

The lack of Medicare access in Australia's youth incarceration system

By Damien Linnane
PhD candidate, University of Newcastle

Introduction

Prisoners in Australia, both children and adults, have never had access to Medicare, our so-called 'universal' health care system. In addition, they do not have access to the Pharmaceutical Benefits Scheme (PBS). While incarcerated children in Australia are indeed not charged for the healthcare they receive, without Medicare funding, juvenile detention centres and health care providers operating within them cannot provide the same level of healthcare and the full-range of services that are available to children in the community.

The lack of equivalent healthcare in youth detention

While some State correctional websites claim that prisoners in Australia do receive equivalent healthcare to that available in the community,¹ these self-serving claims, which provide no sources as supporting evidence, are not consistent with the assertions of Aboriginal Community Controlled Health Organisations (ACCHOs) working in prisons, with independent reports, or with inquests into deaths in custody. The Australian Child Rights Taskforce, the peak body for child rights in Australia, notes that the Medicare exclusion in juvenile detention disproportionately impacts Aboriginal and Torres Strait Islander children, who are severely overrepresented in custody. They also note that many organisations have called for Medicare in juvenile detentions centres to ensure that incarcerated children are able to receive 'a level of care at least equivalent to that offered by community health services',² which is clearly not the case at present.

For example, the ACCHO Danila Dilba provides the health care services at Don Dale Youth Detention Centre. In 2020 their Chief Medical Officer, Dr Andrew Webster, publicly stated that the organisation has no way to fund certain health services without Medicare access, such as assessments for foetal alcohol spectrum disorder (FASD).³ It is noted that FASD has a high prevalence in Australian juvenile detention, and that there is a 'significant need for

¹ For example, the Victorian Corrections webpage on prisoner healthcare states that the 'quality and standard of health care provided to prisoners is the same as that provided in the community through the public health system'. However, multiple reports into deaths in custody, and from the Victorian Ombudsman, directly contradict this assertion. See 'Inquiry into Australia's Human Rights Framework, Submission 250.' <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Human_Rights/HumanRightsFramework/Submissions>

² Australian Child Rights Taskforce, 'The Children's Report: Australia's NGO coalition report to the United Nations Committee on the Rights of the Child' (2018), 42 <<https://www.napcan.org.au/wp-content/uploads/2018/12/Child-Rights-Taskforce-NGO-Coalition-Report-For-UNCRC-LR.pdf>>.

³ Jesse Thompson, 'Greg Hunt rejects Danila Dilba's request for Medicare-funded health services in Don Dale', *ABC News* (online, 19 October 2020) <<https://www.abc.net.au/news/2020-10-19/don-dale-medicare-health-services-rejected-by-greg-hunt/12776808>>.

improved diagnosis' of children in custody in order to assist with rehabilitation.⁴ Many other services readily accessible in the community are not available in detention facilities without Medicare, including Medicare item number 715, known as the Aboriginal health assessment. This assessment was specifically created to allow screening, identification of health issues, and the creation of treatments plans, in response to the disproportionate impact of certain health conditions on Indigenous Australians.⁵ However, as noted by the inquest into the death in custody of Indigenous Australian Mootijah Shillingworth, there is no equivalent of this scheme outside of Medicare, meaning that even at detention facilities that ACCHOs are permitted access to, they are unable to perform these assessments.⁶

Without PBS, the range of medications available in places of detention in Australia is also considerably restricted compared to those available in the community.⁷ In the absence of PBS, medicines in custody are instead purchased through contract agreements, which can cause significant delays for medications becoming available. For example, dulaglutide, a drug used to treat diabetes, became available on PBS in 2018, but was not available in NSW prisons until 2021.⁸ Further, the coronial inquest into the death in custody of Edgar Hugh Sandow noted some medications are not available in places of detention at all, purely as they are deemed too expensive to afford without PBS rebates.⁹

Calls for Medicare in places of detention

Recommendation 15.4 of the 2017 *Royal Commission into Juvenile Detention in the Northern Territory* was that incarcerated children should be able to receive Medicare benefits, and that medication should be supplied to them by the PBS.¹⁰ Furthermore, in 2018 the Australian Child Rights Taskforce recommended allowing health care providers to claim Medicare benefits for services provided in juvenile detention, and also to be able to access PBS subsidies for medications.¹¹ Several inquests into deaths in custody have also recommended the introduction of Medicare in places of detention.¹²

⁴ Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' (2018) 8(2) *BMJ open* e019605.

⁵ Sacha Kendall et al, 'Incarcerated Aboriginal women's experiences of accessing healthcare and the limitations of the 'equal treatment' principle' (2020) 19(1) *International Journal for Equity in Health*, 3.

⁶ Coroners Court of New South Wales, 'Inquest into the death of Mootijah Douglas Andrew Shillingworth' (2022), 40-41 <https://coroners.nsw.gov.au/coroners-court/download.html/documents/findings/2022/Inquest_into_the_death_of_Mootijah_Douglas_Andrew_Shillingworth.pdf>.

⁷ Damien Linnane, Donna McNamara and Lisa Toohey, 'Ensuring universal access: The case for Medicare in prison' (2023) 48(2) *Alternative Law Journal*.

⁸ Sarah Simpkins, 'Inside story: A former inmate's view on why prisoners need Medicare', *Australian Doctor* (online, 17 November 2022) <<https://www.ausdoc.com.au/news/inside-story-a-former-inmates-view-on-why-prisoners-need-medicare/>>.

⁹ Coroners Court of Queensland, 'Inquest into the death of Edgar Hugh Sandow (aka Conlon)' (2023), 4 <https://www.courts.qld.gov.au/__data/assets/pdf_file/0004/770314/conlon-edgar.pdf>.

¹⁰ *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory Findings and Recommendations*, 2017) 33.

¹¹ Australian Child Rights Taskforce (n 2)

¹² Coroners Court of New South Wales (n 6); Coroners Court of Queensland (n 9); Coroners Court of New South Wales, 'Inquest into the death of Reuben Button' (2023), 39 <https://coroners.nsw.gov.au/documents/findings/2023/Inquest_into_the_death_of_Reuben_Button.pdf>

Other organisations and groups that have called for the introduction of Medicare for people in custody include:

- Australian Medical Association,¹³
- Public Health Association of Australia,¹⁴
- National Aboriginal and Torres Strait Islander Legal Services,¹⁵
- Royal Australian College of General Practitioners,¹⁶
- Royal Australian and New Zealand College of Psychiatrists,¹⁷
- Queensland Health,¹⁸
- Western Australian Ombudsman,¹⁹
- Law Council of Australia,²⁰
- Australian Greens.²¹

Australia's international obligations

Article 24 of the United Nation's Convention of the Rights of the Child states that children should enjoy 'the highest attainable standard of health ... State Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.' However, children in detention are clearly unable to receive the highest attainable standard of healthcare without Medicare.

Similarly, Article 12 of the International Covenant on Economic, Social and Cultural Rights, which Australia has ratified, declares all people should have the 'highest attainable standard of physical and mental health'. Specifically, this has been found to mean that all prisoners have the right to access equivalent health care to that received by the general community.²²

¹³ Australian Medical Association, 'AMA Position Statement: Health Care in Custodial Settings' (2023) <<https://www.ama.com.au/articles/ama-2023-position-statement-custodial-health>>.

¹⁴ Public Health Association Australia, 'Prisoner Health Policy' (2013) <<https://www.phaa.net.au/documents/item/239>>.

¹⁵ Change the Record, Human Rights Law Centre and NATSILS, joint submission to the Committee Against Torture (3 October 2022) 5 <<https://www.hrlc.org.au/submissions/2022/10/03/sending-human-rights-abuses-behind-bars>>.

¹⁶ Royal Australian College of General Practitioners, submission to the Federal Ministers for Health and Indigenous Health (10 August 2017) <<https://www.racgp.org.au/advocacy/reports-and-submissions/view-all-reports-and-submissions/2017-reports-and-submissions/access-to-medicare-in-prison>>.

¹⁷ Royal Australian and New Zealand College of Psychiatrists, 2017–18 Pre-Budget submission to the Commonwealth Treasury (January 2017) 3 <https://treasury.gov.au/sites/default/files/2019-03/C2016-052_Royal-Australian-and-New-Zealand-College-of-Psychiatrists.pdf>.

¹⁸ Coroners Court of Queensland (n 7)

¹⁹ Ombudsman Western Australia, 'Report on an investigation into deaths in prisons' (2000).

²⁰ Law Council of Australia, '2024–25 Pre-Budget Submission' (2024) <<https://lawcouncil.au/publicassets/0d298759-f3be-ee11-948f-005056be13b5/4476%20-%20S%20-%20LCA%20Pre-Budget%20Submission%202024-25.pdf>>.

²¹ Commonwealth, *Parliamentary Debates*, The Senate, Closing the Gap, National Apology to the Stolen Generations: 15th Anniversary, 8 March 2023 (Jordan Steele-John).

²² Bronwyn Naylor, 'Human Rights and Respect in Prisons: The Prisoners' Perspective' (2014) 31 *Law in Context* 107.

Writing in the *Alternative Law Journal*, Linnane et al (2023) provide analysis on how denying Medicare access in places of detention is likely also violating the United Nations Convention on the Rights of Persons with Disabilities (CRPD), and the International Covenant on Civil and Political Rights (ICCPR), as well as non-binding resolutions like the Declaration on the Rights of Indigenous Peoples (UNDRIP) and the Nelson Mandela Rules.²³

Additional benefits of introducing Medicare into youth detention

Introducing Medicare into juvenile detention centres would also work towards several goals of the Government's *National Agreement on Closing the Gap*, in particular goal 11, ensuring 'Young people are not overrepresented in the criminal justice system'. There is strong evidence that improving the physical and mental health of people in custody greatly reduces their rates of reoffending.²⁴ The Productivity Commission itself recognises that improved physical and mental healthcare in custody is an important factor in reducing recidivism and saving on the costs of reincarceration.²⁵ It costs over \$1 million per year to imprison a child in Australia.²⁶ While healthcare may appear on face value to be expensive, it is considerably cheaper than the cost of reimprisoning people.²⁷ In particular, as the purpose of the Aboriginal health assessment through Medicare is disease prevention, allowing such assessments into custody will likely have strong cost-effectiveness.²⁸

Conclusion

Introducing Medicare and PBS into juvenile detention facilities would greatly improve healthcare outcomes, especially for Indigenous and Torres Strait Islander children who are severely overrepresented in these spaces. It would help towards Australia's international obligations, such as our commitment to the United Nation's Convention of the Rights of the Child, and would also help towards existing national goals such as the *National Agreement on Closing the Gap*. Furthermore, it would be likely to help reduce reoffending, and would be cost-effective for taxpayers. There is much to gain from its introduction, and very few reasons to oppose such a measure.

²³ Linnane, McNamara and Toohey (n 7)

²⁴ Gideon Meyerowitz-Katz, 'Whatever you do, don't get sick', *Inside Story*, 20 December 2018) <<https://insidestory.org.au/whatever-you-do-dont-get-sick/>>.

²⁵ Productivity Commission, 'Australia's prison dilemma' (2021)

<<https://www.pc.gov.au/research/completed/prison-dilemma/prison-dilemma.pdf>>.

²⁶ Declan Brennan, 'New data shows youth incarceration costing public over \$1 million per child, experts urge 'Raise the Age'', *National Indigenous Times* (online, 25 January 2024) <<https://nit.com.au/25-01-2024/9449/new-data-shows-youth-incarceration-costing-public-over-1-million-per-child>>.

²⁷ Judith M Laing, *Care Or Custody?: Mentally Disordered Offenders in the Criminal Justice System* (Oxford University Press New York, 1999). 209; Jennifer Fleming, Natalie Gately and Sharan Kraemer, 'Creating HoPE: mental health in Western Australian maximum security prisons' (2012) 19(1) *Psychiatry, Psychology and Law*. 2.

²⁸ Tessa M Plueckhahn et al, 'Are some more equal than others? Challenging the basis for prisoners' exclusion from Medicare' (2015) 203(9) *Medical Journal of Australia*.