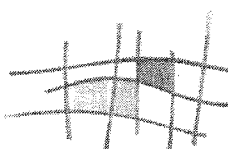


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**Submission to House of Representatives
Standing Committee Inquiry into the
Criminal Justice System for Indigenous
Young People and Young Adults**

A Submission from Anex


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About Anex

- ❖ Anex is an apolitical civil society organisation that recognises that drug consumption is an historical dimension of Australian communities. Anex deals with illicit drug consumption, which we neither condone nor criticise. Instead, we support the three pillars of harm minimisation as a politically pragmatic approach.¹ Within harm minimisation, Anex particularly advocates for reduction of drug-related harms upon individuals, families and societies.
- ❖ Anex is a voice for needle and syringe programs (NSPs) and outlets, many of which also refer injectors to treatment and other social services. Although government-funded, Anex strives to provide constructive critiques of policies, legislation and procedures that enable or hamper harm reduction interventions.
- ❖ The Anex network of experts, like-minded organisations, NSP staff, injectors and opioid substitution outlets represent a wealth of harm reduction knowledge. Anex leverages its network to raise awareness around drug issues in Australia regularly, and within the region intermittently.
- ❖ Anex holds true to an original goal of linking frontline experience with policy and program responses. Anex delivers contracted research and assessments and trains staff within the substance consumption and treatment sector.
- ❖ It is Anex's responsibility to actively and correctly inform policy makers, sector actors and broader communities about the benefits of harm reduction. Anex works collegiately with other institutions to achieve this.
- ❖ **A note about terminology:**

The term Indigenous has been used in this response to refer to people who may identify as Aboriginal or Torres Strait Islander or both. The use of this term should not be taken to mean that Anex does not recognise the rich cultural diversity that exists within the Aboriginal and Torres Strait Islander communities.

¹ Anex recognises the three pillars of harm minimisation. These are supply reduction, demand reduction and harm reduction. However, we believe that supply reduction is over funded in comparison with harm reduction.

Submission to the House of Representatives Standing Committee Inquiry into Indigenous juveniles and young adults in the criminal justice system.

The impact that alcohol use and other substance abuse has on the level of indigenous juvenile and young adult involvement in the criminal justice system and how health and justice authorities can work together to address this.

Anex has been involved in the development of strategies to address drug and alcohol problems in Indigenous communities. We have been working with both the Victorian Aboriginal Community Controlled Health Organisation and the National Aboriginal Community Controlled Health Organisation to address concerns related to drug and alcohol use. It is clear to us from this work that Indigenous people are imprisoned at a younger age, and at a higher rate than their non-Indigenous counterparts. This has enormous ramifications in terms of the long term health and well being of the Indigenous community as prisoners are at greater risk of acquiring a blood borne virus whilst in prison, and then returning to their community.

Data provided in relation to the imprisonment of people in Australia released by the Australian Bureau of Statistics does not specify the precipitating causes for their arrest, charge and imprisonment. The offence itself may be categorised, but the involvement of alcohol or other drugs, for instance is not necessarily specified but may have been involved in people being imprisoned for the offences of:

- Acts intended to cause injury
- Sexual assault and related offences
- Dangerous or negligent acts endangering persons
- Robbery, extortion or related offences
- Theft and related offences
- Public order offences
- Traffic and vehicle regulatory offences
- Miscellaneous offences
- Unknown.

A 2004 report by the Australian Institute of Criminology found that 14% of female prisoners and 10% of male prisoners were incarcerated for drug related offences as their most serious conviction².

The degree to which alcohol or other substances may be involved is not known by the categorisations that have been used in this report. However, the report provides some startling reading when the figures are examined in detail. For this reason, we quote at length from this report which states that:

*"The age standardised imprisonment rate for Indigenous prisoners at 30 June 2009 was 1,891 Indigenous prisoners per 100,000 adult Indigenous population. The equivalent rate for non-Indigenous prisoners was 136 non-Indigenous prisoners per 100,000 adult non-Indigenous population.... The highest ratio of Indigenous to non-Indigenous prisoners was in Western Australia (20 times her for Indigenous prisoners)."*³

² Johnson, H. (2004) *Drugs and Crime: A study of incarcerated female offenders*. Canberra, Australian Institute of Criminology

³ Australian Bureau of Statistics, 2009. *Prisoners in Australia – Report 4517.0 – 2009*, Australian Bureau of Statistics – Canberra. Available from: <http://www.abs.gov.au...> p. 47.

In relation to age, it should be noted that Indigenous people are imprisoned at a younger age than their non-Indigenous counterparts. The report notes that: "The median age of Indigenous prisoners in Australian prisons at 30 June 2009 was 30.7 years; males had a median age of 30.6 years and females 31.7 years. In comparison, the median age of male and female non-Indigenous prisoners was older at 34.5 and 35.5 years respectively."⁴

Therefore, it is not surprising that Indigenous people who are imprisoned, are more likely to have had a previous period of imprisonment, because they are imprisoned at an earlier age. The report states that: "There were proportionally more Indigenous prisoners than non-Indigenous prisoners with prior imprisonment. Nearly three in four (74%) Indigenous prisoners had a prior adult imprisonment under sentence, compared with one in two (50%) for the non-Indigenous population."⁵

As the terms of reference for this enquiry relate specifically to young people and adults, these figures have been assessed in detail (refer to the ABS report for full details). For instance, in 2009, the rate of imprisonment for Indigenous males under the age of 18 was 201.9 persons per 100,000 compared with 16.4 persons per 100,000 for their non-Indigenous counterparts. This means that Indigenous men under the age of 18 are imprisoned at a rate 12.5 times greater than that for their non-Indigenous counterparts. For Indigenous men aged 18 years, the rate of imprisonment was 1713.6 persons per 100,000 compared with 95.5 per 100,000 for their non-Indigenous counterparts. Indigenous men aged 18 are imprisoned at a rate 17.9 times greater than for their non-Indigenous counterparts. For women, the rate of imprisonment for 18 year old Indigenous women was 116.8 per 100,000 people, compared with a rate of 4.9 per 100,000 people for their non-Indigenous counterparts. This means that the Indigenous population of women aged 18 years is 23.6 times more likely to be imprisoned than their non-Indigenous counterparts.

In summary, Indigenous people are imprisoned at a higher rate, and at a younger age than their non-Indigenous counterparts. If we consider that injecting drug use, tattooing and barbering occur in prison, as well as the high rate of sexual assault, we see that the use of prison as a means of punishment for young Indigenous people who may have already suffered significant disadvantage seems to magnify that disadvantage yet again. As noted by Tony Butler and colleagues in their study of NSW prisoners, they showed that high numbers of prisoners are actually contracting hepatitis C while in prison – and mostly through sharing contaminated injecting equipment⁶.

The 2001 NSW Inmate Health Survey showed that among inmates with a history of injecting in prison, 72% of women and 67% of men had used injecting equipment after someone else. About a third of them stated that the needle had been used by five or more people before them⁷.

We have noted above that there are very high rates of incarceration of Indigenous people. We have also noted that Indigenous people are imprisoned at a younger age and are often imprisoned multiple times. Compounding these issues is the fact that in spite of prohibition, the Injecting of both licit and illicit continues to occur in prison with equipment shared between numerous people. Collectively, these circumstances create a very real threat to the health of Indigenous people and communities across Australia.

⁴ Ibid, p. 48.

⁵ Ibid, p. 49.

⁶ Butler, T., Kariminia, A., Levy, M. and Kaldor, J. (2004) "Prisoners are at risk for hepatitis C transmission" in *European Journal of Epidemiology*, vol. 19, no. 12, 1119 – 22.

⁷ MacDonald, D. (2005) *The Proposed Needle Syringe Program at the Alexander Maconochie Centre, Canberra's New Prison*, Canberra: DirectionsACT

Given the above circumstances, the introduction of NSPs into prisons would offer greater protection of the health of Indigenous people who are imprisoned as well as those people who work in prisons. This would require significant co-operation between health and justice authorities but would represent significant inroads to addressing the disadvantage that Indigenous young people who are imprisoned, may suffer.

NSPs in prisons operate in a number of countries as diverse as Iran and Spain. In instances where NSPs do operate in prisons, no incidents have ever been recorded of needle/syringe being used as a weapon. In fact, NSPs in prisons can increase the safety of workers who are less likely to acquire a needlestick injury if injecting equipment is stored in an agreed and regulated manner. Currently, the clandestine nature of injecting drug use in prisons, while known to occur, is largely ignored in the occupational health and safety analysis.

Best practice examples of programs that support diversion of Indigenous young people from juvenile detention centres and crime and provide support for those returning from such centres

A recently completed report by the National Indigenous Drug and Alcohol Council (NIDAC) makes some excellent points in relation to the restrictions of diversionary programs. In making these points, their report also suggests means to improve existing diversionary programs so that they may be more inclusive in their approach, rather than excluding offenders who may have longer histories – and in this instance we refer to Indigenous offenders.

The first issue to be considered is access to diversion in the first instance. Under the existing IDDI framework offenders who are recognized as having alcohol as a primary drug of concern or who have a history of violent offences are excluded. Given the relationship between alcohol and drugs and their high levels of use in some Indigenous communities, this has a larger negative impact on the Indigenous community than the broader community.

Once diversion may be identified as an option, there are other barriers to its implementation. A number of Indigenous-specific court diversion programs are in place, however, the availability of treatment services to which offenders may be diverted, as required by the principle of diversion, limits the utility of these programs.

Thirdly, there are structural barriers to access diversion that are amplified by some of the restrictive criteria that exclude people from being diverted from prison. As we have noted above, Indigenous people are imprisoned at an earlier age, indicating that they may have begun offending at an earlier age. Joudo has noted that that 41–70 per cent of violent crimes are committed under the influence of alcohol⁸. Therefore, the criterion excluding offenders from diversion programs if they have a previous offence of violence is significant for many Indigenous people. This finding has significant repercussions for those Indigenous Australians most in need of diversion into alcohol and other drug treatment programs.

The second barrier as noted by the NIDAC report, is that many diversionary programs require an admission of guilt⁹. For historical, cultural and experiential reasons, Indigenous people may not want to talk to police or legal personnel, may not wish to admit the offence, or may be advised to plead not guilty to avoid the creation of criminal record that a guilty plea would result in. In so doing, they miss an opportunity to avoid imprisonment, and possibly also access to treatment.

Solutions offered by the NIDAC include:

⁸ Joudo, 2008 in National Indigenous Drug and Alcohol Committee 2009. *Bridges and Barriers – Addressing Indigenous Incarceration and Health*, Australian National Council on Drugs, Canberra. Available from: <http://www.ancd.org.au>. [Accessed 20 November 2009] p. 8.

⁹ Ibid, p. 9.

"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. This may include diversion into treatment for a substance misuse problem as a condition of bail (Pritchard et al. 2007).

*Pre-sentence diversion opportunities also exist within the court. Primarily these are for first-time or early offenders and enable participants to avoid a criminal record. Yet, even after conviction, a court can still grant diversion as part of the sentence; for example, into alcohol or other drug treatment"*¹⁰

Another complicating factor is that Indigenous offenders are more likely to have been convicted of a serious violent offence¹¹. Unfortunately, one of these issues can often exclude offenders from most diversion programs due to their strict eligibility criteria. A change in the eligibility criteria to enable greater Indigenous participation rates in diversion programs would provide an effective way to address the overrepresentation of Indigenous Australians in prison. Other barriers to diversion opportunities for Indigenous offenders include the lack of such opportunities in remote areas and a mistrust of the police and legal system (Joudo 2008).

The mistrust apparent among many Indigenous offenders may reflect past experiences and needs to be addressed over the long term. This can be done through the recruitment of Indigenous Liaison Officers, cultural awareness programs provided to court appointed legal representatives, and a greater understanding amongst law enforcement officers of the connection between alcohol and drugs, mental health issues and crime that may be committed.

The extent to which current preventative programs across government jurisdictions are aligned against common goals to improve the health and emotional well-being of Indigenous adolescents, any gaps or duplication of effort, and recommendations for their modification or enhancement.

We wish to comment on this issue only in a general manner because of the broad nature of the work being done across jurisdictions. Time and space does not allow for an analysis of individual programs currently in place.

Work done by Anex reveals that there is a need to reconfigure models of care and treatment for people who are Indigenous to include the family, children, and partners. The intergenerational nature of drug use or alcohol abuse means that without treating the whole family, there is likely to be little complete change in the way a family may interact or work to solve its problems.

Indigenous communities have complex social and familial networks and the traditional individualistic approach of drug and alcohol treatment by services does not fit with the cultural mores of Indigenous families and communities.

The Aboriginal Community Controlled Health Sector provides the opportunity for Indigenous communities to manage and control their own health outcomes. Whilst admirable in principle, this system of health care delivery, like mainstream services, encounters the same challenges as mainstream services. These include attracting and retaining adequate numbers of suitably qualified staff, providing a broad range of services to the community when they may have very specific needs, geographic placement of services and the need to travel to services. This last point needs to be carefully considered because of the location of many Indigenous communities in rural and remote settings. Service placement can have a large impact on the

¹⁰ Ibid, p. 8.

¹¹ Snowball and Weatherburn, 2007 in Ibid, p. 9.

ability of a person to access those services, particularly in the absence of established public transport systems.