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Justice targets in Closing the Gap: let's get them right

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On 12 December 2018, the Council of Australian Governments announced draft targets from the Closing the Gap (CTG) 'Refresh', including a new justice target.¹ PHAA has long advocated for this change² and welcomes the announcement. Each of the current CTG targets, on health, education and employment, are in some way influenced by Aboriginal and Torres Strait Islander people's over-representation in the criminal justice system. The inclusion of justice targets covering the entire criminal justice system would require government agencies such as the courts, police, and adult and juvenile corrections to be accountable, and to develop strategies for reducing inequities. The extent to which that will be achieved will rely, in part, on the detail for the targets, accountabilities and reporting requirements, to be decided upon over the coming months.

Why do we need justice targets?

Rates of incarceration of Aboriginal and Torres Strait Islander people have increased by 40% in the decade since the CTG framework to reduce health inequity between Aboriginal and Torres Strait Islander people and other Australians has been in place, from 1,524.4 per 100,000 in 2008 to 2,141.6 in 2017.³ Aboriginal and Torres Strait Islander people are now over-represented in prisons by an age-adjusted factor of 13,³ and in youth detention by a factor of 24.⁴ Although more than one-quarter of a century has elapsed since the Royal Commission into Aboriginal Deaths in Custody recommended that governments find ways to reduce the over-representation of Indigenous Australians in custody, this over-representation is now at a record high level.

Given the substantial overlap in the determinants of health and crime, and the negative intergenerational impact of incarceration, the inclusion of justice targets is more urgent than ever.

Closing the Gap Refresh

The process up to the point of the release of the draft targets included consultations with large groups of stakeholders attempting to review multiple proposed targets and indicators, with very limited time on each one. Smaller consultations, focused on individual targets with subject matter experts, seemed to be missing. The Aboriginal and Torres Strait Islander health sector has, through the Close the Gap campaign, expressed its concerns about the process and lack of support for the likely outcomes.⁵ The announcement of the new justice targets on 12 December 2018 included specific reference to 'formal partnership between the Commonwealth, state and territory governments and Indigenous Australians through their representatives' for finalising the Refresh. PHAA welcomes this commitment. True partnership will be required to get the details right.

Developing justice targets

The 'desired outcome' of the draft target for the new priority area of 'Justice, including youth justice' specifies 'Aboriginal and Torres Strait Islander people are not over-represented in the criminal justice system'. PHAA welcomes this broad goal, which is inclusive of the police, the courts, community corrections, the youth justice system, and adult corrections across all jurisdictions. However, the single proposed target is to 'Reduce the rate of Aboriginal and Torres

Strait Islander young people in detention by 11–19% and adults held in incarceration by at least 5% by 2028'. This target does not adequately address either the current over-representation, or the broad and inclusive goal.

Developing justice targets will take time and considered consultation. Targets must align with human rights principles, aspirations of Aboriginal and Torres Strait Islander leaders and communities, and the growing body of evidence regarding the health and social impacts of incarceration, and be applied throughout the whole criminal justice system. They will also likely have to satisfy the court of public opinion. Different strategies will be required for the various elements of the justice system, for different age groups, and for women and men. These targeted strategies must be outlined explicitly to accompany the targets. The strategies must include a process for determining the services and funding that will be needed and have specific indicators to measure progress.

Meeting targets is a whole-of-government responsibility and requires genuine multi-sectoral collaboration with cooperation among Commonwealth and State and Territory level governments. Strategies to achieve targets need resourcing to enable required policy and program changes, and must include sufficient detail for accountability to Parliament and the public on progress. The lack of Commonwealth oversight of the justice system(s) may need to be addressed to effectively monitor progress of the justice target. The National Preventive Mechanism, required to be established under Australia's ratification of the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), provides a useful platform for Commonwealth oversight.

In order to define and measure progress against justice targets, Australia will first need to establish a mechanism for routinely reporting on basic justice system metrics. For example, although the Australian Bureau of Statistics now reports on the number of prison receptions each year, this is a count of events, not people, and does not disaggregate reception data by even basic demographic characteristics such as Indigenous status. Given evidence that Indigenous Australians are over-represented

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in the ‘churn’ through prisons,⁶ quarterly and annual counts of the ‘daily number’ in prison in Australia fail to adequately capture the over-representation of Indigenous people in these systems. To work towards new justice targets, we must be able to accurately measure them.

What should justice targets include?

Health status and contact with the criminal justice system are affected by many factors relating to the conditions in which people live, and many of these are potentially modifiable. Socioeconomic status, education, experiences of abuse and neglect, homelessness, behavioural issues (associated with health problems such as mental illness, substance dependence and cognitive disability) and access to health and social services – these determinants are relevant to many of the targets. For example, assuming that diversion from custody is one mechanism by which over-representation may be reduced, diversion from the courts is one measurable indicator. However, other sectors need to ensure that there are effective diversionary options. Where there are differences between Indigenous and non-Indigenous people in diversion rates, issues such as availability of and access to relevant and culturally appropriate treatment programs, such as for alcohol and other drug or mental health problems, may provide some explanation. Targets must therefore measure not only our success in diverting Indigenous people from the criminal justice system, but also their level of engagement with the services they are diverted to. Similarly, successful reintegration of Indigenous people released from prison will require increased investment in post-release support and service delivery. Relevant service engagement targets might relate to housing, access to health care, employment and income support, education and training, family reconnection, and addressing other underlying causes of crime.

Holistic responses from the health system have a central role to play in closing the gap and need to be strengthened and better resourced with a well-trained, culturally safe workforce free of racism, and responsive to Aboriginal and Torres Strait Islander health needs. Critically, holistic/whole-of-government responses to the health and wellbeing needs of Indigenous people must be inclusive of the health care system within the justice system and its relationship with

community healthcare systems. Potential data sources exist through the Australian Institute of Health and Welfare’s National Prisoner Health Data Collection,⁷ which could be strengthened and expanded to provide data relevant to these new targets. These extend beyond current metrics used by the Commonwealth to judge the justice system, such as deaths in custody and the number of prison escapes.⁸

International obligations

Accountability for making progress to reduce the over-representation of Indigenous people in the criminal justice system is increasingly necessary, not just within Australia, but internationally. With the ratification of OPCAT, and the Sustainable Development Goals (SDGs), Australia’s justice system will come under increasing international scrutiny. This will occur through a network of monitoring bodies being established and enhanced, as well as periodic monitoring visits by the United Nations’ Subcommittee on the Prevention of Torture (SPT). Importantly, Australia must make annual reports to the SPT to articulate measures taken as a nation to protect the human rights of people in all places of detention.

Similarly, Australia has international reporting responsibilities under the SDGs to outline progress toward achieving the goals. Many may think of SDGs as relevant to developing nations, rather than wealthy countries such as Australia. However, Australia as a nation seems to accept that many Aboriginal and Torres Strait Islander peoples have long lived in conditions that resemble those in developing countries, with no political representation, role in decision making or other features of self-determination expected by the United Nations Declaration on the Rights of Indigenous Peoples, to which Australia has been party since 2008. The SDGs are therefore directly relevant locally and to closing the gap for Aboriginal and Torres Strait Islander people.

Box 1: Sustainable Development Goals.⁹

Goal 1 – no poverty
Goal 2 – zero hunger
Goal 3 – good health and well-being
Goal 4 – quality education
Goal 6 – clean water and sanitation
Goal 7 – affordable and clean energy
Goal 8 – decent work and economic growth
Goal 10 – reduced inequalities
Goal 16 – peace, justice and strong institutions

Many of these Goals are interrelated and cover a range of underlying causes of poor health and are relevant to involvement with the criminal justice system (Box 1). If we are to keep people out of the justice system, we need to address all of these issues and be accountable for achieving progress.

Conclusion

Australia has an abysmal record in terms of Aboriginal over-representation in the justice system and is now a signatory to international obligations that will highlight this failing. The current Refresh of indicators for CTG provides a timely opportunity to include indicators that can bring about positive societal-level changes for Aboriginal communities by reducing disparities that manifest at all levels of the criminal justice system. The Australian Government’s proposal for the inclusion of justice targets as part of the CTG Refresh is both welcome and overdue. To be useful, the new targets should be clearly defined, and cover the entirety of the criminal justice system, including the health services within it. Strategies for achieving the targets, timelines, responsibility and funding must be clearly articulated by jurisdictions. Each of the CTG targets, including the new justice targets, must be given due consideration, and be developed in consultation with sector-specific experts and in close partnership with Aboriginal and Torres Strait Islander leaders, enabling local communities to implement their solutions. The existing Burra Lotjpa Dunguludja Victorian Aboriginal Justice Agreement may form a useful framework from which to begin such considerations.⁹ The CTG consultation to date has been limited at best. This is not a process that can be rushed if we are to take this opportunity to get it right and address the underlying causes, not the symptoms, to Close the Gap.

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