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Draft standards for health services in Australian prisons (2nd edition)

Danila Dilba Health Service Submission

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Introduction

Danila Dilba Health Service (**DDHS**) was established in 1991 as an Aboriginal community-controlled organisation. Our aim is to improve the physical, mental, spiritual, cultural and social wellbeing of Biluru (and Torres Strait Islander) people in the Yilli Rreung (greater Darwin) region. DDHS provide services from nine locations, reaching more than 12,000 people, approximately 60 per cent of the Aboriginal population residing in the Darwin/Palmerston region. We employ over 200 people (over 70 per cent are Aboriginal and Torres Strait Islander).

We are grateful for the opportunity to provide feedback regarding the Royal Australian College of General Practitioners standards for health services in Australian prisons (2nd ed) ('RACGP Revised Prison Standards'). Aboriginal and Torres Strait Islander people are vastly overrepresented in the Australian prison system, constituting over a quarter (28 per cent) of the total adult prisoner population, whilst comprising approximately 2 per cent of the Australian adult population.[1] The National imprisonment rate of Aboriginal and Torres Strait Islander People is 12 times greater than for the non-Indigenous population.[2] Shockingly, **In the Northern Territory, 84 per cent of the adult prisoner population identify as Aboriginal**,[3] and at almost all times **one hundred per cent of children in detention are Aboriginal.**

On 1 July 2020, DDHS took over the delivery of primary health care at Don Dale Youth Detention Centre (**'Don Dale'**), becoming the first Aboriginal community controlled health service to deliver primary health care from within a youth detention centre in Australia. DDHS have also been delivering a youth social support program at Don Dale since 2016, through which we provide social emotional wellbeing support and programs to young people, as well as some post-release support.

We are grateful for the opportunity to provide feedback regarding the RACGP Draft Standards for Health Services in Australian Prisons (**'RACGP Draft Prison Standards'**). Our submission builds on our experience delivering services to young people in detention, and our broader experience providing comprehensive primary health care to Aboriginal people in the NT. From this experience we know that people in prisons and detention, particularly Aboriginal people and children, have complex health needs and vulnerabilities. We have also know that there are significant challenges delivering services to meet the needs of this vulnerable cohort in a prison or detention centre. We hope to work with the RACGP to continue to strengthen the RACGP Draft Prison Standards and other resources available to health practitioners working in this unique and challenging context.

Executive Summary

Our submission identifies some of the challenges experienced by a non-government health service operating within a detention centre, particularly in the absence of any clear standards for the treatment of children. Our submission also emphasises the unique health and development needs of

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[1] Australian Bureau of Statistics, 4517.0 Prisoners in Australia, Aboriginal and Torres Strait Islander Profiles, Retrieved at https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Aboriginal%20and%20Torres%20Strait%20Islander%20prisoner%20characteristics%20~13.

[2] Report on Government Services 2019, Chapter 8 – Corrective Services at [8.4].

[3] Australian Bureau of Statistics, 4517.0 Prisoners in Australia, Northern Territory. Retrieved at https://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4517.0~2018~Main%20Features~Northern%20Territory~27.

children in detention. Ultimately, we recommend that the RACGP develop specific standards for delivery of health services in youth detention centres, to ensure that these unique needs are properly addressed.

Background

In July 2016, Four Corners program, 'Australia's Shame' aired shocking footage of abuse of children at Don Dale Youth Detention Centre (**Don Dale**). Days later former Prime Minister, the Hon Malcolm Turnbull MP, announced the establishment of the Royal Commission into the Protection and Detention of Children in the Northern Territory (**Royal Commission**). The Royal Commission's Final Report, which made the following **key findings** regarding the health services provided at Don Dale during the relevant period:

- Children and young people entering detention **did not have an adequate health assessment upon admission to youth detention**, whether at initial or subsequent assessment, as required by reg 57 of the Youth Justice Regulations (Ch 15 p 356);
- FASD screening is not undertaken **despite the likelihood that a significant number of detainees are affected** (Ch 15 p 356)
- Ongoing health assessments and treatment were not always available for children and young people in detention **in a timely or comprehensive manner**. Youth Justice Officers, who did not have medical training, made judgments about whether children or young people required medical treatment.
- The healthcare needs of children and young people in youth detention with alcohol and drug addiction or experiencing mental health issues **were not adequately met**.
- At-risk procedures adopted in youth detention centres in the Northern Territory in some instances were **likely to exacerbate the distress of a child or young person rather than prevent serious harm**.
- The identification of at-risk behaviours was carried out by youth justice officers who had minimal or no mental health training.
- The Northern Territory Government **did not adequately provide for culturally competent or age appropriate provision of health services** to children and young people in detention.

DDHS's function at Don Dale has evolved over time. Shortly after the Four Corners episode, the former NT Department of Children and Families (DCF), now Territory Families, approached DDHS to develop a proposal to support the social and emotional wellbeing of young people at Don Dale and to provide an "observer" and information gathering role focusing on youth wellbeing while in detention. Training in Monitoring and Observation was delivered by Australian Red Cross for the DDHS team to perform this role.

The Final report recommended that the Northern Territory Government ensure that culturally competent and age-appropriate health professionals deliver services to children and young people in detention. The DDHS primary health service at Don Dale is a response to this recommendation.

Rationale for Standards for Health Services in Youth Detention

The need for minimum standards for the treatment of children in detention

There is a recognition in international law and practice that the detention or restraint of liberty of children is fundamentally different to adult imprisonment. The Convention on the Rights of the Child (**CROC**), provides that, in all actions concerning children, the best interests of the child shall be a primary consideration.[4] In particular, deprivation of liberty of children shall be used only as a measure of last resort and for the shortest appropriate period of time (art. 37 (b)). Emerging evidence about the impact of detention on children's health and development is consistent with this.[5] United Nations Special Rapporteur, Mr. José Martínez Cobo noted:

> *Children deprived of their liberty are at a heightened risk of violence, abuse and acts of torture or cruel, inhuman or degrading treatment or punishment. Even very short periods of detention can undermine a child's psychological and physical well-being and compromise cognitive development. Children deprived of liberty are at a heightened risk of suffering depression and anxiety, and frequently exhibit symptoms consistent with post-traumatic stress disorder. Reports on the effects of depriving children of liberty have found higher rates of suicide and self-harm, mental disorder and developmental problems*.

Our experience at Don Dale overtime, consistent with the findings and recommendations of the Royal Commission is that there is no therapeutic model of care in detention centres to negate the deleterious effects of detention that the Special Rapporteur outlines above. In our experience, the overarching focus of detention centre management is on prioritising and managing risk, safety and security rather than meeting the health and developmental needs of children. This view was also reiterated in the NT Children's Commissioners Recent Monitoring Report (June 2020) which stated:

> *There is currently **no therapeutic model of care** in place within youth detention centres in the Northern Territory. A therapeutic, trauma informed approach to care can help young people tackle the causes of their offending and build pro-social skills to prepare for a successful reintegration. Healthy, well-adjusted children and young people are less likely to reoffend*. (emphasis added).[6]

Our youth and primary health care teams, which act as important advocates for the improved health and wellbeing of children in detention, have continued to raise concerns about the conventional correction style of operation at Don Dale and treatment of children in detention. We have continued to raise concerns about the following issues in particular:

- Extended periods of lock down which limit access to fresh air, programs and at times access to health services;
- The use of separation (isolation) as punishment;

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[4] United Nations Convention on the Rights of the Child, Art 3.

[5] See Manfred Nowak, 'United Nations Global Study on Children', submitted pursuant to General Assembly resolution 72/245.

[6] https://occ.nt.gov.au/__data/assets/pdf_file/0005/899456/DDYDC-Monitoring-Report-June-2020.pdf

- Limiting young people's access to education, therapeutic programs and activities as punishment for 'bad behaviour'; and

- Transfers of children from Alice Springs Detention Centre to Don Dale, dislocating them from family and support networks.

In our view, part of the problem is that there are no minimum standards for the treatment of children in detention to clarify the rights of young people in detention, and set clear guidelines to prevent the abuse, neglect or torture. This is in contrast to other jurisdictions in Australia and around the world which have charters of rights, or clearly defined minimum standards for the detention of children.[7]

Special Needs of Aboriginal children in detention

Aboriginal and Torres Strait Islander young people are vastly over-represented in detention centres across Australia, particularly in the NT where at nearly all times 100 per cent of young people in detention are Aboriginal. These young people come from diverse cultural, linguistic and regional backgrounds – from urban centres (Darwin, Alice Springs, Tennant Creek, Katherine) to more remote communities (Central Australia, Arnhem land, Tiwi Islands, Wadeye etc.) where English is often not their first language and where traditional cultural practices are the norm.

The majority of these children and young people come from families and communities which are socially and economically disadvantaged and are living in poverty, and many of the young people in detention are also in the care of Territory Families ('Care and Protection'). The overrepresentation of Aboriginal young people in the justice system is a result of the underlying risk factors that give rise to offending and the system's failure to address them. These factors include:

- economic and social disadvantage of Aboriginal people in the Northern Territory which contributes to complex, interrelated risks that impact on many Aboriginal families and children;

- high incidence of health issues associated with disadvantage, such as hearing disorders, foetal alcohol spectrum disorders (FASD), childhood trauma and injury;

- pathways into detention and offending – including the significant proportion of youth in detention who have experienced neglect or abuse, and/or have been placed in Out of Home Care;

- developmental and behavioural disorders of children who have experienced trauma (factors which contribute to disengagement and subsequent youth offending);

- the ongoing impact of detention on young people isolated from their families, communities, culture and language.

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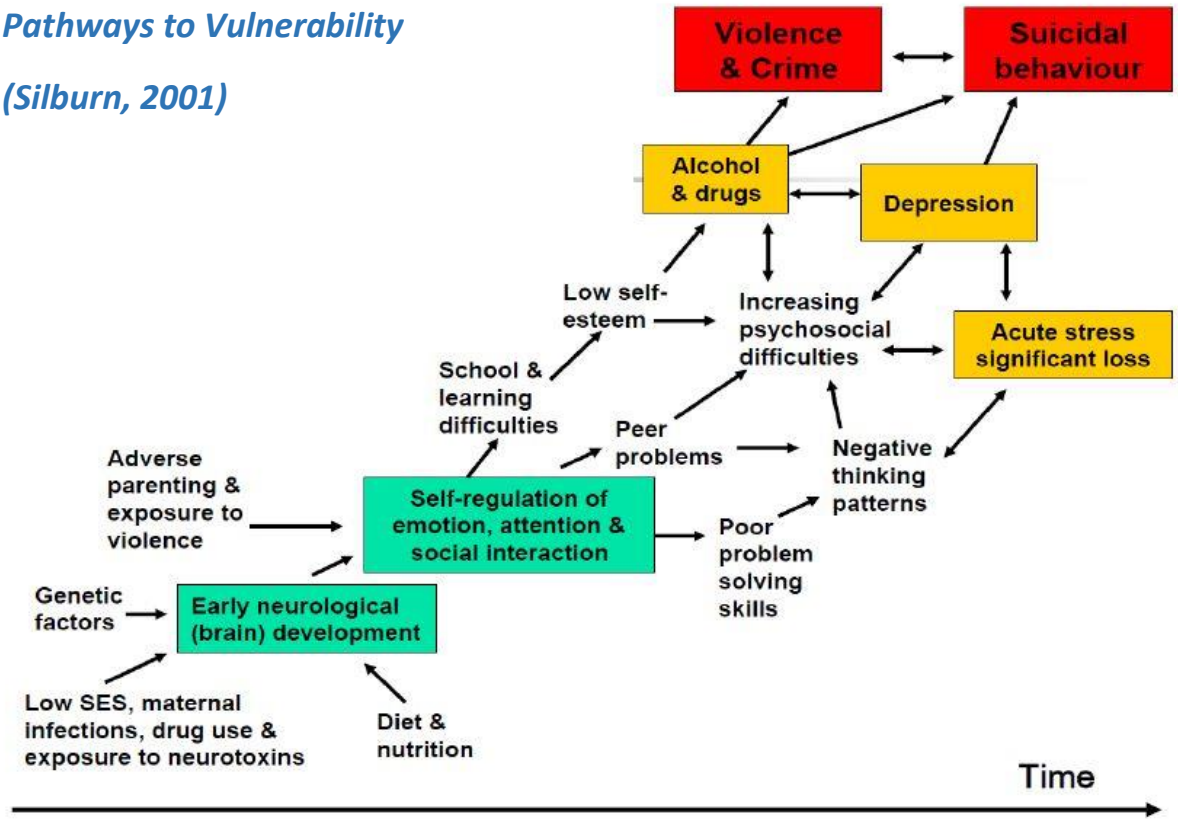
[7] See South Australian Charter of Rights for young people in detention http://www.gcyp.sa.gov.au/the-training-centre-visitor/the-charter-of-rights-for-youths-detained-in-detention-centres/; and ACT Charter of Rights for Young People in Bimbery Youth Detention Centre: https://www.communityservices.act.gov.au/__data/assets/pdf_file/0006/1089663/Charter-of-Rights-for-Young-People-in-Bimberi.pdf. See also New Zealand's Code of Practice for Residential Care https://practice.mvcot.govt.nz/policy/working-with-children-and-young-people-in-residences/index.html

The Australian Institute of Health and Welfare (**AIHW**) has identified 'disadvantage in areas of health, education, employment, housing, and social inclusion' as key contributing factors to pathways into child protection systems, which in turn have been linked to a significantly increased risk of youth offending – or, as Higgins and Davis put it, 'overlapping vulnerabilities'.[8] The figure below, depicted by Sven Silburn (2001) illustrates a pathway of offending (vulnerability) in the absence of safeguards associated with normal psycho-social development. These are the pathways we strive to shape through our work with young people in detention.

Pathways to Vulnerability

(Silburn, 2001)



Our submission about the need for RACGP standards for health in youth detention, stems from our knowledge of the historic poor-treatment of these children as outlined above and the systemic failure to meet their unique (and often complex) health and developmental needs. In our view, the delivery of high quality, comprehensive and culturally appropriate primary health care in detention is essential. RACGP standards, to set guidelines for achieving this would be an important step forward.

Particularly Health Needs of Children in Detention

Prevalence of neuro-disability

A recent study at Banksia Hill Detention Centre in Western Australia (**The Banksia Hill Study**) found that 89 per cent of young offenders have a severe neurodevelopmental impairment, and 39 per cent

[8] Daryl Higgings and Kristen Davis 'Law and justice: prevention and early intervention programs for Indigenous youth' Closing the Gap Clearinghouse, Australian Institute of Health and Welfare (July 2014) at https://www.aihw.gov.au/getmedia/85dd676d-62ab-47cf-8a01-a1847a05a17a/ctg-rs34.pdf.aspx?inline=true

were diagnosed with FASD.[9] Though a similar study has not been undertaken in the NT, it is likely that there is a very high-prevalence of FASD / neurodevelopmental impairment among children in the youth justice system.[10]

It is well-known that children and young people with FASD often have difficulty understanding and following instructions, but to the untrained eye that may appear to be bad behaviour or wilful ignorance of instructions. As part of the Banksia Hill Study, the Telethon Kids Institute, examined the custodial workforce's response to FASD.[11] The study found that there were substantial gaps in knowledge, attitudes, experiences and practices related to FASD among the youth custodial workforce at the Banksia Hill Detention Centre, the only youth detention centre in WA. In particular, the study demonstrated that:

- The custodial workforce was not adequately trained to understand FASD vulnerabilities and therefore staff often mistook behaviours associated with FASD as demonstrating noncompliance or wilful defiance;
- As staff are not aware of FASD vulnerabilities, they often react in ways which further escalate negative behaviours; and
- That there were not adequate information sharing systems in place when formal diagnosis exists.

In our view, the RACGP Draft Prison Standards do not adequately address the additional complexity of working with young people with neuro-disability, and the unique challenges that arise in this context, particularly in relation to communication and patient participation. We would be pleased to work with the RACGP, building on our experiences at Don Dale, to develop and refine these standards.

Mental health and young people 'at risk'

The Royal Commission raised serious concerns in relation to the way young people who were declared 'at risk' of harm had been managed, finding that at risk procedures adopted in youth detention centres in the Northern Territory in some instances were likely to exacerbate the distress of a child or young person rather than prevent serious harm.[12] Some of the young people who gave evidence to the Royal Commission described their experiences at risk as identical to their experiences of being separated as punishment.[13] Experts who gave evidence to the Royal

[9] Carol Bower et al, 'Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia' BJM Open (19 February 2018) http://bmjopen.bmj.com/content/8/2/e019605.

[10] Final Report of the Royal Commission into the Protection and Detention of Children in the NT (2017), Chapter 15, 351.

[11] Foetal Alcohol Spectrum Disorder (FASD): Knowledge, attitudes, experiences and practices of the Western Australian youth custodial workforce Hayley M. Passmore (Australia)

[12] Northern Territory Government, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (2017), vol 2A, 373.

[13] Northern Territory Government, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (2017), vol 2A, 366.

Commission similarly described the approach to at risk placements as punitive as opposed to therapeutic.[14]

More recently, the Office of the Children's Commissioner raised ongoing concerns regarding at-risk procedures in the June 2020 Monitoring Report:

> Of particular concern was the lack of service provision embedded into the current care model on site. This leads to situations where youth justice staff are at times required to transport young people who are in a state of emotional / mental health crisis to RDH. There is often a lengthy waiting period once at RDH prior to young people being seen by the Psychiatric Registrar which has various adverse implications for the young person.

DDHS' clinic at Don Dale opened after this report was released. We are working with Territory Families, and key stakeholders including child psychiatrist, Dr Brendan Daugherty, who is providing an in-reach service into Don Dale, to review and refine at risk processes. We would be happy to work with the RACGP developing guidelines to respond to these complex situations.

Girls and Young Women

Aboriginal girls and young women are 19 times as likely as non-Aboriginal young women to be in detention.[15] While the number of girls in detention in the NT at any point in time are far fewer than young males, Royal Commission witnesses noted that a major concern was the incarceration of young women in facilities that are designed for males that do not accommodate their needs.

There is also evidence that girls in the youth justice system have disproportionately experienced sexual abuse and are particularly vulnerable in an institutional environment that does not address their past trauma. Young mothers and young pregnant women in the justice system are especially vulnerable to harm and further trauma. There are unique challenges that arise delivering health services to this cohort, particularly in relation to sexual and reproductive rights and getting informed consent. The RACGP youth detention standards should address the needs of girls and young women in detention.

Other feedback regarding RACGP Revised Prison Standards

Operational challenges

Our experience at Don Dale has demonstrated that there are complex operational challenges faced by health services providers within a prison or detention centre. Some of these operational challenges are recognised by the RACGP 'Custodial Health in Australia' paper, which notes that there are challenges in the efficient delivery of care in prisons,[16] including access to medical staff, access to investigations, examinations being undertaken while a person is restrained or while someone else is present, and challenges maintaining confidentiality. It is our submission that there are also unique challenges for non-government health providers, delivering services in custodial settings. These include:

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[14] Northern Territory Government, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (2017), vol 2A, 368

[15] AIHW data

[16] https://www.racgp.org.au/FSDEDEV/media/documents/Faculties/SI/Custodial-health-in-Australia.pdf

- Navigating overlapping roles of multiple government departments and service providers, whose engagement is often siloed;
- Responding to non-clinical incidents and concerns regarding the health and wellbeing of detainees and navigating both internal and external reporting processes; and
- Information sharing and confidentiality.

These matters need some further consideration in the RACGP Draft Prison Standards. We would be pleased to work with the RACGP to further refine these standards, building on our experience and learnings so far.

Rights and needs of patients

The RACGP Draft Prison Standards regarding 'ethical dilemmas' (Criterion 2.1) provide some helpful guidance regarding the rights and needs of patients in a custodial setting. However, we feel these guidelines do not sufficiently address the complexity of these challenges, and the competing roles of advocate and clinician that staff working in this context need to navigate. We also note that Criterion 2.2 does not cover issues relating to use of handcuffs or other restraints, which can also cause distress both for people in prison/detention, and for staff.

As noted above, there are also additional challenges for non-government, or Aboriginal Community Controlled Health services in this context. It can be especially difficult for these clinicians to effectively advocate for clients and meet their needs. Clinicians may feel dejected by the limits of their ability to control the environment they are working in. We recommend the development of additional resources or guidelines to support clinicians in this field.

Communication and patient participation

The RACGP Draft Prison Standards acknowledge the challenges communicating with clients with special needs and the need for interpreters or other communication services for certain clients (criterion C 1.4).

In our experience, there are often communication challenges where clients (particularly young people) have neuro or cognitive disability. To address this, we are working with our in-house speech pathologist, occupational therapist and psychologist to develop a screening process, which will form part of a young person's comprehensive health assessment on entry to detention. This assessment process will help clinicians to determine whether the young person has capacity to consent to medical procedures and any further support that may be required to assist with communication.

Health service governance and management

As noted throughout this submission, non-government (in our case Aboriginal Community Controlled) health services delivering services in a prison or detention context face unique challenges. These also affect the governance and management of the centres, as there are overlapping layers of management, and a possible tension between the policies and processes of the health service, and the detention centre. Our experience in relation to emergency planning, particularly with regards to planning for the Coronavirus Pandemic (COVID-19) has exemplified some of these challenges. We would be happy to explore with the RACGP how these matters can be better covered by the RACGP guidelines.

Conclusion

Our submission has identified some of the challenges experienced by a non-government health service operating within a detention centre (or prison), particularly in the absence of any clear standards for the treatment of children. Our submission also emphasises the unique health and development needs of children in detention, which are often unaddressed.

We recommend that the RACGP develop specific standards for delivery of health services in youth detention centres, to ensure that these unique needs are properly addressed. We would be pleased to work with the RACGP in developing and refining these standards, building on our experience working with this vulnerable cohort of young people.