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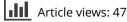
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# 'An awful state of affairs for you': managing the needs of older prisoners – a case study from the Australian Capital Territory

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#### ABSTRACT

The 2013–2017 Australian Royal Commission into Institutional Responses to Child Sexual Abuse found that children were abused in over 4000 Australian institutions between 1980 and 2015. The Commission referred at least 309 matters relating to abuse in Catholic institutions to the police. It is predicted that, in the coming years, older males will comprise an increasingly large part of the prison population in Australia. High increases are already being noted in one Australian jurisdiction, the Australian Capital Territory (the ACT). This paper provides a discussion on the current experiences of older prisoners in Australia and how agencies, such as corrective services, can best address the needs of this population in the coming years.

**KEYWORDS** Australia; health; older prisoners; prisoners.

# Introduction

In Australia, the shift in attitudes towards the prosecution of historic child sexual abuse (CSA) was particularly influenced by the the 2013-2017 Royal Commission into Institutional Responses to Child Sexual Abuse (RCIRCSA). The heightened motivation to prosecute historic child sex offenders has also shed light on an increasingly prominent issue facing correctional facilities: the needs of older prisoners, generally defined as aged 50 years and older, and the ability of corrective agencies to meet these needs. Previous research has acknowledged that the Australian prison population is ageing (Alzheimer's Australia, 2014; Baidawi et al., 2011; Greene, Ahalt, Stijacic-Cenzer, Metzger, & Williams, 2018; Williams, Ahalt, & Greifinger, 2014). This paper focuses in particular on the Australian Capital Territory (the ACT), where the older prison population is already noting high increases (Australian Bureau of Statistics (ABS), 2008; 2019).

The structure of this paper is as follows. First, we briefly discuss the relevant findings of the RCIRCSA. Second, we consider the specific challenges older prison populations face. Third, we move to one Australian jurisdiction, the ACT, to provide discussion on this specific ageing prison population. Finally, we argue that older prisoners have unique social and health needs and there is therefore the need for an 'older prisoner case manager' across correctional agencies. We note that these special needs are likely to be

CONTACT Caroline Doyle 🖾 c.doyle@adfa.edu.au 🗈 Northcott Dr, Campbell ACT 2612, Canberra, Australia © 2020 Sydney Institute of Criminology intensified further as a result of the potential spread and impact of COVID-19 in custodial settings.

### **Royal Commission Into Institutional Responses to Child Sexual Abuse**

In November 2012, the then Australian Prime Minister, Julia Gillard, announced the establishment of the RCIRCSA, following pressure from sexual abuse survivors, politicians and other interested stakeholders. The RCIRCSA aimed to investigate and make recommendations about 'what institutions and governments should do to improve reporting of historic sexual abuse, address and alleviate the impact of, past and future child sexual abuse and related matters in institutional contexts, ... ensuring justice for victims' and ultimately better protect children (RCIRCSA, 2014). The RCIRCSA defined CSA as any act that exposes a child to, or involves a child in, sexual processes beyond his or her understanding or contrary to accepted community standards (RCIRCSA, 2017a).

The RCIRCSA heard from 6875 survivors of CSA, of whom 4029 told them about CSA in religious institutions, with 2489 specifically speaking of their abuse in Catholic institutions (RCIRCSA, 2017b). The commissioners also surveyed 201 Catholic Church authorities and found that, between 1980 and 2015, 4444 individuals reported they had been abused at more than 1000 Catholic institutions. Almost 1900 perpetrators were identified, 90% of whom were male. The average age of perpetrators at the time of the offence was 37 (RCIRCSA, 2017b). In 2017, the RCIRCSA referred 84 matters to the police, and there had already been four prosecutions, and 23 cases were being investigated (Donovan, 2017). Of these cases, George Pell, then the third-most senior Catholic leader in the world, was the most senior official to be convicted. In December 2018, he was found guilty of five charges related to the sexual assault of two boys in the 1990s and, in March 2019, was sentenced to six years' imprisonment, at the age of 77 (Younger, 2019), with the sentencing judge acknowledging that '[f]acing jail at your age ... must be an awful state of affairs for you' (R v Pell, 2019, p. 122). The High Court of Australia granted Pell special leave to appeal his convictions and in April 2020 unanimously allowed the appeal. His convictions were quashed and he was released from prison (McKenna & Farnsworth, 2020). The RCIRCSA made 409 recommendations to make institutions safer for children, including recommendations specific to criminal law. These recommendations suggest that, in the coming years, more people charged with CSA will be tried and, if convicted, sentenced for their crimes, therefore likely increasing the older male prison population (New South Wales (NSW) Inspector of Custodial Services, 2015; Stavrou, 2017). Previous research has already found that a disproportionate percentage of older prisoners are sex offenders (Alzheimer's Australia, 2014; Stavrou, 2017).

# Issues faced by older prisoners

As the Australian Institute of Health and Welfare (AIHW) has identified, people in prison generally 'have significant and complex health needs, which are often long term or chronic in nature' (AIHW, 2019, p. 4). There is a lack of consensus about the age at which a prisoner becomes an 'older prisoner' (Angus, 2015, p. 2). Although 60 years and above is regarded as elderly in the community, a person aged 50 years and above is generally understood as an older prisoner (Baidawi et al., 2011). This is because of 'accelerated ageing',

which reflects the high prevalence of risk factors for poor health common among incarcerated persons (Brooke, Diaz-Gil, & Jackson, 2018; Grant, 1999; Williams, Goodwin, Baillargeon, Ahalt, & Walter, 2012) and means that prisoners' physical age is approximately 10 years older than their actual age (Reimer, 2008, p. 203). Accelerated ageing may reflect inadequate medical attention, poor nutrition, substance abuse and lower socioeconomic status (Fazel, Hope, O'Donnell, Piper, & Jacoby, 2001). Once in prison, the challenges of prison life may exacerbate pre-existing medical conditions and the overall ageing process (see Chu, 2016).

The most common physical issues for older prisoners are those associated with the body's decline as part of the ageing process (Turner & Trotter, 2010, p. 13). For example, the AIHW found that, in 2018, 14% of prison entrants aged 45 and over had cardiovascular disease, compared to 4% of the overall prison population (AIHW, 2018). They also found that the same proportion of these prisoners had diabetes, compared to 1% of prisoners aged 18–24. International studies from the United Kingdom (UK), the United States (US) and Switzerland also found that older prisoners are more prone to physical conditions than younger prisoners (Fazel et al., 2001). Previous studies have also shown that Indigenous Australians have unique health needs, and their experiences are underresearched (Baidawi, Trotter, & O'Connor, 2016; Turner & Trotter, 2010).

The reasons why an older person is incarcerated vary (Alzheimer's Australia, 2014; Baidawi et al., 2016; Grant, 1999; Prison Reform Trust, 2016; Stavrou, 2017; Stevens et al., 2018), but include longer incarceration periods, mandatory prison sentences or older first offenders. The lifestyle differences across these groups have the potential to be substantial. For example, a repeat offender who is incarcerated at the age of 60 may have rarely had stable accommodation, proper healthcare, or a nutritious diet for the majority of their life (Prison Reform Trust, 2016). The effects of accelerated ageing are likely to be more severe on that prisoner than a 70-year-old who has been sentenced for the first time in their life, and who has enjoyed a life of proper healthcare and higher quality of life (Prison Reform Trust, 2016).

Most prisons are designed for fit young men (ACT Inspector of Correctional Services (ACTICS), 2019a; NSW Inspector of Custodial Services, 2015). Previous research has shown that the prison environment can undermine support of the older prisoners' needs, or potentially worsen physical ailments. For example, activities of daily living under the prison regimen, such as standing up for muster counts, walking up and down stairs and to medical appointments, going to the bathroom and moving in and out of bed (especially bunkbeds) can be challenging for an ageing body (Corrections Victoria, 2015; Trotter & Baidawi, 2015, p. 203; Turner, Peacock, Payne, Fletcher, & Froggatt, 2018). A report by the NSW Inspector of Custodial Services (2015) focused specifically on managing aged offenders in custody and found that they face a range of challenges, including the physical environment, their placement, the regime of the correctional centre and accessing healthcare. For example, there are limited physical activity options for older prisoners, with exercise ovals being inaccessible and exercise equipment only for able-bodied prisoners. The long lock-in times also create a sedentary lifestyle and lack of stimuli which impacts on the physical and mental health of older prisoners (NSW Inspector of Custodial Services, 2015, p. 10). More recently, the AIHW (2018) found that 14% of prisoners aged 45 and over reported that their physical health had worsened over their time in prison, compared to 5% of prisoners aged 18-24.

As the NSW Inspector of Custodial Services noted, 'the majority of frail inmates have functional difficulties in the prison environment' (2015, p. 9). Safe mobility is a particular concern, 'due to the number of steps, uneven surfaces, steep gradients and narrow doorways' (NSW Inspector of Custodial Services, 2015, p. 9) and may be exacerbated as a result of changes in touch, balance and sight (see, eg, Morton & Anderson, 1982). Unfortunately, there are barriers in prison to the use of physical aids that could minimise risks. For example, walking frames and canes could be used as weapons – not necessarily by the older prisoner requiring the support – against staff, other prisoners or the older prisoners themselves, while grab rails and similar items could act as hanging points in suicide attempts (Trotter & Baidawi, 2015). In addition, the medication required by older prisoners could make them targets, as in prison their medications can be a highly valued commodity (Turner et al., 2018).

There are particular conditions which older prisoners can suffer from in comparison to their younger counterparts (Alzheimer's Australia, 2014; Baidawi et al., 2016; Crawley & Sparks, 2006; Grant, 1999; Kingston, Le Mesurier, Yorston, Wardle, & Heath, 2011; Stevens et al., 2018; Trotter & Baidawi, 2015). Dementia is a particular psychological condition that often goes undetected and untreated in prison, partly due to its chronic, rather than acute, nature, with the routine of prison life often concealing symptoms (Alzheimer's Australia, 2014; Baidawi et al., 2016; Office of the Correctional Investigator, Canada, 2019). For example, a study from the UK found that 15% of the surveyed older prisoner population 'showed signs of cognitive impairment, suggesting that there may be many asyet unnoticed cases of dementia in prisons' (Kingston et al., 2011, p. 1354). Undetected and untreated dementia can result in difficulty complying 'with prison rules, procedures and routines [and] an inability to comply ... may be misunderstood as defiance, which may lead to penalties' (Baldwin & Leete, 2012, p. 16). Dementia can also increase vulnerability and the risk of victimisation and may prevent prisoners from engaging in prison programs to keep them socially engaged, worsening their condition (Alzheimer's Australia, 2014; Trotter & Baidawi, 2015).

Turner and others have argued that older prisoners often need to be 'cared for' by the prison system, rather than 'controlled' (2018, p. 164). Research has acknowledged that older prisoners tend to be more compliant and easier to control than their younger counterparts, which means that there can be a common misconception that they are 'better adjusted to incarceration than younger prisoners' (Turner & Trotter, 2010; Her Majesty's Inspectorate of Prisons, 2004). However, Haugebrook, Zgoba, Maschi, Morgen, and Brown (2010), Baldwin and Leete (2012) and Haesen, Merkt, Imber, Elger, and Wangmo (2019) noted that older prisoners may have just as much, if not more, psychological trauma and mental health issues than their equivalents in the community and younger prisoners. Of particular concern are older prisoners entering prison for the first time, with Crawley and Sparks (2006, p. 343) finding that 'the stark contrast between their former lives and their present situation was a significant pain during the initial months of imprisonment'.

#### Prison in the ACT

We now move to the ACT to provide a discussion of the current prison population. The ACT opened its first adult prison, the Alexander Maconochie Centre (the AMC), in 2009.

It is the first and only prison in Australia designed and built to operate as a 'human rights' prison (ACTICS, 2019a, p. 25). The AMC houses male and female prisoners (known as detainees) at all classification levels (minimum, medium, maximum), sentenced and unsentenced (remand).

This discussion draws on publicly available information from the ABS, which does not distinguish between sentenced and remand prisoners; therefore, both groups are combined, even though their experiences could vary considerably. The discussion also focusses only on the needs and experiences of older men, although it is recognised that older women have particular needs (see Aday, 2006).

As noted in Table 1, there was an 82% increase in the number of elderly prisoners (defined as 50 and over) in Australia from 2009 to 2019 (ABS, 2019). The fast-growing number of older detainees in the ACT is of particular concern, as this increased by 239%, the largest increase in Australia (ABS, 2019; ACTICS, 2019a), although we acknowledge that the ACT also experienced the largest overall increase during this period.

It is unclear if the disproportionate increase in elderly prisoners is due to already incarcerated prisoners ageing or more older persons being sentenced to imprisonment (ACTICS, 2019a). However, ABS data (2019) reveals that, in the last decade, the number of sentenced detainees whose most serious offence was a sexual offence has increased by 105% in the ACT, with the number of older detainees sentenced for these offences increasing across all age groups, in particular, 65 and above, in the last five years. The RCIRCSA identified 63 claims of CSA from one ACT school, Marist College, Canberra, which was more than any other schools operated by the Catholic Church in the Catholic Church 'claims data' (2017b, p. 96). One of the perpetrators, John Chute, pleaded guilty to 19 historical offences in 2008 and, in his seventies, spent two years in custody and a further three years in an aged care facility (Byrne, 2019). According to the ACT *Corrections Management (Protection) Policy 2011*, those charged or convicted of sexual offences against children are accommodated in separate units and generally have reduced access to programs, activities, work and recreation for their own safety and wellbeing (ACTICS, 2019b).

In designing the prison, the 2005 AMC Functional Brief recognised the needs of older detainees, noting that 'the design of the AMC will have to take this into consideration, seeking design inspiration from aged care facilities and hospitals' (ACT Government, 2005, p. 7). In 2019, the *Healthy Prison Review of the AMC* found that there are some accessibility features of the AMC which require compliance with Australian standards for building and facility access, but recent overcrowding 'limit[s] the ability of ACTCS

Jurisdiction	Number of elderly prisoners, 2019	% increase in elderly prisoners since 2009	% in total prisoners since 2009
NSW	2004	78%	21%
VIC	1210	85%	86%
Qld	933	50%	73%
SA	784	232%	46%
WA	848	117%	57%
Tas	87	30%	30%
NT	181	141%	64%
ACT	61	239%	138%
Australia	5790	82%	47%

Table 1. Jurisdictional Data on Elderly Prisoners.

Source: ABS, 2009; 2019

[Correctional Services] management to ensure that older prisoners can have access to appropriate physical space' (ACTICS, 2019a, p. 97).

While some of the needs of older detainees at the AMC appear to be met, there continue to be challenges. For example, the *Healthy Prison Review of the AMC* observed a range of adaptive equipment provided by ACTCS to assist with daily life and that older detainees can have special dietary requirements catered for. However, the recreation program does not have activities specifically for older detainees, such as a low-impact strength and conditioning program (ACTICS, 2019b). In its earlier report, *The Care and Management of Remandees at the AMC*, the ACTICS raised concerns about top bunks in retrofitted cells having inadequate and/or inappropriate guard rails and ladders. Not only does this create a significant occupational health and safety risk, but also older detainees may be particularly vulnerable as a result (ACTICS, 2019a). The *Healthy Prison Review* also acknowledged that the AMC does not have a specific functional role responsible for detainees. The needs of this population appear to be dealt with as they arise through each functional area. For example, the Head of Accommodation is responsible for any physical accommodation needs, Detainee Services for programs and work matters and Justice Health for health needs (ACTICS, 2019b, p. 98).

Given the complexity of the AMC prison population, ideas such as the segregation of older detainees or the construction of nursing home-like prisons, which have been used in other jurisdictions (Alzheimer's Australia, 2014; Angus, 2015; Baidawi et al., 2016; Chu, 2016; Turner & Trotter, 2010) are unfeasible, especially given the current capacity issues (Burdon, 2019). In addition, this approach might leave older detainees socially isolated. Accordingly, we suggest that corrective services agencies, especially in smaller jurisdictions such as the ACT, should provide a case manager specifically for older detainees. The roles of this case manager could be twofold. First, to ensure that corrective services agencies are aware of the reliance that a sentencing judge might be placing on the corrections staff to administer support for an older offender's needs, as has been noted in recent ACT law (R v Stone, 2016; R v Djenadija, 2015). For example, the case manager could have access to the offender's pre-sentence report, which often contains expert testimony by medical practitioners about their particular health needs, how these have been addressed in the community and how they could be addressed in custody or any issues that could arise there (R v Djenadija, 2015). With this knowledge, the case manager could therefore ensure that the medical team and other staff are aware of older detainees' needs. The case manager could also be trained to address these needs, so that they do not go undetected (Alzheimer's Australia, 2014; Harrison, 2006). Furthermore, the case manager could be responsible for facilitating social and educational programs for older detainees. Successful examples from other prisons include therapy dogs, theatre productions, a pedometer program to encourage movement and establishing groups to reflect on the events of history they have partaken in (Harrison, 2006).

#### Conclusion

As Chief Judge Kidd noted when sentencing George Pell, for any older offender, the prospect of incarceration, coupled with their probable health needs, may be seen as 'an awful state of affairs' (2019, at [122]). As a result of the RCIRCSA, it is predicted that the coming years will see more perpetrators of CSA tried and sentenced for their crimes in Australia, thereby increasing the older male prison population. We note that 27% of the South Australian prison population in 2019 was aged 50 and over, highlighting the broad relevance of the issues identified in this paper. This is particularly salient in the context of the current pressures due to COVID-19, which have led to calls to release some prisoners, including elderly prisoners (ABC News, 2020).

In this paper, we considered some of the specific needs of older prisoners. We then moved to the specific challenges faced by the older prison population in the ACT, which increased by the largest proportion in Australia from 2009 to 2019. Finally, we suggested that an older prisoner case manager would best address the needs of this population. However, further studies are needed on the experiences of older prisoners, including lived experience perspectives and consideration of the specific experiences of female and Indigenous prisoners for accommodating these needs.

#### **Disclosure statement**

Isabella Jackson undertook the research for this paper as part of an internship with Prisoners Aid (ACT). Caroline Doyle is the President of Prisoners Aid (ACT). Lorana Bartels was previously a member of the Prisoners Aid (ACT) Management Committee.

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