

DEAFNESS FORUM AUSTRALIA



CLOSING THE GAP: ADDRESSING THE HEARING HEALTH OF ABORIGINAL AND TORRES STRAIT ISLANDER PEOPLES IN THE CRIMINAL JUSTICE SYSTEM

NOVEMBER 2022

In the spirit of reconciliation we acknowledge the Traditional Custodians of country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all Aboriginal and Torres Strait Islander peoples today.

PREFACE

Deafness Forum Australia is the peak body representing the interest of Australians living with hearing loss. Our work encompasses accessibility in communications, human rights, justice, education, employment, transport, health and aged care. Over the past few decades, the organisation has been involved in various reports to the Australia Government highlighting the high rates of hearing loss amongst Aboriginal and Torres Strait Islander peoples, advocating for improved funding, resources and programs to address these health disparities.

Today, there is a particular pressing need to specifically address the high rates of hearing loss of Aboriginal and Torres Strait Islander peoples in contact with the criminal justice system, with rates as high as 80-95% in some communities. The Australian Law Reform Commission (2017) report *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, estimated that the annual economic burden of the incarceration of Aboriginal and Torres Strait Islander peoples was nearly \$8 billion, with that figure expected to rise to over \$20 billion without appropriate intervention.

As well as the enormous economic burden to society and particularly First Nations communities, Australia's commitments under the United Nations Convention on the Rights of Persons with Disabilities is currently being neglected, with Aboriginal and Torres Strait Islander peoples with hearing loss experiencing unlawful discrimination on a regular basis. Our justice system remains ineffective in addressing the complex needs and vulnerabilities of this population. This report aims to provide evidence of the perpetual cycle that exists between childhood ear disease in Aboriginal and Torres Strait Islander peoples and how it impacts on the disproportionately higher rates of incarceration for this population, and makes recommendations accordingly.

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1. SUMMARY

The National Agreement on Closing the Gap (Australian Government, 2020) has 17 national socio-economic targets across areas that have an impact on life outcomes for Aboriginal and Torres Strait Islander peoples. Two of the targets, 10 and 11, relate to ensuring that Aboriginal and Torres Strait Islander peoples are not overrepresented in the criminal justice system. Due to the clear links between hearing loss and high rates of incarceration for this population, it is imperative that hearing loss across the life span is considered in any action designed to meet these targets.

Aboriginal and Torres Strait Islander peoples experience high levels of ear disease and hearing loss from a very early age. It impacts speech and language development, cognitive development and auditory processing ability which inhibit listening skills and leads to poor attention. This can then result in disruptive behaviour in the classroom, poor school attendance and early school leaving (Weatherburn et al., 2016). The lack of education then impacts on employment opportunities and income levels and can result in increased contact with the criminal justice system (Burns & Thomson, 2013), causing a “school to prison pipeline” (O’Brien & Trugett, 2021 p 98).

Numerous reviews, inquiries and research findings (Hill, 2012; Senate Community Affairs References Committee, 2010; Vanderpoll & Howard, 2012; State Coroner’s Court of New South Wales, 2022; Hearing Health Sector Committee, 2019; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011; AMA Report Card on Indigenous Health, 2017) some dating back almost three decades (Howard et al, 1994), have made recommendations to government to break the cycle of disadvantage, however, the impact of hearing health is often overlooked due to the myriad of other chronic health issues requiring attention. Further, action is often neglected due to lack of clarity between Commonwealth and State responsibilities to implement such recommendations.


The recent tragic death of Mootijah, an Aboriginal person in custody, was found by the NSW Coroner to be directly related to an untreated ear infection (State Coroner’s Court of New South Wales, 2022). The investigation identified systemic failures within the criminal justice system to recognise and provide appropriate care for the individuals’ ear and hearing issues.

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Douglas 'Mootijah' Shillingsworth's death from ear infection while in custody was preventable, inquest finds

By Tim Swanston
Posted Fri 22 Jul 2022 at 1:44pm, updated Fri 22 Jul 2022 at 1:47pm



The NSW Coroners Court has found the death of an Indigenous man in custody, stemming from a middle ear infection, was preventable.

WARNING: This story contains images and details of an Aboriginal person who has died and have been used with the permission of his family.

Budjiti and Murrwarri man Douglas 'Mootijah' Shillingsworth died on February 15, 2018 after he was taken to Westmead Hospital from Silverwater jail the month before.

Mr Shillingsworth experienced recurring otitis media, known as a middle ear infection.

Deputy State Coroner Magistrate Joan Baptie found Mr Shillingsworth died from a neurological injury, that traced back to his ear infections.

Key points:

- A Coroner found Mr Shillingsworth died from a neurological injury, relating back to his recurring ear infections
- She found his hearing loss and disease were rarely investigated despite being recorded on his prison profile
- Mr Shillingsworth's family said he 'didn't need to die' from an ear infection in the 21st century

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In order to address the impact of hearing health on Closing the Gap target 10 and 11, and reduce the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, it is recommended that

- existing programs that target ear disease and hearing loss in children, work to improve school attendance and help Aboriginal and Torres Strait Islander peoples gain employment be strengthened. These programs will also support the Closing the Gap targets of Children Thriving in their Early Years (Target 4) and Students Achieve their Full Learning Potential (Target 5).

b) targeted funding be made available for a culturally appropriate hearing program to be established nationally to address the needs people within the criminal justice system including the juvenile system. The program would need to include:

- Education programs for all staff working within both the juvenile and criminal justice systems, to increase awareness of the impact of chronic ear disease experienced by Aboriginal and Torres Strait Islander children and adults and to provide information on appropriate strategies and programs to meet the needs of people with ear disease and hearing loss
- Education and counselling programs for individuals who may not realise they have a hearing loss or that treatment options are available, or, due to cultural reasons may feel shame about having a hearing loss or wearing an assistive listening device
- Community education on the link between hearing loss and involvement with the juvenile and criminal justice systems
- Provision of hearing assessment prior to a person's court appearance
- If hearing loss is identified appropriate interventions must be provided before the court appearance or supports provided to ensure a fair hearing
- Provision of hearing assessment prior to a person being admitted to prison with regular assessments provided during the person's stay in prison
- Clinical pathways to medical advice and treatment as well as rehabilitation options including assistive listening device fitting where indicated
- Provision of devices such as sound field amplification system and other mechanisms for improving the acoustic environment for those with hearing loss
- Access to hearing support services once the person leaves prison
- National data source on hearing loss among Aboriginal and Torres Strait Islander peoples in contact with the criminal justice system within the National Prisoner Health Data Collection (NPHDC).

It is essential the recommended services are culturally appropriate and involve Aboriginal and Torres Strait Islander community members in all aspects of the program to ensure initiatives are tailored to meet the cultural needs of individuals. The implementation of these initiatives would lead to a reduction in the overrepresentation of Aboriginal and Torres Strait Islander peoples involved with the juvenile and criminal justice systems and will also prevent further deaths in custody resulting from the consequences of unidentified and untreated ear disease.

2. EAR HEALTH AND HEARING LOSS IN ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES

2.1. CHILDHOOD

Aboriginal and Torres Strait Islander children experience some of the highest rates of ear disease in the world (Tsilis et al., 2013). Chronic suppurative otitis media (CSOM) is the most common cause of ear disease in Aboriginal and Torres Strait Islander communities and, when left untreated can cause permanent hearing loss. What is considered a preventable and treatable disease, Aboriginal and Torres Strait Islander children experience CSOM at a younger age, more frequently, persistently and severely, and with more serious complications than non-indigenous children (Gotis-Graham et al. 2020). In some Aboriginal and Torres Strait Islander communities the prevalence of CSOM is 10 times the World Health Organisation's public health emergency threshold of 4% (World Health Organization, 2004).

Hearing loss attributed to CSOM leads to early learning difficulties including speech delays with resulting communication difficulties, developmental delays, low self-esteem, educational challenges (Gotis-Graham et al. 2020) as well as influencing the development of social skills, psychological wellbeing and educational engagement (Howard, 2020). Contributing further to the high rates of hearing loss experienced in this population is the absence of culturally appropriate healthcare and treatment, with parents and caregivers reporting lack of trust for healthcare institutions due to systemic racism and feelings of shame, guilt and fears of having the child removed from their care (Campbell et al., 2022).

2.2. EDUCATION

Aboriginal and Torres Strait Islander children with hearing loss have an increased risk of lower school readiness, decreased school attendance and lower academic achievement (He et al., 2019; Su et al., 2020). Aboriginal and Torres Strait Islander children entering the education system with an undiagnosed or inadequately managed hearing loss can be labelled with behavioural issues such as lack of attention and disengagement (Campbell, 2022). The inability of schools to identify and respond to hearing loss amongst Aboriginal and Torres Strait Islander students significantly increases the likelihood of future involvement with the juvenile and criminal justice systems (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011).

Aboriginal and Torres Strait Islander children continue to perform significantly worse than their non-Indigenous peers in national standards of literacy, reading and numeracy. They

also remain overrepresented among underachieving students and have lower student attendance rates than non-Indigenous students (Armstrong & Buckley, 2011). In 2014, the percentage of Aboriginal and Torres Strait Islander students who completed Year 12 or equivalent was significantly lower than non-Indigenous students. Nationally in 2015, of the potential Year 12 population, 43.8% of non-Indigenous young people achieved an ATAR of 50.00 or above, compared with just 8.5% of Aboriginal and Torres Strait Islander young people (Australian Bureau of Statistics, 2019).

Research shows that young people with poor educational outcomes are more likely to be unemployed, placing them at higher risk of coming into conflict with the criminal justice system (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011). Measures that improve school attendance and school performance have been shown to reduce the risk of juvenile involvement in crime (Weatherburn et al., 2016). Results from the 2002 National Aboriginal and Torres Strait Islander Peoples (NATSISS) survey by the Australian Bureau of Statistics show that Aboriginal and Torres Strait Islander peoples who have completed Year 9 or below are more than 3 times more likely to be imprisoned than those who were able to complete Year 12. Further, Aboriginal and Torres Strait Islander peoples who have only completed Year 9 or below are also more than twice as likely to have been charged with an offence than those who went on to complete Year 12.

2.3. EMPLOYMENT

Participation in employment has numerous social, financial and health benefits, however Aboriginal and Torres Strait Islander peoples continue to be underrepresented in meaningful employment across their lifespan (Australian Health Ministers' Advisory Council, 2017). In 2015, the unemployment rate for working age Aboriginal and Torres Strait Islander peoples was more than three times the rate of the non-Indigenous population (Australian Law Reform Commission, 2017). When employed, they also consistently earn lower average incomes than non-Indigenous Australians (Osborne et al. 2013) increasing reliance on social welfare and further contributing to social and economic disadvantage.

Australian Institute of Health and Welfare (AIHW) report on Ear and Hearing Health of Aboriginal and Torres Strait Islander people (2022) highlights the link between hearing loss, educational attainment and employment with evidence showing that of the Aboriginal and Torres Strait Islander peoples who did not have any hearing loss, 41% had completed Year 12 or equivalent educational qualifications, and 56% were employed. The equivalent

proportions among Aboriginal and Torres Strait Islander peoples who had measured hearing loss in one or both ears were 26% and 40% respectively. Among those with hearing loss in both ears, only 21% had completed Year 12 or equivalent, and 32% were employed.

2.4. JUSTICE SYSTEMS

Aboriginal and Torres Strait Islander peoples are considerably overrepresented in police custody, in both the juvenile and criminal justice systems of Australia and are jailed at 13 times the rate of non-Indigenous Australians (ABS, 2019). While representing only 3% of the total population, more than 29% of Australia's prison population are Aboriginal and Torres Strait Islander peoples (Korff, 2021).

In juvenile justice systems, Aboriginal and Torres Strait Islander youth make up 54% of all young people in care (O'Brien, 2021), and are kept in detention far longer than their non-Indigenous counterparts (Australian Institute of Health and Welfare, 2017). In WA the figures are even more alarming with Aboriginal and Torres Strait Islander youth accounting for 80% of youth in incarceration, (Blagg, 2012).

Aboriginal and Torres Strait Islander peoples also experience higher rates of recidivism, with 75% of offenders having a previous conviction compared to only 42% for non-Indigenous Australian offenders. They are four times more likely to have five or more prior convictions than non-Indigenous Australian offenders, according to sentencing reports by State Government of Victoria (2013).

Since 2004, the rate of Aboriginal and Torres Strait Islander peoples in custody has risen by 88% compared to only 28% of non-indigenous Australians. Data suggests these figures are not indicative of higher crimes rates, but rather harsher treatment and sentencing for Aboriginal and Torres Strait Islander peoples (Korff, 2021). O'Brien (2021) reports that the negative relationships between police and Aboriginal and Torres Strait Islander peoples significantly contributes to their overrepresentation in incarceration, with systemic bias and substantial over-policing leading to higher charges and arrest rates. Also, the cumulative and intergenerational impact of colonisation and oppression is often ignored within the criminal justice system. (Hovane et al., 2014)

Hearing loss has been identified as a major issue in the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, with hearing loss exacerbating

problems in interactions with police, judicial or correctional staff due to communication difficulties (Vanderpoll & Howard, 2011; He et al., 2109).

“Principal judges, magistrates, and Chief Justices also have to learn about the importance of communication and access to language, because they are putting our mob into prison. And if they can't communicate and they can't understand and they don't know how it works, then we're going to have a failure. It will fail our mob. And it can be prevented.”

Jody Barney, Indigenous cultural awareness consultant, submission to the Royal Commission Into Violence, Abuse, Neglect And Exploitation Of People With Disability

The individual may appear confused or defiant, speak too loudly or at the wrong time, respond inappropriately to questions, appear to be non-compliant or withdraw into themselves. A study in NSW by Murray et al. (2004) found prisoners had poorer hearing compared to the general population. Quinn and Rance (2009) found 12% of Aboriginal and Torres Strait Islander prisoners in Victoria had a hearing loss compared with only 5% of the remaining prisoner population. Vanderpoll and Howard (2012) reported that 94% of Indigenous prisoners in N.T. correctional facilities were found to have significant hearing loss, with the majority not even being aware they had a hearing loss.

“We believe that hearing impairment is a significant contributor to the causal pathway that represents a failure basically of education and health to deal with those issues and they get picked up by the justice system. Hearing loss may not cause criminal activity, but when considering the stigmatising effects of hearing impairment on self-concept, educational attainment and social skills, there is a causal link to criminal activity”

Paul Higginbotham, Telethon Speech and Hearing, submission to the “Hear Us: Inquiry into Hearing Health in Australia” regarding the connection between Indigenous hearing health and the criminal justice system (p139).

Untreated hearing loss can lead to communication difficulties. This can be an issue when they occur during court appearances. There can be uncertainty for police, lawyers and magistrates whether the person is being uncooperative, or has a mental health issue or a

hearing problem or a combination of these conditions. Hearing loss amongst prisoners leads to difficulties communicating with other inmates and staff, as well as impacting on their participation in any rehabilitation initiatives (House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, 2011).

Hearing loss can also have an impact on social and emotional wellbeing. It can lead to behavioural problems, such as anger, irritability and disobedient behaviour and can lead to social isolation. The link between social and psychological problems caused by hearing disabilities and criminal activity was made in the Royal Commission into Aboriginal Deaths in Custody (1991). It was there noted in relation to the case of Graham Walley that hearing impairment: “would have added to his problems because it has a compounding effect ... of reducing self-esteem and seeing himself negatively ... certainly it would have been a factor in poor behaviour” (p351).

3. ISSUES TO CONSIDER WHEN ADDRESSING HEARING ISSUES WITHIN THE CRIMINAL JUSTICE SYSTEM

There are several issues that need to be addressed in order to establish successful ear and hearing programs

- The individual will not access programs if they do not realise that they have a hearing problem in the first instance. Education programs, and the provision of a hearing assessment at critical points such as prior to a court appearance or prior to admission to prison, need to be included in any hearing program
- Services may not be viewed as culturally safe and therefore individuals may be reluctant to seek help even when they realise they have a hearing issue. Hearing programs need to be culturally sensitive and tailored to the needs of Aboriginal and Torres Strait Islander peoples
- Police, court staff and prison staff often mistake hearing loss for a mental health issue and have little or no knowledge of the signs of hearing loss or the high prevalence of hearing loss in the Aboriginal and Torres Strait Islander population. Education programs are needed to improve knowledge, and clear pathways need to be established so an individual can be directed to an appropriate service
- People in detention are not able to access Commonwealth funded programs such as Medicare, the Australian Government Hearing Services Program or the National Disability Insurance Scheme programs, even if they meet eligibility for such

programs. State Justice Health Departments are responsible for providing the necessary treatment but this has not occurred when it comes to hearing issues

4. NORMALISATION OF EAR AND HEARING ISSUES

The high prevalence of hearing problems in the Aboriginal and Torres Strait Islander population has resulted in it being normalised. People often do not seek treatment as they do not see their hearing issues as something that needs to be addressed. Some people are not even aware that they have a hearing problem or feel shame about having a hearing loss or wearing a device.

The AIHW report showed that in 2018-19 among Indigenous Australians with measured hearing loss, almost 8 in 10 (79%) did not report hearing loss. This has implications for any programs that are established to offer medical or rehabilitation options to people with hearing loss. It may be necessary to firstly educate people that it is not normal for ears to discharge fluids or for people to not be able to hear what others are saying and that there are treatment options available.

It has also been documented that much of the data collected on hearing loss prevalence in various Aboriginal and Torres Strait Islander health surveys is self-reported, making under-reporting likely to be substantial as it does not include those that are not aware they have a hearing impairment, or are aware but choose not to disclose it due to cultural or social reasons (Avery, 2018).

“If people find out that they can't hear well, they can become bullied – a target of bullying, or they might be scapegoated or they might be blamed for other things that happen within the prison system. We see a lot of issues occurring with how people don't want to make it known that they can't hear properly. They are quite secretive about that.”

Jody Barney, Indigenous cultural awareness consultant, submission to the Royal Commission Into Violence, Abuse, Neglect And Exploitation Of People With Disability

5. RECOMMENDATIONS

In order to address the impact of hearing health on Closing the Gap target 10 and 11, and reduce the overrepresentation of Aboriginal and Torres Strait Islander peoples in the criminal justice system, it is recommended that

- a) existing programs that target ear disease and hearing loss in children, work to improve school attendance, and help Aboriginal and Torres Strait Islander peoples gain employment be strengthened.
- b) targeted funding be made available for a culturally appropriate hearing program to be established nationally to address the needs of people within the criminal justice system including the juvenile justice system. The program would need to include:
 - Education programs for staff working within the criminal justice system to increase awareness of the chronic ear disease experienced by Aboriginal and Torres Strait Islander children and adults and to provide information on appropriate strategies and programs to meet the needs of these people. The education programs need to include police, court staff as well as prison staff.
 - Education programs for individuals who may not realise they have a hearing problem or that treatment options are available or may feel shame about having a hearing problem or wearing a device
 - Community education on the link between hearing loss and involvement with the criminal justice system
 - Provision of hearing assessment prior to a person's court appearance
 - Provision of hearing assessment prior to a person being admitted to prison with regular assessments provided during the person's stay in prison
 - Clinical pathways to medical advice and treatment as well as rehabilitation options including device fitting where indicated
 - Provision of devices such as sound field amplification system and other mechanisms for improving the acoustic environment for those with hearing loss
 - Access to hearing support services once the person leaves prison
 - National data source on hearing loss among Aboriginal and Torres Strait Islander peoples in contact with the criminal justice system within the National Prisoner Health Data Collection (NPHDC).

“There have never been any formal studies into [the extent of hearing loss among Indigenous people engaged with the justice system], despite the attempts on

numerous occasions to get some going, particularly by me and a number of other people. When trying to attempt to get these studies going, the response has generally been people from the criminal justice system saying that it is a health issue and people from the health system saying that it is a criminal justice issue...when a problem is everyone's issue, it very easily becomes no-one's issue"

Dr Damien Howard submission to the "Hear Us: Inquiry into Hearing Health in Australia" regarding the lack of research into the prevalence of hearing impairment among Indigenous prisoners (p140).

These programs could be provided through a partnership arrangement between existing national service providers including the Aboriginal and Torres Strait Islander Health Organisations and hearing rehabilitation services. This would ensure the program is available nationally, is culturally appropriate, and is cost effective especially where devices are indicated. A partnership arrangement would also ensure that medical and rehabilitation services are available as well as education programs tailored to the needs of individuals, communities and staff within the criminal justice system. It allows for systems, protocols and procedures to be developed so that a structured, robust program is established nationally.

The implementation of these initiatives should lead to a reduction in the number of Aboriginal and Torres Strait Islander people who become involved with the criminal justice system and will also prevent further deaths in custody resulting from the consequences of unidentified and untreated ear disease.

FOR FURTHER INFORMATION ON THIS SUBMISSION

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