). Such Indigenous-specific services should be utilised under a contract or partnership agreement to work in prisons and detention centres, especially where there is a significant population of Indigenous offenders.

Recidivism

A major key performance indicator for the correctional system is the recidivism rate. The 2011 National Prisoner Census reports that 55 per cent of prisoners had served a prior sentence in an adult prison: 74 per cent of Indigenous prisoners and 48 per cent of non-Indigenous prisoners (Australian Bureau of Statistics 2011). Reducing recidivism would thus have major impacts on overall crime and imprisonment rates. Research indicates that rehabilitative prison programs such as vocational education and training and diversionary programs reduce recidivism (Cunningham 2007; Australian Institute of Criminology 2008).

Juvenile recidivism is difficult to measure, partly due to lack of clarity regarding exactly what should be measured, as well as difficulties linking information from the juvenile and adult correctional systems (Richards 2011a). A review of the literature by Payne (2005) concluded that approximately one-third of offenders appearing before Youth Courts in Australia would be reconvicted before turning 18; and about two-thirds would be reconvicted as either juveniles or adults. A study in the Northern Territory found that Indigenous juveniles who had appeared in or been diverted from court were more than twice as likely as non-Indigenous juveniles to be apprehended again within one year (Cunningham 2007). A New South Wales study found that the rate of reappearance in court by juvenile Indigenous offenders was 187 per cent higher than that for non-Indigenous juveniles (Chen et al. 2005).

Burden of costs

Despite the recommendations of the Royal Commission and the substantial money invested in improving the correctional system, no headway has been made in reducing Indigenous over-representation; indeed, the proportion has increased.

It has been argued that the reason for this lack of progress is the failure to recognise that the leading cause of Indigenous over-representation in the correctional system is harmful Indigenous substance use (Weatherburn et al. 2008). Substance use is a far more direct cause of Indigenous incarceration than economic and social disadvantage. Far from being a symptom of Indigenous disadvantage, harmful substance use is its principal cause (Pearson 2001).

Strategies to address harmful substance use are urgently needed to break the cycle of physical and social harm and the rate of incarceration. Given the increasing over-representation of Indigenous people in the correctional system, the financial and social costs of incarceration need to be recognised, along with urgent consideration of alternative and more effective ways of reducing substance use-related offences.

The total cost per prisoner in 2009–10 averaged \$275 per day (Productivity Commission Steering Committee for the Review of Government Service Provision 2011), or \$100 375 per year. Costs are even higher for juvenile detention. No national statistics on the costs of the juvenile correctional system are currently collected, and data availability differs by jurisdiction. However, in 2011, juvenile detention cost \$652 per person per day in New South Wales, or \$237 980 per year (Audit Office of New South Wales 2011). In Tasmania in 2011, the cost was stated by the Minister for Children to be \$905 per person per day, or \$330 000 per year (Tasmania Commissioner for Children 2011). In Victoria in 2006–07, the cost per bed per day was \$408–\$500, or \$148 920–\$182 500 per year (Victorian Auditor-General's Office 2008).

By comparison, the cost of residential rehabilitation was estimated to be \$98 per day (Moore et al. 2007), or \$35 770 per year. All substance use treatments are far more cost-effective when compared to imprisonment, including the social and family costs associated with offending, and the health complications that often accompany harmful substance use. Treatment provides an opportunity for the individual to address harmful

substance use issues, with a resultant reduction in re-offending, a better environment for children, and improved safety for Indigenous communities. Rarely is such a compelling argument for reducing the over-representation of Indigenous people in the correctional system presented than in the provision of substance use treatment and relevant support services.

Sector costs

With the introduction of alcohol and other drug diversion programs, a significant shift of responsibility occurs — from the justice system to the health system. However, this change is not always accompanied by a commensurate transfer of resources, particularly to alcohol and drug treatment services. The provision of offender rehabilitation also raises important issues requiring additional policy and funding consideration as well as adaptation for alcohol and drug services.

Furthermore, many Indigenous offenders have complex problems, in addition to harmful substance use, which demand greater resources and an investment in staff training if those problems are to be adequately addressed. A transfer of funding from the justice to the health system could significantly address such problems.

Suitability of programs and services

Programs and mainstream services that are inclusive of family, pregnant women and women with children are also important for Indigenous offenders. Culturally appropriate services for Indigenous inmates that include ways to re-integrate with families and communities upon release from prison need further attention.

States and Territories have implemented various programs that specifically attempt to reduce Indigenous incarceration. These include Indigenous sentencing courts,⁸ Drug and Alcohol courts,⁹ and restorative or ‘therapeutic’ justice programs.¹⁰ While these programs have contributed to addressing disproportional Indigenous incarceration, a consistent and national approach must be implemented.

Necessary short-term and long-term changes are outlined in the recommendations below.

8 Circle courts in New South Wales and the Australian Capital Territory, Nunga courts in South Australia, Murri courts in Queensland, Koori Courts in Victoria, and community courts in the Northern Territory and Western Australia (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011).

9 Drug or Alcohol Courts, as well as some youth Drug and Alcohol Courts, operate in all of Australia’s States and Territories except Tasmania, where the Court Mandated Diversion of Drug Offenders program operates. However, some Drug Courts deal only with illicit substances, thus excluding those with alcohol or inhalant use issues (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs 2011). The New South Wales Youth Drug and Alcohol Court was recently discontinued.

10 See the report by the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011), section 4.1 for a list of diversion programs. A database of Indigenous-specific diversion programs is maintained on the Australian Indigenous HealthInfoNet website (2012).

General recommendations

1. Include information on incarceration rates for Indigenous men, women and young people in *Closing the Gap: Prime Minister's Report*, tabled annually in federal parliament.
2. Provide every Indigenous young person with an individual education support fund to assist and promote his or her participation and retention within the education system.
3. Seek a commitment from all governments to support the principles of justice reinvestment.
4. Seek a commitment from all governments to reducing barriers to employment for ex-offenders, particularly for those with previous substance use issues.

Specific recommendations

Community-based

1. Amend the eligibility criteria of current diversion programs to allow participation of Indigenous people (including those who have received advice to plead not guilty to avert a criminal record) with:
 - a prior conviction that is alcohol- or drug-related
 - multiple charges
 - a harmful alcohol and/or other drug use problem
 - a co-existing mental illness or health problem
 - a violent alcohol- or drug-related offence conviction.
2. Require each State and Territory receiving funding from the previously named Council of Australian Governments' Illicit Drug Diversion Initiative to:
 - introduce and fund an increased number of Indigenous-specific diversion programs
 - establish appropriate links with existing Aboriginal community-controlled health services in their region where possible
 - provide data on participation rates for central reporting.
3. Provide funding for each State and Territory to develop and implement appropriate Indigenous-specific programs to assist individuals and their family members post-release, to aid the re-integration of Indigenous inmates into the community and to include the provision of education regarding post-release health risks.
4. Provide regular publicly available reports on diversionary programs, alcohol and other drug services, and other health care services for Indigenous people.

Correctional system (juvenile and adult)

5. Improve the level of health services available to all Indigenous prisoners and juvenile detainees by:
 - providing comprehensive health screening on reception
 - encouraging the take-up of any treatment recommended after health screening
 - ensuring access to a full range of effective harmful substance use treatments, as well as mental health services, that are well suited to treating Indigenous offenders and their families
 - providing a continuum of health care and referral both within and beyond the correctional system.
6. Promote the development of partnerships with Indigenous services, such as Aboriginal community-controlled health services and Aboriginal drug and alcohol services, to work in the correctional system.

7. Conduct national research into the health needs of, and provision of appropriate and effective health services to, Indigenous offenders.
8. Institute a national leadership forum to monitor and evaluate strategies introduced to reduce the level of Indigenous incarceration.
9. Institute a trial of a needle and syringe program within an Australian correctional centre.
10. Provide all inmates with access to free nicotine patches or other smoking cessation therapies.

Long-term recommendations

Prevention

1. Fund a network of community-based Indigenous youth wellbeing and activity centres with links to education and health services.
2. Develop a national alcohol and other drugs campaign for Indigenous Australians which aims to reduce demand and decrease the incidence of fetal alcohol spectrum disorder.
3. Ensure all harmful substance use community management plans and community law and justice initiatives are developed with local communities.
4. Identify and support current Indigenous-specific programs and best practices that are effective in reducing offending and re-offending.
5. Develop and encourage working partnerships between community-based patrols, law enforcement and drug and alcohol treatment services.
6. Develop programs or initiatives that encourage positive police–community interaction and increase police cultural awareness.

Intervention

7. Redirect funding from the construction and operation of any further correctional system centres to establish a ‘break the cycle’ network of Indigenous-specific residential rehabilitation centres and services, supported by Aboriginal community-controlled health services, for courts to utilise as a real and viable alternative to incarceration.
8. Further develop consistent nationwide access to Alcohol Courts, Drug Courts and other diversionary operations.
9. Provide appropriate accommodation options for young Indigenous offenders who are eligible for bail but lack appropriate accommodation.

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