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**The Royal Commission into the Protection  
and Detention of Children in the Northern  
Territory**

The Royal Australasian College of Physicians  
Submission, October 2016

# Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

The Royal Australasian College of Physicians (RACP) welcomes the Royal Commission into the Protection and Detention of Children in the Northern Territory to investigate the horrific evidence of abuse at Don Dale Youth Detention Centre. With respect to the letter of patent item (a), the RACP notes significant failings in the youth detention system of the Northern Territory, evidenced through the well publicised abuses perpetrated against children and young people in detention. We deplore these abuses in the strongest possible terms, and repeat our call for adolescents who have been victims of any abuse whilst in the justice system to receive immediate support and treatment to deal with any physical and mental health issues this might have caused or exacerbated.

This submission will focus on the social determinants of health, health status of inmates and health needs of adolescents, which fall within the expertise of the RACP. However there are numerous other contextual issues which we urge the Royal Commission to consider when investigating the Protection and Detention of Children in the Northern Territory. These issues include the examination of the underlying causes of adolescents entering incarceration; specifically the disproportionately high number of Aboriginal and Torres Strait Islander adolescents, and the need for effective alternate strategies to reduce incarceration and recidivism.

In line with the letter patent item (i) which asks the Commission to consider access to medical care, the RACP recommends that the Royal Commission consider the health challenges faced by incarcerated young people more generally, and how the health needs of incarcerated young people can be met and their health outcomes improved. It must be recognised that adolescence is a critical time for a person's physical, neurological and psychosocial development, and experiences during this time will profoundly influence the rest of a person's life. The RACP is deeply concerned by the health issues faced by adolescents and young people in juvenile detention, and reiterates the vital importance of timely access to appropriate, regular and culturally safe health services so that these young people get the support and treatment they need.

## Introduction

It is recognised that incarcerated adolescents are more likely to experience poorer health and life outcomes and disproportionately high levels of disadvantage than the general population, and it is increasingly recognised that their health needs are greater than adolescents in non-custodial settings. The over-representation in detention of Aboriginal and Torres Strait Islander young people relative to non-Indigenous young people is significant, and is more extreme than for the adult population<sup>1</sup>. Indigenous young people in detention need access to culturally appropriate care which recognises their specific needs and supports their cultural identity.

The treatment of incarcerated adolescents and the over-representation of Aboriginal and Torres Strait Islander adolescents in custodial settings are of serious concern. Whilst the role of the RACP is to provide health expertise on these matters, we reiterate the need to examine and address the causes of the incarceration of adolescents and the extremely high level of involvement of the criminal justice system with Aboriginal people. The incidents and behaviours that are the causes of incarceration are often health related, including the impact of mental health problems, substance abuse and trauma. For example, a 1999 study by Fast, Conry & Loock showed that nearly a quarter of those remanded for committing a crime had a foetal Alcohol spectrum disorder<sup>2</sup>. The systemic failure which has resulted in high levels of Aboriginal and Torres Strait Islander adolescents in custodial settings needs to be acknowledged and addressed by the Royal Commission.

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<sup>1</sup> The Royal Australasian College of Physicians, *The Health and Well-being of Incarcerated Adolescents*, 2011

<sup>2</sup> Fast, D., Conry, J., Loock, C. (1999). Identifying Fetal Alcohol Syndrome (FAS) among youth in the criminal justice system. *J Dev Behav Pediatr*, 20, 370.

Adolescence is a critical time in a person's development, and it is imperative that juvenile detention provides support for young offenders to develop healthy behaviours for life. We acknowledge that the interactions between disadvantage, incarceration, poor health and well-being, and life outcomes are complex. The Royal Commission must respond to the need for young people to access the healthcare, support services and rehabilitation opportunities to support them to have a healthy and productive future.

There is evidence that physical punishment by parents/caregivers can have serious long-term effects on children's wellbeing and can be linked to criminal or antisocial behaviour. Two studies from 1996 found that children who received physical punishment were more likely later in life to experience problems with anger, to exhibit physical aggression, to experience marital discord, and to have problems with substance use, crime and violence.<sup>3 4</sup> A 2002 meta-analysis showed links between physical punishment of children and risk of poor outcomes in childhood, including aggressive and/or antisocial behaviour, mental health problems and physical maltreatment, as well as several adverse outcomes in adulthood such as mental health problems, aggression, criminal or antisocial behaviour, and abuse of own children or spouse.<sup>5</sup>

The RACP recommends that the Royal Commission is guided by the United Nations Convention on the Rights of the Child (CRC) and fully considers the health needs of incarcerated adolescents and the health impacts of incarceration as part of its work. The RACP is willing to contribute paediatric or medical specialist expertise to assist the Royal Commission.

### Overall recommendations

- Ensure incarcerated adolescents undergo a comprehensive medical history and examination promptly when first incarcerated, and then at regular intervals throughout their detention. This includes screening for the presence of developmental or intellectual disability as part of a comprehensive screening service, health promotion and an integrated mental health and drug and alcohol service.
- Provide incarcerated Indigenous adolescents in Australia with the choice of accessing services that include those provided by the Aboriginal Community Controlled Health Organisations (ACCHOs) and Aboriginal Medical Services (AMS).
- Address drug and alcohol use disorders for young people in custody. The delivery of effective drug and alcohol services must take an integrated, multi-disciplinary approach, and the RACP recommends the involvement of youth workers, Aboriginal health/alcohol and other drugs (AOD) workers, social workers and addiction medicine specialists to assess and manage young offenders with substance use disorders. This should be the case both in adolescent detention centres and in community programs servicing young offenders (such as youth drug & alcohol court programs).
- Offer voluntary drug and alcohol counselling to all young people in detention. The RACP recommends providing adequate and timely assessment of mental health status and treatment outcomes. These should include programs that are culturally-specific and relevant for Indigenous people.
- Consider the long term and broad implications of trauma or abuse on the physical and mental health of adolescents.
- Enforce duty of care requirements to ensure the health and safety of incarcerated adolescents.

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<sup>3</sup> Straus MA. Spanking and the making of a violent society. *Pediatrics* 1996; 98(4):837-842.

<sup>4</sup> Cohen P. How can generative theories of the effects of punishment be tested?" *Pediatrics* 1996; 98(4):834-836.

<sup>5</sup> Gershoff ET. Corporal punishment by parents and associated child behaviors and experiences: a meta-analytic and theoretical review. *Psychological Bulletin* 2002; 128(4):539-579.

- Institute independent oversight of all facilities.
- Reduce the number of incarcerated adolescents. Consideration and evaluation of the various strategies available to prevent youth interaction with the criminal justice system is the first step in preventing the incarceration of adolescents. The expansion of youth services and other diversion strategies such as justice reinvestment should be examined as a means of preventing youth incarceration. One such evidence-based approach which is being trialed across Australia is Justice Reinvestment, which uses a community based approach to redirect funding for prisons to community initiatives with the aim to reduce the underlying causes of crime and rates of recidivism<sup>6</sup>. Early indications seem to indicate that Justice Reinvestment may be an effective means of addressing the over-representation of Aboriginal and Torres Strait Islander young people in detention. Justice Reinvestment programs are utilised internationally, specifically in the United States of America and is being trialed in the United Kingdom<sup>7</sup>. We strongly recommend that the Commission speak with experts in this field to seek their advice.

For broader recommendations relating to the health of incarcerated adolescents, see the recommendations in the RACP policy "[The Health and Well-being of Incarcerated Adolescents](#)".

### Social determinants of health and links to incarceration

An individual's health is shaped by socioeconomic factors, which can be broadly defined as the conditions in which people are born, grow, live, work and age. These social characteristics are influenced by political and economic systems, social and economic policies, and development agendas which shape the conditions of daily life<sup>8</sup>. These influences are collectively known as the social determinants of health (SDoH).

Health inequities occur when there is failure to avoid inequalities or differences in health between groups of people<sup>9</sup>. As a result, a social gradient is created whereby poorer, disadvantaged populations experience worse health outcomes. The impact of social and economic conditions on people's lives determines two outcomes: 1) their risk of disease, and 2) the actions taken to prevent them becoming ill or treat illness when it occurs. These outcomes highlight the need to prevent and treat disease in a holistic manner, by having both a biological understanding of disease and an understanding of how social and psychological factors influence biology.

The RACP acknowledges the complex relationship between social and economic disadvantage and interactions with the legal systems. Around 80% of young people in detention have experienced multiple traumatic events during their lifetime<sup>10</sup> and many young people enter detention with untreated physical health problems<sup>11,12,13</sup>. Approximately 40% of this group had a parent in custody and 10% were parents themselves. Many come from backgrounds of risk and vulnerability and this population rank amongst the most disadvantaged groups within the community<sup>14</sup>.

<sup>6</sup> Smart Justice, *Justice reinvestment: investing in communities not prisons*, 2015 - [http://www.smartjustice.org.au/resources/SJ\\_JusticeReinvest.pdf](http://www.smartjustice.org.au/resources/SJ_JusticeReinvest.pdf)

<sup>7</sup> Red Cross, *Rethinking Justice - Vulnerability Report 2016* - <http://www.redcross.org.au/files/VulnerabilityReport2016.pdf>

<sup>8</sup> World Health Organization 2016. *Social Determinants of Health*. [http://www.who.int/social\\_determinants/en/](http://www.who.int/social_determinants/en/) [accessed 2 September 2016].

<sup>9</sup> World Health Organization 2015. *Health systems: Equity*. <http://www.who.int/healthsystems/topics/equity/en/> [accessed 2 September 2016].

<sup>10</sup> Abram KM, Teplin LA, Charles DR, Longworth SL, McClelland GM, Dulcan MK. *Posttraumatic Stress Disorder and trauma in youth in juvenile detention*. Archives of General Psychiatry, 2004. 61. p403–410

<sup>11</sup> NSW Department of Juvenile Justice. 2003 NSW Young People in Custody Health Survey: Key findings report. Sydney: NSW Department of Juvenile Justice, 2003

<sup>12</sup> Bolin K, & Jones D. *Oral health needs of adolescents in a juvenile detention facility*. Journal of Adolescent Health, 2006. 38 p755–757

<sup>13</sup> Fasher AM, Dunbar N, Rothenbury BA, Bebb DK, & Young SJ. *The health of a group of young Australians in a New South Wales juvenile detention centre: A pilot study*. Journal of Paediatrics and Child Health, 1997. 33 p426–429

<sup>14</sup> Blaauw E, Arensman E, Kraaij V, Bout R. *Traumatic life events and suicide risk among jail inmates: The influence of types of events, time period and significant others*. Journal of Traumatic Stress, 2002.15(1) p9-16

The RACP draws attention to the link between child protection, out-of-home care and juvenile justice. A high rate of young people from out-of-home care end up in the juvenile justice system which reduces “their likelihood of full social and economic engagement in mainstream society”<sup>15</sup>. A Victorian based study identified the need for increased use of leaving-care plans, diversionary programs and formalized interagency collaboration to address the link between out-of-home care and juvenile justice<sup>16</sup>.

There is thought to be a high hidden prevalence of people living with an intellectual disability in custodial settings<sup>17</sup>. In addition, and as mentioned earlier, a significant number of people in detention have been identified as having a foetal alcohol spectrum disorder (FASD), with one 1999 study by Fast, Conry and Loock, estimating that this was the case for nearly a quarter (23.3%) of those remanded into custody. There is international and national recognition of the need for more appropriate responses to the health needs of individuals within the criminal justice system who have an intellectual disability.

### Specific health needs of adolescents

Due to the developmental changes occurring during the period of adolescence, this time represents an important opportunity to lay the foundations for positive health over the course of an individual’s life. Adolescence is a unique time of growth and includes the physical changes of puberty, attainment of adult reproductive capacity, neurocognitive changes and major psychosocial development<sup>18,19</sup>.

The onset of puberty begins a period of profound physical growth and neurological development that underpin the capabilities required for adult life. The social determinants of health during adolescence are more dynamic than at any other time, and include family, school and peers, social media and community influences. Young people’s health and development, together with their future social, emotional, cognitive and economic wellbeing are particularly influenced by their educational and vocational opportunities during adolescence and young adulthood. The period from 10-24 years old are the prime years for the establishment of patterns of health and health behaviours that play out across the life course in terms of later life non-communicable diseases (NCDs).

The leading causes of death among young people are injury and poisoning (66%), cancer (10%), and then diseases of the nervous system such as cerebral palsy, epilepsy and muscular dystrophy (5%). Given the leading cause of death in young people, unintentional injury, is to a large degree preventable, there is significant room for improvement with interventions specifically targeting young people. This burden of disease underlines the need for young people to benefit from easier access to health care, facilitated for example by routine health assessments

Specifically for Aboriginal and Torres Strait Islander adolescents, this is a developmental period of strengthening individual identity, cultural identity, links to cultural practices and concepts of culture. The implicit link between culture and identity needs to be acknowledged when considering appropriate care for Aboriginal and Torres Strait Islander adolescents in custodial settings. For Aboriginal and Torres Strait Islander young people in detention it is vital to provide care which acknowledges and supports their specific cultural needs and allows for development and maintenance of their cultural identity<sup>20</sup>.

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<sup>15</sup> Philip Mendes, Susan Baidawi & Pamela C. Snow (2014) Young People Transitioning from Out-of-home Care in Victoria: Strengthening Support Services for Dual Clients of Child Protection and Youth Justice, Australian Social Work, 67:1, 6-23

<sup>16</sup> Ibid.

<sup>17</sup> Herrington V. *Assessing the prevalence of intellectual disability among young male prisoners*. Journal of Intellectual Disability Research, 2009. 53(5) p397-410

<sup>18</sup> Aldermann E, Rieder J, Cohen M. A History of Adolescent Medicine. Pediatric Research. 2003;54:137-47.

<sup>19</sup> Steinberg L. Adolescence. 9th ed. New York, NY: McGraw-Hill; 2011.

<sup>20</sup> Medical Journal of Australia *Emerging themes in Aboriginal child and adolescent mental health: findings from a qualitative study in Sydney, New South Wales* 2010; 192 (10): 603-605.

Given the significance of the formative developmental phase which is occurring for incarcerated adolescents there is a need to support the development of healthy behaviours during incarceration.

The RACP recommends:

- Developmentally appropriate health services for young people targeting specific adolescent health conditions in acknowledgement of their unique burden of disease.
- RACP recommends that the Australian government affirm the principles of mutual respect as set out in the United Nations Declaration on the Rights of Indigenous Peoples to which Australia and New Zealand are signatories.

### **The health of incarcerated adolescents**

Adolescents in custodial settings have greater health needs than adolescents in non-custodial settings. The RACP recognises the special vulnerability of children in detention and their need for appropriate support, access to healthcare, and guidance to support their personal development. The detention of adolescents can result in detrimental health impacts, and appropriate health care and supports are required to minimise the impact of detention and help adolescents develop and mature appropriately.

Adolescents within the youth justice system suffer a broad range of psychosocial problems, as well as decreased social, educational and occupational opportunities<sup>16,17,18</sup>. Studies suggest that young people in custody have higher rates of mental health problems, substance use issues, health risk behaviours, disconnection from school and social disadvantage than similar aged individuals in the general community. A 2003 survey of NSW youth in custody found that 42% reported having been physically abused, 11% sexually abused and 38% had experienced emotional neglect<sup>21</sup>.

Mental health disorders significantly affect young people in detention. The broad range of psychiatric diagnoses over-represented in this cohort include attention-deficit/hyperactivity disorder, autism, mood and anxiety disorders, and post traumatic stress disorder. There is also significant co-morbidity with substance misuse and drug-induced psychosis. The NSW study found that 30% reported high or very high psychological distress implying that they may have a greater than 50% chance of anxiety or depressive disorder<sup>22</sup>.

Young people in the youth justice system have suicide prevalence rates four-times that of other young people<sup>23</sup>, with high levels of suicidal ideation (29%) and a history of attempted suicide (21%), with 7% making a recent attempt<sup>24</sup>. Suicide risk factors are common in young people within the youth justice system.

High levels of health-risk behaviours and thrill-seeking behaviours have been identified among incarcerated adolescents<sup>25</sup> including: unsafe sexual practices, alcohol abuse, illicit drug use, tattooing and tobacco use. Evidence has indicated that incarcerated adolescents report significantly higher rates of drug use in a one month period than non-offending adolescents report in a year<sup>26</sup>.

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<sup>21</sup> NSW Department of Juvenile Justice *2003 NSW Young People in Custody Health Survey. Key Findings Report*. Allerton and Champion, 2003

<sup>22</sup> Ibid.

<sup>23</sup> Kosky RJ, Sawyer MG, Gowland JC. *Adolescents in custody: Hidden psychological morbidity?* Medical Journal of Australia, 1989. 153 p24-27

<sup>24</sup> Putnins AL. *Recent drug use and suicidal behaviour among young offenders*. Drug and Alcohol Review, 1995. 14 p151-158

<sup>25</sup> Kenny D & Nelson P. *Young Offenders on Community Orders: Health, Welfare and Criminogenic Needs*. Sydney: Sydney University Press, 2008

<sup>26</sup> Lennings C & Pritchard M. *Prevalence of drug use prior to detention among residents of youth detention centers in Queensland*. Drug and Alcohol Review, 1999. 18 p145-152

The RACP recommends providing incarcerated Indigenous adolescents in Australia with the choice of accessing services that include those provided by the Aboriginal Community Controlled Health Organisations (ACCHOs) and Aboriginal Medical Services (AMS).

As the Royal Commission is investigating instances of abuse, the RACP urges the Royal Commission to consider the long term and broad implications of trauma or abuse on the physical and mental health of adolescents. Treating and resolving problems caused by abuse can take a long time, and it's important that this context is taken into account; including in ensuring the provision of appropriate support and care post incarceration, to also improve a person's chances of rehabilitation and reduce recidivism rates.

### **Health Assessments**

Assessing the current health status of adolescents entering custodial settings is important. Young people entering incarceration are a high risk population and are more likely to suffer from a range of health issues making timely health assessment and treatment crucial. Assessment will also help mitigate the risk of a negative psychological reaction and associated risks of self-harm or suicide due to the possible trauma associated with entering incarceration. The RACP supports a service that provides health screening within 24 hours of a young person's entry into detention, and one that can document current health status as well as identify and intervene where appropriate for health risk behaviours. With respect to the letter of patent item (i) the RACP understands that currently the only comprehensive health assessment that occurs routinely happens after 5 days of detention, and is carried out by a clinic nurse. Specialist paediatric and/or psychiatric assessments are not routinely offered, despite documented high rates of physical and mental health problems among child and youth detainees.

Regular assessments and the management of physical and mental health issues are required for incarcerated adolescents. Regular assessments will facilitate the timely identification of adverse impacts that detention is having on the person's health or existing health problems. It is fundamental to identify, manage and treat adolescent health issues during incarceration to ensure their well-being.

### **Legal protection of adolescents against torture**

Whilst national laws are in place to ensure the protection of adolescents against torture, the RACP would like to draw attention to additional conventions which may assist in protecting adolescents through the establishment of monitoring and enquiry mechanisms.

Australia ratified the United Nations Convention on the Rights of the Child in 1990, and governments have a responsibility to ensure that the rights set out in the CRC are protected. The RACP recommends the Royal Commission considers the CRC, and specifically Article 37 dealing with the imprisonment of children, as part of its work.

The Optional Protocol to the Convention against Torture (OPCAT) aims to prevent torture, cruel, inhuman punishment or treatment for all individuals deprived of their liberty through the establishment of an independent monitoring mechanism. Australia is a party to Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), OPCAT aims to assist states to meet their obligations under CAT. The OPCAT was signed by the Australian government in 2009 but has not yet been ratified<sup>27</sup>.

The ratification of OPCAT would assist in the prevention of abuse for all individuals in detention and provide an enquiry mechanism to examine accusations of acts which contradict Australia's obligations under CAT. The RACP therefore calls for the Royal Commission to examine the

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<sup>27</sup> Australian Human Rights Commission, *Optional Protocol to the Convention against Torture* <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/optional-protocol-convention-against-torture-opcat#s5>

reasons for the delayed ratification of OPCAT and provide recommendations that would facilitate its progression.

### **Conclusion**

The health risks faced by incarcerated adolescents are significant, and the assessment and treatment of their health issues is critical to the development of physically and mentally well young people. For Aboriginal and Torres Strait Islander young people in detention it is vital to provide care which acknowledges and supports their specific cultural needs and allows for development and maintenance of their cultural identity.

We recommend that the Royal Commission consider the broader social determinants of health, and the extreme overrepresentation of Aboriginal and Torres Strait Islander young people in detention; in particular whether other justice diversion options offers opportunities to redress this appalling situation. The RACP suggests a comprehensive evaluation of available strategies to address the national issue of young people, specifically Aboriginal and Torres Strait Islander adolescents, interacting with the criminal justice system. When broadly considering the issue of incarcerated adolescents, more must be done to support young people to live full and productive lives without interactions with the criminal justice system. We strongly recommend the Commission seek the advice of experts in this field.

If you would like to discuss this matter further please contact Beth Wilson, Policy Officer **Privacy** or **Privacy**.