Impacts of Imprisonment and Remand in Custody

The purpose of this document is to collate key research and the findings of government reports and inquiries in relation to the impacts that imprisonment may have on a person's behaviour, development, physical, mental and social well-being, and likelihood of coming into subsequent contact with the legal system. Findings specific to the impacts of short-term imprisonment and remand are also presented.

Note: This document is limited in scope to presenting available research findings. It does not purport to represent the full spectrum or magnitude of impacts experienced by incarcerated individuals. The researchers and experts involved in compiling this document also acknowledge the stigmatising potential of terminology frequently employed in policies and research in relation to imprisonment;[1] by necessity, all direct quotations from sources have been cited verbatim.

Introduction

1 Research shows that imprisonment has negative impacts on the physical and mental health of incarcerated individuals, and these impacts persist after release.[2] Other documented impacts of imprisonment include loss of housing, barriers to employment, and significant negative impacts on families and communities,[3] which may affect families and communities in different ways.[4]

2 The family and community impacts of incarceration are more pronounced for Aboriginal and Torres Strait Islander people, particularly women.[5] Loss of culture and disconnection from Country and community due to imprisonment may have adverse impacts on the social and emotional well-being of Aboriginal and Torres Strait Islander people who experience incarceration.[6]

3 Even short periods of incarceration, including remand, can have wide-ranging detrimental impacts and may be linked with subsequent contact with the criminal process.[7] Research shows

[1] See, eg, Nguyen Toan Tran et al, 'Words Matter: A Call for Humanizing and Respectful Language to Describe People who Experience Incarceration' (2018) 14 *BMC International Health and Human Rights Rights* 81:1–6; Gwen van Eijk, 'Inclusion and Exclusion through Risk-Based Justice: Analysing Combinations of Risk Assessment from Pretrial Detention to Release' (2020) 60 *British Journal of Criminology* 1080; Jo Deakin, Claire Fox and Raquel Matos, 'Labelled as "Risky" in an Era of Control: How Young People Experience and Respond to the Stigma of Criminalized Identities' (2020) 19 *European Journal of Criminology* 653.

[2] Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 22–5.

[3] See, eg, Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) vol 1, 89–90.

[4] See, eg, Australian Government Productivity Commission, *Australia's Prison Dilemma* (Research Paper, October 2021) 67.

[5] See Human Rights Law Centre and Change the Record Coalition, *Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment* (Report, May 2017) 13.

[6] See, eg, Australian Institute of Health and Welfare, *Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System* (Report, 14 July 2021) 7; Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report, 2021) 42.

[7] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 269 [7.157]–[7.158].

that people who receive non-custodial penalties are significantly less likely to be re-convicted within the next 12 months than those who receive sentences of imprisonment.[8]

Terminology and Scope

4 In this chapter:

- **incarceration** and **imprisonment** are used interchangeably to refer to detention in a correctional setting, whether to serve a sentence imposed by a court or on remand;
- **remand** refers to the detention of a person in a custodial setting after being refused bail (or granted bail but unable to meet conditions), pending future court action in relation to determining criminal liability or sentencing; and
- **short-term incarceration** refers to periods of imprisonment of less than 6 months.

5 The research summarised in this chapter primarily relates to the impacts of adult incarceration, although research findings which are relevant to young people (or to both adults and young people) are also included.[9]

Imprisonment Statistics

Trends in relation to the overall prison population

6 The Australian Bureau of Statistics ('ABS') found that, from June 2020 to June 2021:

- The number of people in Australian prisons increased by 5% (1,910) to 42,970.
- The imprisonment rate increased from 205 to 214 prisoners per 100,000 adult population.
- 92% of people in prison were male.
- The number of people in prison on remand increased by 16% (2,085) to 15,182, while people in prison serving sentences decreased by 1% to 27,680.
- Approximately 35% of people in prison were being held on remand.[10]

7 The number and proportion of older people in prison in Australia is increasing, with the greatest growth in numbers observed among people aged over 65.[11]

8 The median age of people in prison increased from 32 in 2002 to 35.2 in 2020.[12]

[8] NSW Bureau of Crime Statistics and Research, *Reoffending Statistics for NSW* (Web Page, 15 August 2022).

[9] See, esp, paras [22], [56]–[58] of this document.

[10] Australian Bureau of Statistics, *Prisoners in Australia, 2021* (Previous Catalogue Number 4517.0, 9 December 2021).

[11] See, eg, NSW Inspector of Custodial Services, *Old and Inside: Managing Aged Offenders in Custody* (Report, 2015).

[12] Australian Government Productivity Commission, *Australia's Prison Dilemma* (Research Paper, October 2021) 22.

Trends in relation to the incarceration of Aboriginal and Torres Strait Islander peoples[*]

9 Aboriginal and Torres Strait Islander peoples are significantly overrepresented among both people held in prison on remand and those serving sentences.[13] Despite the fact that the vast majority of Aboriginal and Torres Strait Islander people have never been imprisoned,[14] the ABS (2021) found that Aboriginal and Torres Strait Islander people made up 30% of all people in prison.[15]

10 The Australian Government Productivity Commission (2021) found that the national imprisonment rate for the Aboriginal and Torres Strait Islander population was 11.7 times greater than for the non-Indigenous population in 2019–20.[16]

11 In the June quarter 2022, the ABS (2022) found that '[t]he Aboriginal and Torres Strait Islander imprisonment rate was 2,315 persons per 100,000 adult Aboriginal and Torres Strait Islander population'.[17]

12 The Australian Institute of Health and Welfare ('AIHW') (2022) found that Indigenous young people aged 10–17 were 18 times as likely as non-Indigenous young people to be in detention on an average day in 2020–21.[18]

13 The ABS (2021) found that Indigenous women made up 38.7% of all women in prison in Australia at 30 June 2021.[19] Although 90% of Aboriginal and Torres Strait Islander people in prison are male,[20] 'Aboriginal and Torres Strait Islander women are a fast-growing group within the remand population'.[21]

14 The Australian Law Reform Commission ('ALRC') (2017) found that Aboriginal and Torres Strait Islander people convicted of criminal offences are 12.5 times more likely to receive a sentence of imprisonment than non-Indigenous people who are convicted.[22] They are also more likely to receive short prison terms and less likely to receive community-based sentences.[23]

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[*] **See also the *Bugmy* Bar Book research paper *Incarceration in Australia since 1967: Trends in the Over-representation of Aboriginal and Torres Strait Islander Peoples* (September 2022).**

[13] Available international data supports a conclusion that Australian First Nations peoples are 'the most imprisoned people on Earth': see, eg, Thalia Anthony and Eileen Baldry, 'FactCheck: Are First Australians the Most Imprisoned People on Earth?', *The Conversation* (Online, 6 June 2017).

[14] Australian Bureau of Statistics, *National Aboriginal and Torres Strait Islander Social Survey, 2014-15: Safety, Law and Justice* (Previous Catalogue Number 4714.0, 28 April 2016).

[15] Australian Bureau of Statistics, *Prisoners in Australia, 2021* (Previous Catalogue Number 4517.0, 9 December 2021).

[16] Australian Government Productivity Commission, 'Part C: Justice,' *Report on Government Services 2022* (Web Page, 28 January 2022).

[17] Australian Bureau of Statistics, *Corrective Services, Australia* (15 September 2022). The incarceration rate for the general population in the same quarter was 202 persons per 100,000 adult population: ibid.

[18] Australian Institute of Health and Welfare, *Australia's Welfare: Youth Justice* (Web Page, 31 March 2022).

[19] Australian Bureau of Statistics, *Prisoners in Australia, 2021* (Previous Catalogue Number 4517.0, 9 December 2021).

[20] Ibid.

[21] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 105 [3.41]. See also Human Rights Law Centre and Change the Record Coalition, *Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment* (Report, May 2017) 12.

[22] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 91 [3.2].

[23] Ibid.

Links between Imprisonment and Return to Custody

15 The Australian Government Productivity Commission (2022) found that the rate at which people released from prison are returned to custody is high, and is increasing:

> In 2020–21, 45.2 per cent of prisoners released in 2018–19 after serving a sentence had returned to prison within two years … Some of those returning to prison may also have received community corrections orders. In total, 53.1 per cent of released prisoners had returned to corrective services within two years in 2020–21 (either prison or community corrections) … Returns to prison and corrective services were higher in all states and territories for Aboriginal and Torres Strait Islander than non-Indigenous people.[24]

16 The Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022) recognised that 'imprisonment is not effective in reducing recidivism in and of itself', observing that prison environments 'can be challenging and can exacerbate the physical and emotional vulnerability of incarcerated people'.[25] The Inquiry acknowledged that 'discipline-based interventions such as incarceration are not effective at reducing recidivism except for incapacitating those in custody for a short time', and that 'punishment or the threat of punishment does not shift criminal behaviour or reduce recidivism'.[26] The Inquiry made a formal finding that '[r]ecidivism rates suggest that our current punitive approach to criminal behaviour is not reducing crime or improving community safety'. [27]

17 The ALRC (2017) found that incarceration of parents and caregivers may also result in the children of incarcerated individuals coming into contact with the legal system:

> Imprisonment of a parent can result in children having to relocate or having to enter into the care of the state – research confirms that these children are much less likely to complete secondary school and are more likely to become homeless, unemployed and come into contact with the criminal justice system.[28]

18 The NSW Bureau of Crime Statistics and Research ('BOCSAR') (2015) examined whether first-time prison sentences reduced the likelihood of re-conviction and found:

> There is no particular deterrent effect in receiving a prison sentence for people who had not previously been to prison … [O]ur findings suggest that sentencing courts contemplating imposing a suspended sentence of up to two years instead of full-time custody of 12 months (or less) need not be concerned about the possibility that imposing a suspended sentence will put the public at greater risk.[29]

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[24] Australian Government Productivity Commission, 'Part C: Justice,' *Report on Government Services 2022* (28 January 2022). A NSW study found that 55% of people found guilty in the NSW criminal courts in 2010 were re-convicted of a further offence within 10 years of their reference offence: Bureau of Crime Statistics and Research, *Long-term Re-offending Rates of Adults and Young People in NSW* (Bureau Brief No 162, September 2022). The ABS found that 78% of Aboriginal and Torres Strait Islander prisoners had experienced prior adult imprisonment: *Prisoners in Australia, 2021* (Previous Catalogue Number 4517.0, 9 December 2021).

[25] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 636.

[26] Ibid 636–41.

[27] Ibid 641 (Finding 61).

[28] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 127 [4.11]. **See also the *Bugmy* Bar Book chapters 'Incarceration of a Parent or Caregiver' and 'Out-of-Home Care'**.

[29] Judy Trevena and Don Weatherburn, *Does the First Prison Sentence Reduce the Risk of Reoffending?* (NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice No 187, October 2015) 11–12.

Non-custodial penalties and likelihood of re-conviction

19 There is a growing body of research suggesting that community-based alternatives may be more effective than full-time imprisonment in reducing subsequent contact with the criminal process.[30]

20 A report commissioned by the Queensland Sentencing Advisory Council (2019) found:

> Although imprisonment is undoubtedly effective at punishing offenders and denouncing criminal behaviour, research shows that it is not effective as a deterrent to further offending and it appears to reduce reoffending via incapacitation only to a limited extent … At best, imprisonment has a marginal impact on recidivism. At worst, imprisonment increases the likelihood of reoffending.[31]

21 BOCSAR statistics from 2015, 2016 and 2017 show that people convicted in NSW who received non-custodial penalties were significantly less likely to be re-convicted within the next 12 months compared with those who received prison sentences.[32]

22 This effect was more pronounced for young people aged 10–17. BOCSAR (2022) found that 64.4% of young people released from detention in 2017 were convicted of another offence within 12 months; by contrast, 44.3% of young people who were convicted and received a non-custodial sentence were re-convicted within 12 months.[33]

23 A 2013 BOCSAR study found that '[t]here is some evidence to suggest that [intensive correction orders] are more effective than periodic detention in terms of reoffending rates'.[34] In 2017, BOCSAR found that there was 'a 11%–31% reduction in the odds of re-offending for an offender who received an ICO compared with an offender who received a prison sentence of up to 24 months'.[35]

24 A 2020 BOCSAR study found that Aboriginal people who participate in Circle Sentencing in NSW have lower rates of imprisonment and subsequent convictions than Aboriginal people who are sentenced in the traditional way.[36]

Health Impacts*

25 The Senate Legal and Constitutional Affairs References Committee report, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (2013), recognised the negative health impacts of incarceration:

> The increase in prison populations has caused overcrowding in prisons, which impacts on prisoner health. Drug use and related health issues are a concern with a higher rate of hepatitis C and HIV manifesting in prison populations due to needle sharing. The overall prevalence

[30] See, eg, Denis Yukhnenko et al, 'Recidivism Rates in Individuals Receiving Community Sentences: A Systematic Review' (2019) 14(9) *PLoS ONE* e0222495:1–15, 1.

[31] Karen Gelb, Nigel Stobbs and Russell Hogg, *Community-based Sentencing Orders and Parole: A Review of Literature and Evaluations across Jurisdictions* (Report, Queensland University of Technology, April 2019) 84.

[32] NSW Bureau of Crime Statistics and Research, *Reoffending Statistics for NSW* (August 2022).

[33] Ibid.

[34] Clare Ringland and Don Weatherburn, *The Impact of Intensive Correction Orders on Re-Offending* (NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice No 176, December 2013) 1.

[35] Joanna JJ Wang and Suzanne Poynton, *Intensive Correction Orders Versus Short Prison Sentence: A Comparison of Re-Offending* (NSW Bureau of Crime Statistics and Research, Contemporary Issues in Crime and Justice No 207, October 2017) 1.

[36] Steve Yeong and Elizabeth Moore, *Circle Sentencing, Incarceration and Recidivism* (NSW Bureau of Crime Statistics and Research, Crime and Justice Bulletin No 226, April 2020).

* **See also the *Bugmy* Bar Book chapter 'COVID-19 Risks and Impacts for Prisoners and Communities'.**

> of hepatitis is estimated to be between 23 and 47 per cent for male prisoners and between 50 and 70 per cent for female prisoners. As many prisoners move in and out of the corrections system quickly, these infections pose a risk to both the inmate and public health. Prisoners with histories of substance abuse are also at a higher risk of death once released, particularly death from drug overdose.[37]

26 The impacts of increasing prison populations on the health of incarcerated people were also recently acknowledged by the Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022):

> [The Inquiry] received extensive evidence indicating that the facilities, processes and culture of Victorian prisons may be inadequate to meet the complex health and wellbeing needs of people who are incarcerated. This is particularly urgent in the context of the rapidly increasing prison population over recent years.[38]

27 The AIHW (2021) has recognised that adverse health impacts are exacerbated by the fact that many people enter prison with pre-existing, complex health needs:

> Prisoners have higher levels of mental health problems, risky alcohol consumption, tobacco smoking, illicit drug use, chronic disease and communicable diseases than the general population. This means they have significant and complex health and welfare needs, often long term or chronic. The health of prisoners is sufficiently poorer than that of the general community, and prisoners are often considered to be 'old' at age 50–55.[39]

28 Research indicates that poor health outcomes for incarcerated individuals persist after release.[40] A study by the Australian Institute of Criminology (2006) found that people released from prison were at increased risk of mortality.[41] People released from prison were also found to be at increased risk of hospitalisation or contact with mental health services in comparison with the general population.[42]

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[37] Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 23–4 [3.24].

[38] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 585.

[39] Australian Institute of Health and Welfare, 'Snapshot – Adult Prisoners', *Australia's Welfare 2021* (Web Page, 16 September 2021). See also Australian Government Productivity Commission, *Australia's Prison Dilemma* (Research Paper, October 2021) 26.

[40] International research has additionally found that the mere fact of 'contact with the prison system is generally more important than the amount': Jason Schnittker and Andrea John, 'Enduring Stigma: The Long-Term Effects of Incarceration on Health' (2007) 48 *Journal of Health and Social Behaviour* 115, 120.

[41] Australian Institute of Criminology, *Mortality and Morbidity in Prisoners after Release from Prison in Western Australia 1995–2003* (Trends & Issues in Crime and Criminal Justice No 320, July 2006) 2.

[42] Ibid 3.

Barriers to Accessing Healthcare in Prison

29 It is widely recognised that a lack of 'appropriate access to health care services can have adverse effects on the health and wellbeing of prisoners'.[43]

30 Evidence submitted to the Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022) 'indicated that it is difficult to verify the quality of healthcare provision in prisons' and that people in prison 'may not be able to access healthcare of an equivalent standard to that available to the general population'.[44]

31 The Victorian Ombudsman (2014) found that 'the current prisoner health model has significant shortcomings with the potential to adversely affect the health of prisoners', including:

- inadequate inpatient facilities
- the lack of medical services available at some regional prisons
- difficulties with prisoners attending specialist appointments due to limited transport arrangements … [45]

32 An earlier report by the Ombudsman 'highlighted the inadequate physical and mental health services available to prisoners within the Victorian prison system', including:

- grossly inadequate psychiatric beds available to prisoners with mental health issues
- lengthy waiting periods for prisoners to access specialist health services
- inadequate time for medical staff to conduct comprehensive medical assessments of prisoners.[46]

33 The Ombudsman also found that '[o]vercrowding in the prison system has placed further pressure on the limited health services available to prisoners'.[47]

34 The NSW Inspector of Custodial Services (2021) has acknowledged that the 'demand for health services clearly outweighs the supply of health services' in NSW correctional centres.[48] The Inspector found that constraints on health centre access remained largely unchanged between 2015 and 2021:[49]

> This office found in 2015 that while extra accommodation beds, including double bunks, had been installed in correctional centres to accommodate increasing inmate numbers, health infrastructure and services had not been increased proportionally. Inspections for the current report identified the same concerns. In many cases, the size and profile of the inmate population had grown without a commensurate increase in health centre infrastructure.[50]

[43] See, eg, Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (Report, March 2014) 106.

[44] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 594 (Finding 55).

[45] Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (Report, March 2014) 8.

[46] Victorian Ombudsman, *Investigation into Prisoner Access to Health Care* (Report, August 2011), cited in Victorian Ombudsman, *Investigation into Deaths and Harm in Custody* (Report, March 2014) 105–6.

[47] Ibid.

[48] NSW Inspector of Custodial Services, *Health Services in NSW Correctional Facilities* (Report, March 2021) 124.

[49] Ibid 127.

[50] Ibid 125.

35 The Inspector also found that there is a shortage of health staff in correctional centres, particularly in rural and remote areas, and particularly for Aboriginal health worker roles and mental health nurses.[51]

36 Waiting lists for Justice Health & Forensic Mental Health network general practitioners and primary health nurses were found to be lengthy, with most NSW correctional centres failing to provide access within required timeframes:

> Wait times between a patient being placed on a waitlist to seeing a nurse or medical practitioner can be lengthy and depend on their assessed priority level: P1 being the most urgent and P3 for non-urgent. P1 should be seen within 1–3 days; P2 in 3–14 days, P3 14 days to three months. P4 are for routine appointments within 12 months and P5 for follow up appointments.
>
> Figure 5 shows that many centres did not see P1 and P2 patients within the required timeframes. Nine of the 38 centres met the required timeframe based on average wait times (See Figure 15). As priority is given to P1 and P2 patients, P3 patients can wait exceedingly long times or not seen at all … It should be acknowledged that when a health issue is triaged to a P3 or lower it does not mean that a clinical risk does not persist. In an emergency department it is recognised that P3 level patients, albeit not acute, still need to be seen within a reasonable timeframe … Chronic health conditions may become acute if not appropriately monitored and health interventions applied. [52]

37 The NSW Special Commission of Inquiry into the Drug 'Ice' (2020) found that people on remand, people serving short sentences, and people serving long sentences all face difficulty accessing alcohol and other drug ('AOD') treatment in custody:

> The evidence before the Inquiry describes a situation in which most inmates will not get the AOD treatment they need. It suggests that while forms of AOD treatment, such as behavioural programs, remain under the control of Corrective Services, this will be inaccessible to a significant number of inmates who would benefit from access to treatment, including those on remand and those serving long sentences.[53]

38 Incarcerated Australians are currently excluded from accessing Medicare and PBS subsidies under s 19(2) of the *Health Insurance Act 1973* (Cth).[54]

Restrictions on access to culturally safe healthcare for First Nations people in prison

39 Aboriginal and Torres Strait Islander people are less likely to be able to access culturally safe healthcare in prison than in the community. The AIHW (2022) found that only 9% of incarcerated Aboriginal and Torres Strait Islander people in Australia report receiving treatment or consultation from an Aboriginal Community Controlled Health Organisation or Aboriginal Medical Service whilst in prison.[55]

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[51] NSW Inspector of Custodial Services, *Health Services in NSW Correctional Facilities* (Report, March 2021) 129.

[52] Ibid 114.

[53] NSW Special Commission of Inquiry into Crystal Methamphetamine and Other Amphetamine-type Stimulants, *Report – Volume 1* (January 2020) Ii [197].

[54] See, eg, Craig Cumming et al, 'In Sickness and in Prison: The Case for Removing the Medicare Exclusion for Australian Prisoners' (2018) 26 *Journal of Law and Medicine* 140.

[55] Australian Institute of Health and Welfare, 'Health of Prisoners' (Web Article, 7 July 2022). 'This is despite the recommendations of the Royal Commission into Aboriginal Deaths in Custody for Aboriginal people in prison to have access to culturally safe health care and Aboriginal-specific health services': Sacha Kendall et al, 'Incarcerated Aboriginal Women's Experiences of Accessing Healthcare and the Limitations of the "Equal Treatment" Principle' (2020) 19 *International Journal for Equity in Health* 48, 50.

40 Aboriginal and Torres Strait Islander women and men in prison

> have restricted access to Aboriginal Community Controlled Health Organisations (ACCHOs), Aboriginal Medical Services (AMS) and government-funded (Medicare) health assessments available to them in the community. Aboriginal Community Controlled Health Organisations and Aboriginal Medical Services are guided by Aboriginal concepts of health and social and emotional wellbeing, acknowledging the ongoing effects of colonization on Aboriginal people and communities. They provide culturally safe continuity of care for an increasing number of Aboriginal people. The Medicare health assessment item specifically established for Aboriginal people targets the early onset of chronic illnesses that disproportionately affect Aboriginal people due to the transgenerational impacts of colonization on health outcomes.[56]

41 Kendall et al (2020) conducted a large qualitative study with Aboriginal women in urban and regional prisons in NSW and found that 'Aboriginal women experienced institutional racism and discrimination in the form of not being listened to, stereotyping, and inequitable healthcare compared with non-Indigenous women in prison and the community':[57]

> Our findings show that Aboriginal women in prison experience multiple barriers to accessing culturally safe healthcare … Whilst some women in our study reported improvements in the management of health conditions and benefit from taking regular medication in prison, the vast majority of women shared experiences of not having their health needs met.
>
> In the process of accessing healthcare, women in this study reported discontinuation of effective medications on entry to prison, abrupt reductions in medication and excessive wait times for assessment and medication review … Some women had to be transferred to local hospitals due to the onset of acute symptoms while they waited for prison healthcare and did not receive adequate follow up or support on their return, triggering a rapid deterioration in their mental state and instances of self-harm. For some women, not being able to access healthcare when needed was attributed to the workloads of prison health staff and general waiting times. Other women described their unmet health needs as resulting from custodial and health staff disregarding their requests for healthcare. These women reported racism and discriminatory treatment and quality of care from custodial and prison health staff in the form of judgementalism and stereotyping, resulting in them not being listened to or taken seriously, having their symptoms ignored or misread, and not being offered the same treatment as non-Indigenous women for the same health issues. Women experienced punitive treatment when they asked for help such as being ignored whilst their health deteriorated, being ridiculed for not knowing how to navigate the system and being told inconsistent information about how the system works …
>
> For women in this study, [this] led to a worsening of symptoms, compounded distress, and life-threatening health crises. Some women described becoming suicidal after requests for help were repeatedly ignored by custodial staff … Aboriginal women in our study reported feeling as though they 'have to break' before they will get any support.[58]

[56] Sacha Kendall et al, 'Incarcerated Aboriginal Women's Experiences of Accessing Healthcare and the Limitations of the "Equal Treatment" Principle' (2020) 19 *International Journal for Equity in Health* 48, 50.

[57] Ibid 48.

[58] Ibid 57.

Barriers to healthcare access for older people in prison

42 It has been recognised that older people in prison face additional challenges in accessing health care. The NSW Inspector of Custodial Services (2021) found:

> Aged and frail inmates face additional challenges in accessing health care, including diminished mobility, cognition, and the level of health services required to treat the comorbidity and clinical complexity which increases with age. Issues for accommodating aged inmates include higher rates of poor physical and mental health, prison infrastructure designed for younger and fitter inmates (for example stairs, bunk beds, long distances to walk between accommodation and service areas), and vulnerability to victimisation … Health and custodial staff told the inspection team that providing the additional services, care and specialisation required for an ageing population could generally not be provided in mainstream correctional centres … This is significant considering reports that demand for these beds is increasing. [59]

Impacts on Mental Health

43 The experience of incarceration may result in poor mental health outcomes.[60] One of the formal findings of the Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022) was that 'Victorian prisons are harming vulnerable people by exacerbating existing mental health conditions and causing new experiences of poor mental health'.[61]

44 The Inquiry received evidence that prisons may be 'controlling, oppressive, and punitive institutional environments [which] worsen mental health for all people, particularly those who have suffered from past traumas':[62]

> Practices such as use of isolation, restricting visits from family and friends, overcrowding, poor access to health services and programs, and negative interactions with correctional officers have a significant impact upon mental health. The psychiatric impacts of prison are particularly acute for Aboriginal and Torres Strait Islander people. For example, Aboriginal women in prison are hospitalised for mental illness at triple the rate of Aboriginal women in the community. [63]

45 Other evidence received by the Inquiry argued that

> prolonged incarceration of people with mental illness is rarely clinically justified [and] can cause trauma resulting in 'further poor mental health outcomes and challenging behaviour patterns [which] may further compromise a person's ability to engage with and benefit from support upon release'.[64]

46 The NSW Inspector of Custodial Services report, *Full House: The Growth of the Inmate Population in NSW* (2015) found:

> The wellbeing of inmates relates not only to their physical health, but also their mental health and their psychological wellbeing. Psychological wellbeing is impacted by myriad factors,

[59] NSW Inspector of Custodial Services, *Health Services in NSW Correctional Facilities* (Report, March 2021) 135–6. See also NSW Inspector of Custodial Services, *Old and Inside: Managing Aged Offenders in Custody* (Report, 2015).

[60] See, eg, Australian Institute of Health and Welfare, *Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System* (Report, 14 July 2021) 7.

[61] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 594 (Finding 55).

[62] Ibid 594.

[63] Ibid.

[64] Ibid 593.

> not least of which are the ability to exercise and socialise, a lack of privacy and exposure to fresh air and natural light, and the ability to be involved in activities. When overcrowding occurs in prisons all these elements are constrained …
>
> Overcrowding diminishes an already impoverished quality of life in prison. The Coroner's Court of South Australia commented on the living conditions of a deceased inmate in one of the jurisdiction's prisons:
>
> > [C]hronic over-crowding in South Australian prisons requires multiple occupation of cells. One only has to look at photographs of cell 302 to realise the miserable and over-crowded conditions in which these prisoners lived. The lack of privacy and hygiene involved in sharing toilet and hand-washing facilities in the cell. … [He] so disliked sleeping on the top bunk that he used to take his mattress and put it on the floor and sleep there next to the toilet bowl each night.[65]

47 The term 'institutionalisation' is sometimes used to describe the psychological impacts of adaptation to life in correctional settings. The Australian Institute of Criminology (2005) found that

> the experience of incarceration may have subtle, long-term effects on some prisoners … and the number so affected is likely to increase in harsher, more extreme or psychologically taxing prison environments. Imprisonment imposes a rigid routine on an offender that removes the potential for individual decision-making in many aspects of daily life … In removing opportunities to exercise [these] skills, imprisonment can lead to institutionalisation, in which a prisoner becomes decreasingly able to live independently, and may lose a sense of personal responsibility. Other manifestations of institutionalisation include hypervigilance, aggression, emotional over-control, and loss of self-worth. Institutionalisation can be compounded by the lack of purposeful activity many prisoners experience when in custody.[66]

48 A widely cited report by psychologist Craig Haney found that 'prolonged adaptation to the deprivations and frustrations of life inside prison – what are commonly referred to as the "pains of imprisonment" – carries a certain psychological cost',[67] and

> that adaptation to modern prison life exacts certain psychological costs of most incarcerated persons; that some groups of people are somewhat more vulnerable to the pains of imprisonment than others; [and] that the psychological costs and pains of imprisonment can serve to impede post-prison adjustment … [N]ot everyone who is incarcerated is disabled or psychologically harmed by it. But few people are completely unchanged or unscathed by the experience. At the very least, prison is painful, and incarcerated persons often suffer long-term consequences from having been subjected to pain, deprivation, and extremely atypical patterns and norms of living and interacting with others.[68]

Overrepresentation of people with mental health and cognitive impairments in prison

49 Numerous government reports and studies have found that 'on the basis of available data, the representation of people with cognitive and mental health impairments in the criminal justice

[65] NSW Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW* (Report, 2015) 58–9, citing Coroner of South Australia, *Finding of Inquest: Marshall Freeland Carter* (2000).

[66] Australian Institute of Criminology, *Interventions for Prisoners Returning to the Community* (Report, Commonwealth of Australia, February 2005) 37 (citations omitted).

[67] Craig Haney, 'Psychological Impact of Incarceration: Implications for Post-Prison Adjustment' (Conference Paper, US Department of Health and Human Services, 30 January 2002) 1.

[68] Ibid 77–9.

system is disproportionately high'.[69] A 2022 report for the Australian National Mental Health Commission found:

> 40% of prison entrants reported ever being told by a health professional that they had a mental health condition, including alcohol and other drug use; nearly double the self-reported rate of lifetime mental and behavioural conditions in the general population (20.1%; ABS, 2018). Nearly one quarter (23%) of prison entrants in the AIHW study reported currently taking medication for a mental health condition.[70]

50 The Mental Health Commission of NSW (2017) found:

> Half of all adult inmates have been diagnosed or treated for a mental health problem and 87 per cent of young people in custody have a past or present psychological disorder. Rates are higher for Indigenous young people in custody. Estimates of the rates of intellectual disability or borderline intellectual disability among prisoners range from eight to 20 per cent. This figure relates to people who meet the diagnostic criteria for intellectual disability. The rate of inmates with cognitive impairment is likely to be higher, given that a number of inmates report ongoing neurological effects and psychological symptoms because of a traumatic brain injury.[71]

51 The Australian Government Productivity Commission (2021) found that 21% of people in prison have a history of self-harm.[72] The 2009 NSW Inmate Health Survey found that First Nations people in prison 'were more likely to have ever attempted suicide than non-Aboriginal inmates and Aboriginal men were more likely to have ever self-harmed'.[73]

52 The AIHW (2021) found that '[e]xisting data and research into the mental health of Indigenous Australians across adult correctional and youth detention centres indicates a high prevalence of mental health conditions'.[74]

53 Available data also suggests that Aboriginal and Torres Strait Islander people in prison have higher rates of cognitive impairment than non-Indigenous people in prison.[75]

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[69] NSW Law Reform Commission, *People with Mental Health and Cognitive Impairments in the Criminal Justice System* (Report No 135, June 2012) xvi [0.13].

[70] Kimberlie Dean, Christie Brown and Nicholas Dean, *Stigma and Discrimination Experiences amongst Those with Mental Illness in Contact with the Criminal Justice System: A Rapid Review Report for the Australian National Mental Health Commission* (Report, UNSW, 2022) 3.

[71] Mental Health Commission of NSW, *Towards a Just System: Mental Illness and Cognitive Impairment in the Criminal Justice System* (Report, July 2017) 8 (citations omitted). The precise scale of the overrepresentation of people with cognitive impairment within the prisoner population is difficult to quantify for a number of reasons, including lack of available, comprehensive and consistent data and lack of uniformity in definitions: see, eg, Mental Health Commission of NSW, *Towards a Just System: Mental Illness and Cognitive Impairment in the Criminal Justice System* (Report, July 2017) 6; NSW Law Reform Commission, *People with Mental Health and Cognitive Impairments in the Criminal Justice System* (Report No 135, June 2012) 48–9; Ruth McCausland et al, *People with Mental Health Disorders and Cognitive Impairment in the Criminal Justice System: Cost-Benefit Analysis of Early Support and Diversion* (Report, August 2013) 4.

[72] Australian Government Productivity Commission, *Australia's Prison Dilemma* (Research Paper, October 2021) 21.

[73] Devon Indig et al, *2009 NSW Inmate Health Survey: Aboriginal Health Report* (Justice Health, Report, 2010) 47.

[74] Australian Institute of Health and Welfare, *Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System* (Report, 14 July 2021) 2. See also Ed Heffernan et al, 'Mental Disorder and Cognitive Disability in the Criminal Justice System' in Pat Dudgeon, Helen Milroy and Roz Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia, 2nd ed, 2014) 167–72; Devon Indig et al, *2009 NSW Inmate Health Survey: Aboriginal Health Report* (Justice Health, Report, 2010) 43–7. The sources cited note that available data is likely to underestimate the prevalence of mental health conditions among Indigenous prisoners for various reasons, including available data sources not being representative of the overall prison population, the under-recording of Indigenous status, Aboriginal and Torres Strait Islander people being less likely to seek treatment for mental health problems (including due to barriers to accessing mainstream services) and the limitations of mainstream services in understanding the cultural context of social and emotional wellbeing of Aboriginal people: Indig et al (2010) 47; AIHW (2021) 36; Heffernan et al 171–2. See also Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report, 2021) 43 [181].

[75] Stephane M Shepherd et al, *Aboriginal Prisoners with Cognitive Impairment: Is This the Highest Risk Group?* (Australian Institute of Criminology, Trends & Issues in Crime and Criminal Justice No 536, October 2017) 2. The authors found that, '[g]iven the high prevalence of mental health issues in custody and culturally specific conceptualisations of disability, cognitive impairment is in danger of

54 Baldry et al (2015) found that 'thousands of Aboriginal people with mental and cognitive impairment are being "managed" by criminal justice systems in lieu of support in the community':[76]

> Aboriginal people with mental and cognitive disabilities are forced into the criminal justice system early in life in the absence of alternative pathways. Although this also applies to non-Indigenous people with mental and cognitive disabilities who are highly disadvantaged, the impact on Aboriginal people is significantly greater across all the measures and experiences gathered in the studies across the project … Systems of control rather than care or protection are being invoked for this group, often from a very young age.[77]

55 Baldry et al (2015) also found that, although entry into prison may lead to many prison entrants being assessed for and diagnosed with a cognitive impairment for the first time, this rarely results in the provision of appropriate services and support:

> For adults in the criminal justice system, cognitive impairment is either not recognised at all, or if recognised, poorly understood. For many Aboriginal people, diagnosis of their cognitive impairment comes with assessment on entry to prison. However such a diagnosis rarely leads to appropriate services or support while in prison; analysis of the data reveals that subsequent interventions tend to continue to foreground offending behaviour rather than complex social disadvantage or disability, mental health or alcohol and other drug (AOD) support needs.[78]

Impacts of Detention on Young People*

56 It is widely recognised that 'incarceration fails to meet the developmental … needs of youth offenders and is limited in its ability to provide appropriate rehabilitation'.[79]

57 International research also suggests that 'incarceration during adolescence and early adulthood is independently associated with worse physical and mental health outcomes during adulthood'.[80]

58 The *Inquiry into Victoria's Criminal Justice System* (2022) found:

> Being held in corrections facilities can be extremely damaging for children and young people. As noted by the Human Rights Law Centre, exposure to these facilities can increase the risk of stigmatisation and the likelihood of experiencing physical and psychological harm. Detention also results in disruptions to family life, development, education and employment. The Youth Junction, a youth services organisation, described the impact of time spent in custody for its clients:
>
> > The periods of time spent in custody had negatively impacted upon their ability to engage in therapeutic interventions on an ongoing basis, and [the] primary focus for a significant proportion was initially on issues of safety such as temporary

being under-diagnosed or even unnoticed': 9. **See also the Bugmy Bar Book chapters 'Acquired Brain Injury' and 'Fetal Alcohol Spectrum Disorders (FASD)'.**

[76] Eileen Baldry et al, *A Predictable and Preventable Path: Aboriginal People with Mental and Cognitive Disabilities in the Criminal Justice System* (Report, UNSW, October 2015) 12.

[77] Ibid.

[78] Ibid.

[*] Note: a forthcoming *Bugmy* Bar Book chapter will consider the specific impacts of custody and detention on young people.

[79] See, eg, Ian Lambie and Isabel Randell, 'The Impact of Incarceration on Juvenile Offenders' (2013) 33 *Clinical Psychology Review* 448, 448; Elizabeth S Barnert et al, 'How Does Incarcerating Young People Affect Their Adult Health Outcomes?' (2017) 139(2) *Pediatrics* 1, 7. This is also reflected in international instruments and domestic legislation which provide that the detention or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time: see, eg, *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) art 37; *Children (Criminal Proceedings) Act 1987* (NSW) ss 6, 33(2).

[80] Elizabeth S Barnert et al, 'How Does Incarcerating Young People Affect Their Adult Health Outcomes?' (2017) 139(2) *Pediatrics* 1, 7.

> accommodation. Time in custody also destabilised the stability achieved in the community within their individual circumstances prior to being remanded.[81]

Loss of Housing and Employment

59 It is widely recognised that imprisonment 'adversely affects future outcomes including higher unemployment, social exclusion and homelessness'.[82] The AIHW (2021) found that 'the impact and flow-on effects of incarceration such as reduced access to employment and a lack of stable housing can be lifelong'.[83]

60 The AIHW (2019) found that more than half of people exiting Australian prisons expect to be homeless following release:

> Most prison dischargees (54%) expected to be homeless upon release from prison. Almost half (44%) were planning to sleep in short-term or emergency accommodation, almost 2% expected to sleep rough, and 8% did not know where they would stay'.[84]

61 The AIHW (2019) found that imprisonment 'adds another barrier to employment, particularly for those who have been in prison for longer than 6 months'.[85]

62 The ALRC (2017) recognised that 'Aboriginal and Torres Strait Islander women are the least likely of any group within prisons to be able to find appropriate accommodation upon release from incarceration – particularly where they have dependent children':[86]

> A study of NSW and Victorian Aboriginal and Torres Strait Islander female prisoners released between 2001–2003 found that: none of the women was able to find stable family accommodation; half were still homeless at nine months after release; and over two-thirds (68%) returned to prison within nine months.[87]

63 Longer periods of incarceration may have greater negative impacts on housing. In *The Road Home: A National Approach to Reducing Homelessness* (2008), the Australian Government identified people leaving prison after serving sentences of 12 months or more as a priority group for its homelessness strategy.[88]

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[81] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 445.

[82] Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) vol 1, 89–90 (citations omitted). **See also the *Bugmy* Bar Book chapters 'Unemployment', 'Social Exclusion' and 'Homelessness'.**

[83] Australian Institute of Health and Welfare, *Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System* (Report, 14 July 2021) 2.

[84] Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (Report, May 2019) 24. A study for the Australian Housing and Urban Research Institute found that being transient or homeless is a predictor of re-incarceration: Eileen Baldry et al, *Ex-prisoners and Accommodation: What Bearing Do Different Forms of Housing Have on Social Reintegration?* (AHURI Final Report No 46, August 2003) 22.

[85] Ibid 17.

[86] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 356 [11.41].

[87] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 356 [11.41].

[88] Homelessness Taskforce, Department of Families, Housing, Community Services and Indigenous Affairs (Cth), *The Road Home: A National Approach to Reducing Homelessness* (White Paper, December 2008) 27.

Retaining social housing tenancies

64 Social housing tenants who experience incarceration may be forced to relinquish tenancies while in prison if the period of incarceration they experience exceeds the period of time they are permitted to be absent from their housing.

65 The Australian Housing and Urban Research Institute ('AHURI') (2021) found that

> where a social housing tenant is serving a short sentence, they may be able to keep their tenancy on foot while in prison. In NSW and Victoria, public housing operational policies generally allow tenancies to remain on foot, at a nominal rent, if the tenant is in prison for not more than six months (and HousingVic may allow longer by special consideration). In Tasmania, the policy is to allow tenancies to remain on foot for eight weeks, but longer may be allowed by special consideration.[89]

66 AHURI (2021) also observed that, in relation to people exiting prison who were not previously social housing tenants:

> No state or territory has eligibility criteria for priority or 'wait-turn' housing, or other forms of assistance, specifically relating to people exiting prison, so ex-prisoners must demonstrate eligibility according to the usual income, assets and priority need criteria.[90]

67 Borzycki and Baldry (2003) found that the impacts of imprisonment on a person's ability to obtain post-release employment and housing may be linked to subsequent contact with the criminal process:

> Social disadvantage can be further exacerbated by the prison experience. Prisoners tend to possess low levels of workplace skill and education, and the addition of a custodial term to an ex-offender's personal history further diminishes employability. Similarly, stable accommodation can become hard to obtain because on release, ex- prisoners do not have the financial means to secure private housing, or may be ineligible for priority public housing. Without sufficient material and social support upon release, the cycle of release and rearrest can become increasingly difficult to break.[91]

Family, Social and Community Impacts*

68 One of the formal findings of the NSW Parliament's *Inquiry into Support for Children of Imprisoned Parents in New South Wales* (2022) was 'that parental incarceration has a profoundly negative effect on children, and should be avoided where possible':[92]

> The Committee heard that children can be severely impacted when one or both of their parents are taken into custody. Children of imprisoned parents are effectively serving a 'hidden sentence', in that they face a broad range of negative outcomes 'without having committed any crime themselves'.[93]

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[89] Australian Housing and Urban Research Institute, *Exiting Prison with Complex Support Needs: The Role of Housing Assistance* (August 2021) 30.

[90] Ibid.

[91] Maria Borzycki and Eileen Baldry, *Promoting Integration: The Provision of Prisoner Post-Release Services* (Australian Institute of Criminology, Trends & Issues in Crime and Criminal Justice No 262, September 2003) 2.

[*] **See also the *Bugmy* Bar Book chapter 'Incarceration of a Parent or Caregiver'.**

[92] Committee on Children and Young People, Parliament of New South Wales, *Support for Children of Imprisoned Parents in New South Wales* (Report 4/75, June 2022) 1 (Finding 1).

[93] Ibid 1 [1.2].

69 The Inquiry found that the negative outcomes experienced by children of imprisoned parents include poorer physical and mental health, developmental delay, financial and housing stress, poorer educational and employment outcomes, and an increased risk of being placed in the child protection system or having adverse contact with the criminal legal system themselves.[94]

70 The Queensland Productivity Commission (2019) found:

> Imprisonment imposes many … indirect costs on prisoners, their families and the broader community. Imprisonment has been shown to worsen prisoners' physical health, exacerbate mental illness and cause inmates' human capital to decline, with costs increasing with the length of imprisonment. Post-release data also shows that imprisonment adversely affects future outcomes including higher unemployment, social exclusion and homelessness.
>
> For the families of prisoners, imprisonment can lead to a loss of income and reduce total resources available for meeting household expenses … For prisoners who are parents to young children, imprisonment 'disrupts parent–child relationships, alters the networks of familial support, and places new burdens on governmental services such as schools, foster care, adoption agencies, and youth-serving organizations'. In Australia, the increase in women's imprisonment has been shown to impact on children's welfare in both the short and long term.[95]

71 Family and community impacts of incarceration are more pronounced for imprisoned Aboriginal and Torres Strait Islander parents, especially women.

72 The Victorian Parliament's *Inquiry into Children Affected by Parental Incarceration* (2022) found:

> For Aboriginal communities, incarceration can have significant cultural repercussions by separating parents from their family and community. There is also a higher risk of Aboriginal children being removed from families and put into out of home care, which can result in children being placed in non-Aboriginal care. This can create a disconnect from culture, identity and extended family.[96]

73 The Human Rights Law Centre and Change the Record Coalition (2017) found:

> Prison is a stressful and traumatic experience for many Aboriginal and Torres Strait Islander women, most of whom have significant histories of trauma. It disconnects women from children, family, community and country. The unnecessary imprisonment of a growing number of Aboriginal and Torres Strait Islander women contributes to the dislocation and fragmentation of families and communities, when action to strengthen communities is needed. The impact of imprisonment on women, their families and communities is profound, particularly when viewed in the context of the high number of Aboriginal and Torres Strait Islander men in custody. The sheer number of men and women missing from some families and communities creates devastating gaps in terms of parenting, income, child care, role models and leadership. … When women are taken into custody, even for short periods, the impacts ripple throughout families and communities and can have 'long-term cumulative effects'.[97]

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[94] Ibid. Similar findings were made by a contemporaneous Victorian parliamentary inquiry: see Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Children Affected by Parental Incarceration* (Report, August 2022) 23.

[95] Queensland Productivity Commission, *Inquiry into Imprisonment and Recidivism* (Final Report, August 2019) 89–90 (citations omitted). **See also the *Bugmy* Bar Book chapters 'Incarceration of a Parent or Caregiver', 'Unemployment' and 'Out-of-Home Care'.**

[96] Legislative Council Legal and Social Issues Committee, Parliament of Victoria *Inquiry into Children Affected by Parental Incarceration* (Report, August 2022) 29.

[97] Human Rights Law Centre and Change the Record Coalition, *Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment* (Report, May 2017) 13.

74 The Victorian Equal Opportunity and Human Rights Commission (2013) also recognised the profound impact of incarceration on Aboriginal women in Victoria:

> When a Koori woman enters prison, it has a significant impact on community connection and kinship obligations. Koori women shoulder the responsibility of child rearing and family obligations within the Koori community. As a result, the imprisonment of Koori women has a greater effect on family, community and society compared to the imprisonment of Koori men.[98]

75 The Commission found that there is 'a broader impact on the community. Often grandmothers and other relatives have to pick up the care of the children whilst the mother is incarcerated. This places a heavy burden on Koori families who may already be struggling with health, financial and other pressures'.[99]

76 A study by Anthony, Sentance and Behrendt (2021) noted that, of the 80%t of Aboriginal women in prison who are mothers, 54% have children who depend on them for their basic needs.[100] Many women in the study 'were the mothers of multiple children – some with up to ten – indicating that for every mother imprisoned, multiple children are affected':

> Imprisoning First Nations mothers undermines family bonds and cultural nurturing roles, and causes grief, loss and trauma for children and mothers alike … While First Nations mothers in prisons are remanded or sentenced for short terms, their imprisonment can have lifelong and transgenerational impacts.[101]

77 Anthony, Sentance and Behrendt also cite evidence received by the Australian Law Reform Commission '[explaining] the critical effect of prison for First Nations women in terms of interrupting "attachment to their children resulting in transmission of inter-generational trauma and further entrenching cycles of disempowerment".'[102]

Impacts on Aboriginal and Torres Strait Islander Peoples' Social and Emotional Wellbeing

78 A well-established body of research highlights the central role that connection to culture and community play in Aboriginal and Torres Strait Islander peoples' social and emotional wellbeing.[103]

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[98] Victorian Equal Opportunity and Human Rights Commission, *Unfinished Business: Koori Women and the Justice System* (August 2013) 91.

[99] Ibid 92.

[100] Thalia Anthony, Gemma Sentance and Larissa Behrendt, '"We're Not Being Treated Like Mothers": Listening to the Stories of First Nations Mothers in Prison' (2021) 10(3) *Laws* 74:1–18, 1 citing Australian Institute of Health and Welfare, *The Health of Australia's Prisoners 2018* (Report, May 2019) 14.

[101] Ibid 3. The authors adopt an expansive definition of 'mothering' in recognition of the fact that 'First Nations mothering needs to be conceptualised outside of a Western frame. It extends to relationships that include grandmothers, aunties, cousins and big sisters … the profound effects of imprisonment on Aboriginal children are not only derived from 'parental incarceration', but also from the imprisonment of caregivers in extended family and kin relations': ibid (citations omitted).

[102] Thalia Anthony, Gemma Sentance and Larissa Behrendt, '"We're Not Being Treated Like Mothers": Listening to the Stories of First Nations Mothers in Prison' (2021) 10(3) *Laws* 74:1–18, 9, citing Dorinda Cox, Submission No 120 to Australian Law Reform Commission, *Inquiry into Indigenous Incarceration Rates of Aboriginal and Torres Strait Islander Peoples* (December 2017) 1.

[103] See, eg, Commonwealth of Australia, *National Strategic Framework for Aboriginal and Torres Strait Islander Peoples' Mental Health and Social and Emotional Wellbeing 2017–2023* (2017); Graham Gee et al, 'Aboriginal and Torres Strait Islander Social and Emotional Wellbeing' in Pat Dudgeon, Helen Milroy and Roz Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia, 2nd ed, 2014) 55–68; Pat Dudgeon et al, *Connection to Community* (Report, AIHW, March 2022). See also Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report, 2021) 22 [89].

79 The AIHW (2021) has recognised that 'social and emotional wellbeing factors such as loss of culture, identity and family connection are a consequence of imprisonment for Indigenous people'.[104]

80 The Justice Health and Corrections Victoria *Aboriginal Social and Emotional Wellbeing Plan* (2017) acknowledges that

> Aboriginal mental health encompasses all aspects of an individual's life, including the social, physical, emotional, cultural and spiritual wellbeing of the individual and their community. It recognises the risks that discrimination, unresolved grief and trauma have on mental health and the influence that spirituality, connection to country and strong cultural identity has on building resilience and protecting against poor mental health.[105]

81 The Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022) recognised that there is 'a lack of sustainably resourced, culturally appropriate health services and programs to meet the social and emotional wellbeing needs of Aboriginal people in prison'.[106]

82 Edwige and Gray (2021) found that 'disruption to family, community and cultural relationships, including through the over-incarceration of Aboriginal and Torres Strait Islander children, youth and adults … [is] likely to continue to entrench the social determinants of offending (and undermine wellbeing)':[107]

> The consensus regarding the importance of community-based, culturally embedded and holistic supports in promoting healing and rehabilitation within the custodial setting emphasises both the importance of these elements in healing (as outlined in the models above), but also the potential for disruption of these connections and subsequent isolation as a result of incarceration, further entrenching adverse trajectories.[108]

83 The Senate Legal and Constitutional Affairs Reference Committee (2013) recognised:

> Indigenous prisoners are affected profoundly with the breakdown of links with family members and communities. Indigenous communities are also affected as every individual has a role to play including financial and social. If an individual or group of individuals is removed, the community is heavily burdened, weakening the community and exacerbating economic distress creating prime conditions for further offending behaviour.[109]

Impacts of Short-term Imprisonment including Remand

84 The ALRC (2017) found that 'being held in prison for even a short period of time can be disruptive and destabilising, especially for women where the "social as well as the financial costs of these short-term remands can be very high".'[110]

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[104] Australian Institute of Health and Welfare, *Improving Mental Health Outcomes for Indigenous Australians in the Criminal Justice System* (Report, 14 July 2021) 7. See also Ed Heffernan et al, 'Mental Disorder and Cognitive Disability in the Criminal Justice System' in Pat Dudgeon, Helen Milroy and Roz Walker (eds) *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice* (Commonwealth of Australia, 2nd ed, 2014) 174. **See also the *Bugmy* Bar Book chapter 'Cultural Dispossession'.**

[105] Justice Health and Corrections Victoria, *Aboriginal Social and Emotional Wellbeing Plan* (February 2017) 3.

[106] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 594.

[107] Vanessa Edwige and Paul Gray, *Significance of Culture to Wellbeing, Healing and Rehabilitation* (Report, 2021) 42 [177].

[108] Ibid [178].

[109] Senate Legal and Constitutional Affairs References Committee, Parliament of Australia, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, 20 June 2013) 22 [3.20].

[110] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 153 [5.25].

85 The Victorian Parliament's *Inquiry into Victoria's Criminal Justice System* (2022) acknowledged that

> [p]eople on remand often experience high levels of frustration and stress due to sudden separation from family, uncertainty about their future, as well as facing substance withdrawal or a sudden loss of existing mental health support. Furthermore, they may lose their employment and housing.[111]

86 Borzycki and Baldry (2003) found:

> Without sufficient material and social support upon release, the cycle of release and rearrest can become increasingly difficult to break. This is especially true for prisoners serving short sentences who may not be imprisoned long enough to receive any in-prison assistance and who are probably not subject to any formal post-release supervision.[112]

Lack of access to programs and treatment

87 The ALRC (2017) found that people in prison 'serving short sentences are less likely to be able to access programs or training, and in that regard, the time in prison does little to address offending behaviour or to develop skills that might later promote desistence from offending':[113]

> 'Offence-based' programs may not be provided to people on remand because the offences charged are yet to be proven, and corrections staff cannot accurately assess when a person held on remand will be released and whether there will be sufficient time to complete a program in prison … People on short sentences are generally not in prison long enough to access and complete a prison program .[114]

88 Even where remand programs exist, government findings suggest they may not be regularly or consistently made available. A report of the NSW Inspector of Custodial Services, *Women on Remand* (2020), identified that barriers include lack of resourcing, the prioritisation of provision of programs to sentenced prisoners, and high frequency of inmate movements between centres.[115]

89 An earlier report, *Full House: The Growth of the Inmate Population in NSW* (2015), found that '[r]ehabilitation outcomes are also compromised when inmate numbers are increased without a commensurate increase in appropriate resources. Overcrowding limits opportunities for parole because access to required programs is constrained'.[116]

90 Short-term incarceration may also result in more limited access to medical treatment in custodial settings. The ALRC (2017) found that 'due to the short length of sentences Aboriginal and Torres Strait Islander women commonly receive, there can be practical difficulties in providing appropriate mental health and other treatments and supports in what is often a relatively short prison episode'.[117]

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[111] Legislative Council Legal and Social Issues Committee, Parliament of Victoria, *Inquiry into Victoria's Criminal Justice System* (Report, March 2022) 586.

[112] Maria Borzycki and Eileen Baldry, *Promoting Integration: The Provision of Prisoner Post-Release Services* (Australian Institute of Criminology, Trends & Issues in Criminal Justice No 262, September 2003) 2.

[113] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 269 [7.155].

[114] Ibid 288 [9.21].

[115] NSW Inspector of Custodial Services, *Women on Remand* (Report, February 2020) 76.

[116] NSW Inspector of Custodial Services, *Full House: The Growth of the Inmate Population in NSW* (Report, 2015) 10.

[117] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 353 [11.25], citing Lorana Bartels, 'Painting the Picture of Indigenous Women in Custody in Australia' (2012) 12(2) *Queensland University of Technology Law and Justice Journal* 1, 11.

91 The NSW Special Commission of Inquiry into the Drug 'Ice' (2020) found:

> [W]hile on remand, inmates have very limited access to rehabilitation programs including AOD programs. Remand is known to be a very stressful time for inmates. Inmates may be withdrawing from alcohol and/or other drugs; typically have had no time to prepare for custody; may have had no time to make arrangements for their family; may be moved far from home or frequently between centres to attend court proceedings; and may have limited access to programs. People on remand, arguably at a time of very high need, have access to few or no AOD programs.
>
> Another cohort that finds it difficult to access AOD treatment in custody is inmates serving short sentences. About a quarter of the custodial population is in custody for a sentence of less than two years. AOD programs are generally not available until inmates are sentenced. Due to the increase in median finalisation times for criminal trials, there is often insufficient time for an inmate to become eligible, gain access to an AOD program and complete it before release.[118]

Links to subsequent contact with the criminal process

92 The ALRC (2017) received evidence that

> 'short termers' (serving six months or less) account for more than half of prisoners released each year and without access to appropriate programs, are at greater risk of reoffending. A lack of stable housing, work, family and social ties, together with a lack of post-release support, heightens this risk even further.[119]

93 The ALRC also recognised research which found that

> effects associated with remand in custody (particularly for those subsequently not convicted) include: increased likelihood of further offending as a consequence of contact with the prison system; increased risk of suicide and mental distress, disintegration of social supports and family ties; disruption to employment and housing that may increase likelihood of reoffending on release; limited access to supports, programs and services that might address factors underpinning the alleged offence.[120]

94 The ALRC acknowledged that 'the high rates of repeated short-term incarceration experienced by Aboriginal people in Australia have a multitude of negative health effects for Aboriginal communities and the wider society, while achieving little in terms of increased community safety':[121]

> Short terms of incarceration for female Aboriginal and Torres Strait Islander offenders are particularly damaging. Several stakeholders commented that a short period in prison for many women frequently triggered other significant life events that often spiralled the women back into prison. The common scenario was described as a prison term resulting in a woman losing her rental property, and subsequently having her children removed because she no longer had a residence. This then resulted in the woman turning to drugs and/or alcohol, which in turn led to further offending.[122]

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[118] NSW Special Commission of Inquiry into Crystal Methamphetamine and Other Amphetamine-type Stimulants, *Report – Volume 1* (January 2020) Ii [193]–[194].

[119] Australian Law Reform Commission, *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report No 133, December 2017) 291 [9.28].

[120] Ibid 287 [9.17].

[121] Ibid 269 [7.157], quoting Anthea S Krieg, 'Aboriginal Incarceration: Health and Social Impacts' (2006) 184 *Medical Journal of Australia* 534, 534.

[122] Ibid 269 [7.158].