Submission to the Inquiry into Australia's youth justice and incarceration system

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About the Justice Health Group

The Justice Health Group is a research group spanning Curtin University and Murdoch Children's Research Institute. Members of the Justice Health Group come from diverse disciplinary backgrounds including epidemiology, public health, psychology, psychiatry, criminology, and law. The Justice Health Group is led by Professor Stuart Kinner, who has undertaken research on the health of justice-involved people for 25 years in Australia and internationally. The Justice Health Group benefits from a national Community and Lived Experience Advisory Group (CLEAG), which provides strategic advice and facilitates research translation and impact.

The vision of the Justice Health Group is a world where contact with the criminal justice system is minimised and, where it does occur, contributes to reducing rather than compounding health and social inequities. The objective of the Group is to generate world-class evidence regarding the health and health service experiences of justice-involved children, adolescents, and adults, and to advocate for evidence-informed policy to improve their health outcomes. The work of the Group is distinguished by methodological rigour, ethical research practice, a global perspective, and a commitment to real-world policy impact.

Our submission

We welcome the opportunity to make a submission to the Inquiry into Australia's youth justice and incarceration system. Our submission focusses on the health and wellbeing of justice-involved children and adolescents, both during and after periods of justice system supervision, and is grounded in the available evidence.

a) the outcomes and impacts of youth incarceration in jurisdictions across Australia

The youth justice system functions as a 'filter' for marginalised, at-risk young people with complex health and psychosocial needs.[1] Children and adolescents who have contact with the youth justice system are distinguished by a high prevalence of mental illness, substance use disorder, neurodevelopmental disability, and chronic illness. These health issues frequently co-occur and interact in a syndemic fashion.[2]

Remarkably few studies have examined health outcomes after contact with the youth justice system. With funding from the National Health and Medical Research Council (NHMRC), the Justice Health Group has linked youth justice records in Queensland (1993-2017) with adult correctional records, the National Death Index (NDI), and the National Coronial Information System (NCIS). Publications describing the findings of this landmark study are currently in preparation. Among 48,670 young people followed for an average of 13.5 years after first contact with the youth justice system, we observed 1431 deaths (2.9% of the sample). The rate of death among these young people is 4.2 times that of the age- and sex-matched general population. This elevation in rate of death was greatest for those who had spent time in detention (standardised mortality ratio = 6.4, which means that the rate is 540% higher than in the age- and sex-matched general population), although the rate of death was also elevated for those who had only ever served a community-based supervision order (standardised mortality ratio = 4.3), and those who had only ever been charged with an offence (standardised mortality ratio = 3.5).

The most common underlying causes of death among these young people were suicide (n=495, 35%), motor vehicle transport accidents (n=244, 17%), and accidental drug poisoning (n=209, 15%). However, the risk of death due to violence (n=52)[3] and non-communicable disease (n=121)[4] was also markedly elevated. The majority of observed deaths (57%) occurred before age 25, and almost all (n=1408, 98.4%) occurred in the community (a small minority occurred in prisons).[5]

Death inequities are the 'tip of the iceberg' in terms of poor health outcomes after contact with the youth justice system. It is abundantly clear that more needs to be done to improve and maintain the health and wellbeing of children and adolescents who have had contact with the youth justice system. Although the rate of death appears to be greatest for those who experience youth detention, the vast majority of deaths (76% in our study) occur among young people who have had some contact with the criminal justice system but have never been detained. As such, efforts to improve the health of justice-involved young people must not be restricted to youth detention settings.[6] There is an urgent need for investment in (a) post-release care and support, separate from any criminal justice function and intended to achieve the best possible health outcomes for young people released from detention, and (b) mechanisms for supporting the health and wellbeing of the very large number of young people who have contact with the criminal justice system, but never experience detention.[7]

Our Group recently reviewed the global evidence regarding the impact of incarceration on the health of young people as part of the UN Global Study on Children Deprived of Liberty.[8] Although it seems self-evident that incarceration will be harmful to the health of young people, there is surprisingly little evidence to support this view.[2] This is a case of 'absence of evidence' rather than 'evidence of absence' – in other words, although it is almost certainly the case that incarceration is harmful to young people, there is a need for more research to quantify and characterise these harms, to inform efforts to prevent and mitigate them.

Youth detention should clearly be a sanction of last resort, for the shortest time possible: during adolescence (10-24 years), young people's brains are still being quickly transformed and their capacity to make informed decisions is still far from being fully developed.[9] However, preventing detention alone will not be sufficient to achieve good health outcomes for at-risk young people. Our research shows that even young people who are charged with an offence but are never convicted or sentenced to a community order are at dramatically increased risk of preventable death. Efforts to prevent youth detention must be paralleled with commensurate investment in therapeutic, community-based alternatives.

b) the over-incarceration of First Nations children

First Nations children are over-represented in the youth justice system by a factor of 22.7 and in detention by a factor of 28.0.[10] These appalling statistics reflect structural racism, ongoing impacts of colonialism and intergenerational trauma, and the reality that criminal justice systems 'select for' marginalisation, disadvantage, and ill health. Closing the Gap target 11 is to reduce the rate of youth detention for First Nations children by at least 30% by 2031. According to the Productivity Commission,[11] the rate of detention in 2022/23 was higher than in the previous three years, although around 7% lower than in 2018/19. It is far from clear that this target will be met by 2031.

Furthermore, the target itself is limited in at least two important ways:

1. The target does not consider the extent to which First Nations children are over-represented in detention. According to the AIHW,[10] in the 5 years from 2018/19 to 2022/23 the rate of over-representation increased by 22%, from 23 to 28 times the rate among non-

Indigenous children. These figures may indicate that efforts to reduce the use of detention are disproportionately benefiting non-Indigenous children.

2. The target is intended to drive down youth detention rates. Although this is clearly desirable, as noted above, reducing detention alone will not be sufficient to improve the health of First Nations children. Also important are investments in (a) high-quality, culturally safe healthcare in detention, and (b) investment at scale in therapeutic alternatives to detention, for children who come into contract with the criminal justice system.[12]

c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention; and

d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights

Although Article 24.1 of the Convention on the Rights of the Child (UNCRC) provides for every child to enjoy the highest attainable standard of health, there is resolvable ambiguity regarding the right to health for children in youth detention. The United Nations Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules, 1990) require that States provide children in detention with "adequate medical care", which is arguably a lower standard than that articulated in the UNCRC. In 2019, the UN Committee on the Rights of the Child regrettably echoed this lower standard in General Comment 24, stipulating that children in detention should receive "adequate physical and mental healthcare".[13]

This stands in stark contrast to the comparable standard for incarcerated adults (Figure 1). The UN Standard Minimum Rules for the Treatment of Prisoners (the Mandela Rules, 2015) require that "prisoners should enjoy the same standards of healthcare that are available in the community" (Rule 24.1). This rule is often referred to as the 'principle of equivalence', noting that given the higher burden of health problems among people in custody, equivalent does not mean 'the same'.[14]

Figure 1. Healthcare standards for adults and children, in the community and in custody.

	ADULTS	CHILDREN
COMMUNITY	Every human being is entitled to the enjoyment of the highest attainable standard of health conducive to living a life in dignity[1]	States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health[2]
CUSTODY	Prisoners should enjoy the same standards of health care that are available in the community[3]	Every child is to receive adequate physical and mental health care throughout his or her stay in the facility[4]

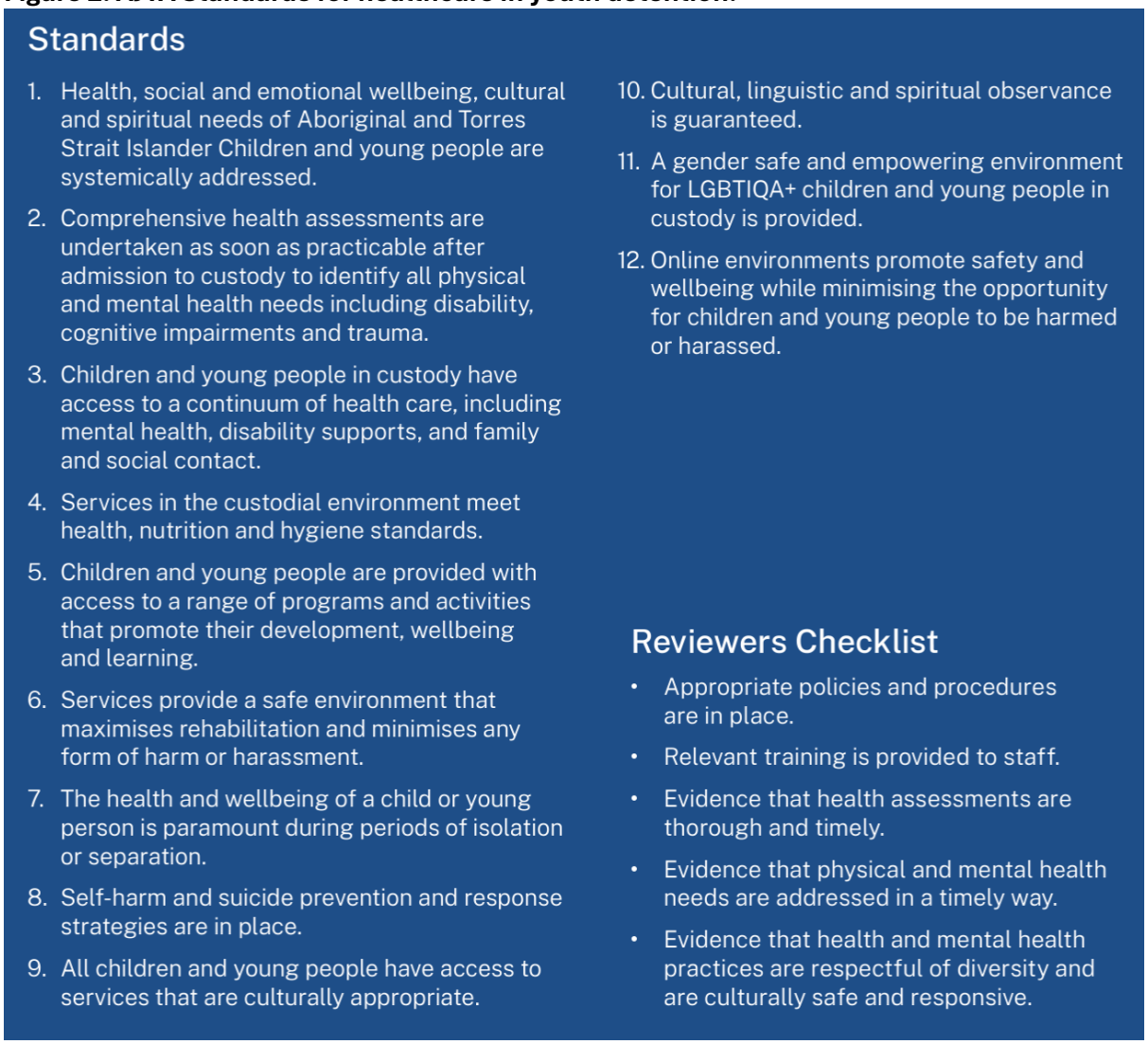
1. *Committee on Economic, Social and Cultural Rights - General comment No. 14 on the highest attainable standard of health*
2. *UN CRC, Article 24.1*
3. *UN Standard Minimum Rules for the Treatment of Prisoners (Mandela Rules, 2015), Rule 24.1*
4. *UN CRC General Comment 24 (2019), 95(d)*

An opportunity exists for the UN Committee on the Right of the Child to clarify that children in detention retain the right to the highest attainable standard of health – not just to 'adequate' healthcare.[15] In the interim, all Australian governments should affirm their commitment to providing the best possible healthcare for children in youth detention, to ensure that the basic health rights of all children in Australia are being met.

e) the benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations

It is often said that 'what gets counted gets done'. Australia currently lacks clear, measurable, enforceable national standards for healthcare in youth detention. Domain 5 of the Australasian Youth Justice Association (AJYA) National Standards for Youth Justice in Australia 2023 relates to health and wellbeing, with the articulated purpose being "to provide services that optimises [sic] health and wellbeing". Although this is a laudable aspiration, the purported 'standards' articulated by AJYA (Figure 2) are not sufficient to ensure adequate, let alone optimal, healthcare in detention.

Figure 2. AJYA Standards for healthcare in youth detention.



Source: National Standards for Youth Justice in Australia 2023. Australasian Youth Justice Administrators.

Routine, independent monitoring and public reporting on the standard of healthcare in youth detention is essential to protecting the rights of these highly vulnerable children, and optimising their health outcomes. Given the appalling over-representation of First Nations children in detention, this is also important to Closing the Gap, even if we do not currently have a target related to healthcare in youth detention.

Critical features of effective standards for healthcare in youth detention include:

1. National: Although youth justice services are administered at the State and Territory levels, and both financing and governance arrangements may vary across jurisdictions, standards for healthcare in youth detention must be national.
2. Measurable: Aspirational and subjective standards are not sufficient to drive quality improvement. Similarly, so-called 'process indicators' that do not require quantification of healthcare inputs or health outcomes are inadequate. Effective standards must define and permit quantification of investments in detention healthcare (e.g., expenditure, FTE healthcare staff), and health outcomes for children in and released from detention.
3. Publicly reported: Transparency and independence are hallmarks of a functional monitoring system. Routine, public reporting against agreed national standards for healthcare in youth detention would drive quality improvement and mitigate against the delivery of second-rate healthcare for children in detention.

Even if effective national standards for healthcare in youth detention were in place, Australia does not currently have a mechanism for routinely monitoring and reporting against such standards. The Report on Government Services (ROGS)[16] reports annually on the performance of the youth justice system, but the Indicator Framework for youth justice almost completely excludes consideration of health or healthcare. The only health-related indicators considered by the ROGS are (a) deaths in custody, and (b) self-harm and attempted suicide in custody. Even these basic indicators are not yet adequately reported, with the most recent data for self-harm and suicidal behaviour "either not comparable and/or not complete". This is particularly concerning in jurisdictions where, against the long-standing recommendation of the World Health Organization WHO),[17, 18] healthcare in detention is the responsibility of a Department of Justice, rather than a Department of Health. There appears to be almost no routine, public reporting on health or healthcare in Australia's youth detention systems.

In 2016-17, the Australian Institute of Health and Welfare (AIHW) undertook a national scoping exercise to assess the feasibility of developing a system for routinely monitoring health and healthcare in the youth justice system. This system was intended to parallel the well-established system for monitoring health and healthcare in Australia's prisons.[19] In 2018, the AIHW concluded that such a system was needed and feasible, that it should encompass both children in detention and those under community supervision, and that the backbone of the collection should be cross-sectoral data linkage (i.e., linking youth justice records with relevant health records).[20] In 2019, the Justice Health Group, in partnership with the AIHW, was awarded an NHMRC grant to link national youth justice records from 2000-2019 with national emergency department, hospital, Medicare, PBS, and NDI records. These data have now been linked, and are available for analysis on the Secure Unified Research Environment (SURE). However, the NHMRC grant that underpinned the development of this globally unique data resource has now expired, and to the best of our knowledge, the AIHW has not received any specific funding to work with these data. Funds are urgently required to permit retention and support analysis of these data, to provide 'proof of concept' for using cross-sectoral data linkage to routinely monitor health and healthcare in Australia's youth justice systems.

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