



Victorian
Branch

*Submission to Inquiry into
Youth Justice Centres in
Victoria*

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Introduction

Who we are

The Australian Association of Social Workers (AASW) is the professional body representing more than 10,000 social workers throughout Australia. We set the benchmark for professional education and practice in social work and maintain a strong voice on matters of social inclusion, social justice, human rights and issues that impact upon the quality of life of all Australians.

The AASW acknowledges the Aboriginal and Torres Strait Islander peoples, the First Australians, and pays respect to their unique values, and their continuing and enduring cultures, which deepen and enrich the life of our nation and communities.

The social work profession

Social work is a tertiary-qualified profession recognised nationally and internationally that supports individuals, families, groups and communities to improve their wellbeing. Principles of social justice, human rights, collective responsibility and respect for diversity are central to the profession and are underpinned by theories of social work, social sciences, humanities and Indigenous knowledge.

Social workers practice in a diverse range of settings. Social workers consider the relationship between biological, psychological, social, cultural and spiritual factors and how they impact on a person's health, wellbeing and development. Accordingly, social workers maintain a dual focus in both assisting with and improving human wellbeing and identifying and addressing any external issues (known as systemic or structural issues) that may have a negative impact, such as inequality, injustice and discrimination.

Our submission

The AASW acknowledges that Victoria has been applauded both nationally and internationally for the enlightened and forward-thinking approach it has taken to youth justice reform in the past. This approach has consistently resulted in rates of youth offending that are significantly lower than the national average.¹

We have been dismayed at the recent incidents occurring within Victoria's key youth justice facilities, particularly as they have served to illuminate troubling policies and practices that run counter to ensuring a dynamic and responsive youth justice system. Furthermore, the government response and rhetoric has demonstrated an unsettling attitude toward a population that comprises some of our most vulnerable citizens.

In line with our *Code of Ethics*, the AASW submission is underpinned by a commitment to the principles and aspirations of the *United Nations Universal Declaration of Human Rights (1948)* and all relevant human rights instruments.

A rights-based approach to understanding the current and critical issues concerning youth justice centres in Victoria points to a significant failure to uphold Australia's obligations as a signatory to key international conventions and protocols, such as the *United Nations Convention on the Rights of the Child*, the *United Nations Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment and Punishment*. This also extends to Victoria's rights-informed legalisation including the *Charter of Human Rights and Responsibilities Act (2006)* and the *Children, Youth and Family Act (2005)*.

These instruments enshrine the right of all people to be treated with humanity, dignity and respect. Importantly, these rights also apply to those deprived of their liberty. Recognising that a significant

¹ Overall, T. (2 February 2017). Inquiry into Youth Justice Centres in Victoria Consultation. *Smart Justice for Young People presentation*. Me bourne.

proportion of those residing in Victoria's youth justice centres are children, and in line with the *United Nations Convention on the Rights of the Child* and the *Victorian Charter of Human Rights and Responsibilities*, special protection should be granted to these children with regard to both their age and their inherent vulnerability.

Our submission argues that although we acknowledge that a small cohort of children and young people present a significant danger to the community and that, under certain circumstances, detention within a youth justice centre may be necessary as a last resort, their status and rights as children ought to be a priority in both policy and practice.

Response

Our submission focuses on items 3, 4, 5 and 8 of the Terms of Reference for this inquiry.

3. Reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years

This submission will first discuss the factors contributing to the increase in numbers of children and young people on remand before turning to the implications of that increase.

3.a. Reasons for the increase in numbers of young people on remand in the last 10 years

The AASW notes with concern that, although the overall number of young offenders is declining, the number of children on remand in Victoria is unacceptably high, that the majority of those on remand are situated within youth justice centres and that the number of children on remand has been increasing steadily over the longer term.^{2 3 4}

The available evidence points to a number of possible contributors to this high and increasing number, and demonstrates a link between children and young people's involvement in the youth justice system and underlying vulnerabilities.⁵

There is a strong association between a child or young person's involvement in the child protection system and their subsequent participation in the youth justice system.⁶

We note that Victoria's child protection system has refined and strengthened its early intervention services through the introduction of Child FIRST and Integrated Family Services (IFS). We further note that the state government allocated \$48 million to family support and early intervention services under the Stronger Families banner, in the 2015–16 state budget.⁷

Nevertheless, the children and young people currently in Victoria's youth justice centres have been living with significant underlying vulnerabilities and unmet needs for many years. In a large number of cases, the issues in their individual and family circumstances would have been evident while they were in primary school, if not before. As they made the transition from vulnerable child to vulnerable young person, these issues have been compounded and become more entrenched. During the period of this

² Victorian Youth Parole Board, (2016). *Youth Parole Board Annual Report 2015-16*. http://www.dhs.vic.gov.au/_data/assets/pdf_file/0009/975942/Youth-Parole-Board-Annual-Report-2015-16.pdfhttp://www.dhs.vic.gov.au/_data/assets/pdf_file/0009/975942/Youth-Parole-Board-Annual-Report-2015-16.pdf

³ http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125/07_custodial_remand.html

⁴ Victorian Ombudsman, (2017). *Report on youth justice facilities at the Greenvale unit of Barwon Prison, Malmsbury and Parkville*. February 2017, p. 6. <https://www.ombudsman.vic.gov.au/getattachment/c6880f35-3cf3-4237-b463-9be28db448c8>

⁵ Richards, K. & Renshaw, L. (2013), *Bail and remand for young people in Australia: A national research project*. Australian Institute of Criminology Research and Public Policy Series. http://www.aic.gov.au/media_library/publications/rpp/125/rpp125.pdf

⁶ *Youth Parole Board Annual Report 2015-16*.

⁶ Victorian Ombudsman, (2017)

⁷ Victorian Department of Health and Human Services, (2016). *The Roadmap for reform: Strong families; safe children will achieve the best possible outcomes for children and their families, now and in the future*. <http://strongfamiliesafechildren.vic.gov.au>

transition the early intervention system has been under considerable strain. In 2015, the Victorian Auditor General's Office conducted a review of Victoria's Early Intervention Services. The report concluded:

*Child FIRST and IFS are failing to provide effective services for vulnerable children and families. The increasing number of high priority cases has made IFS less available to families who are 'at risk' and qualify for an early intervention response, and to professionals seeking to refer vulnerable children and families.*⁸

The report calls for an 'urgent and comprehensive' review of Victoria's approach to early intervention.⁹

In our view, Victoria's approach needs to incorporate an expanded perspective on early intervention. The approach to early intervention currently used by the service system concentrates on the *early years of the child*. By contrast, 'early intervention' can also be understood to refer to *'early in the trajectory of a need'*.¹⁰

Bearing this distinction in mind, the relationship between involvement in the child protection system on the one hand and involvement in the juvenile justice system on the other becomes more compelling. Recently, clear evidence has emerged that abuse and neglect that either commences in childhood and continues into adolescence, or commences in adolescence is strongly associated with subsequent involvement in the youth and adult justice systems.¹¹ Indeed, a direct line can be drawn between experiences of abuse and neglect in adolescence and admission into remand.

There are three aspects to this relationship. The first is that children and young people who are in the child protection system and have been placed in residential care (such as a staffed residential unit) are more likely to become involved in the youth justice system than are children and young people who still live with their families. In the view of many of our members who work with children and young people in out-of-home care, difficult and antisocial behaviour on the part of children and young people in residential care can be understood as a reaction to trauma and can be linked to their lack of safety and stability. Nevertheless, staff members in residential care facilities are responsible for all children and young people in that facility. Therefore, staff members are more likely to call in the police than family members are; and there is a greater likelihood that charges will be laid against the child or young person.¹² This dynamic has been documented in other states, where random selection of files in the Children's Court demonstrated that a third involved children or young people currently or recently in out-of-home care when the charges were laid and that the most common charge related to damage of property.¹³

The second element of this relationship is that once a child or young person who is in residential care comes into contact with the youth justice system they are treated differently from other children or young people, which regularly results in them progressing further into the system. The vulnerabilities that have precipitated a child or young person's contact with the youth justice system may be the very vulnerabilities that render them more likely to be remanded in custody rather than released on bail or referred to alternative diversionary programs. They often have fewer social supports, weaker ties to education or employment, less stable accommodation, as well as an ambiguous relationship with their families. All of these factors make it less likely that they will be granted bail and more likely that they will be remanded into a youth residential or youth justice centre.

⁸ Doyle, J. (2015). *Early intervention services for vulnerable children and families*. Melbourne: Victorian Government.

⁹ *ibid.*

¹⁰ Cashmore, J. (2011). The link between child maltreatment and adolescent offending. *Family Matters* (89), 1–23.

¹¹ *ibid.*

¹² *ibid.*

¹³ Cashmore (2011)

Finally, a large proportion of young people graduate out of residential care without adequate supports. Much has been written about the woefully inadequate arrangements for housing, health, education and income that are made for these young people when their status changes on their 18th birthday.¹⁴ Many young people leave residential care with low levels of educational attainment, insecure housing arrangements, and inadequate income. Although homelessness is not in itself a reason to be refused bail, in the case of a young person who has been in residential care, it is often accompanied by poorer social and community supports, and these are the factors that have a bearing on the outcome.¹⁵

3.b. The effects of the increase in the number of young people on remand in the last 10 years

Custodial remand has a significant negative impact on children, young people and the wider community. Research has described remand 'as one of the most taxing and unstable prison experiences'.¹⁶ While on remand, undeniably a time of significant vulnerability, children and young people may find themselves disconnected from many, if not all, support networks that may have existed prior to their detention and may also have limited access to programs, in particular therapeutic programs, that might serve as a support during this critical period.

The deprivation of liberty and the uncertainty associated with the outcome of their case are likely to be very unsettling and may further compromise existing vulnerabilities and precipitate behavioural issues. For these reasons, remand is highly likely to compromise the mental health of the child. There are also certain cohorts that may be particularly negatively impacted by their experience of detention on remand.

Overcrowding has been identified as one of a number of contributing factors to recent high profile incidents within Victorian youth justice centres. High numbers of children and young people situated within unsuitable and outdated detention facilities compromises the safety and security of the children and young people themselves, but also the staff operating within the facilities. In 2010, and more recently in February 2017, the Victorian Ombudsman expressed concern about the suitability of Parkville as a custodial facility for vulnerable children.¹⁷

The negative consequences may extend beyond the period of remand itself. Research suggests that young offenders on remand are more likely to receive a custodial sentence than their bailed counterparts and that they are more likely to receive a remand period following a future court appearance.¹⁸

We acknowledge that conditions for those on remand have been further compromised by the damage to the Parkville facility in November 2016 that is attributed to the behaviour of children and young people detained therein.

¹⁴ McDowall, J. J. (2011). *Transition-from-care planning in Australia: An evaluation of CREATE'S 'What's the plan?' campaign*. Sydney: CREATE Foundation.

¹⁵ *ibid.*

¹⁶ Youth Parole Board (2016)

¹⁷ Victorian Ombudsman (2017)

¹⁸ Kellough & Wortley (2002) quoted in Richards & Renshaw (2013)

4. Implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning in relation to –

a. the likelihood of reoffending;

b. the implications of separating young people from their communities and cultures

The children and young people incarcerated in our youth justice centres are a stark reminder of the consequences of a failure to invest in the protection of children and youth more broadly. The current conditions in youth justice centres here in Victoria only serve to further marginalise and damage highly vulnerable children and young people. Compounding past trauma and neglect can only compromise community safety in the long term. Additionally, it is widely acknowledged that exposure to other children and young people who are involved in criminal activity and acclimatisation to a prison-like environment have a potential criminogenic effect.

We are particularly concerned at the well-documented implementation of a regime of measures, some used in an expressly punitive manner, including the excessive use of isolation, separation and lockdowns within youth justice centres in Victoria.¹⁹ The use of force or punishment is antithetical to a therapeutic approach and risks perpetuating or exacerbating the child or young person's existing vulnerabilities.

These actions appear to be in direct contravention of a number of key human and children's rights instruments. In 2011, the UN Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment expressly recommended the abolition of the use of solitary confinement of any duration for juveniles.²⁰

The AASW is deeply concerned about the ongoing over-representation of Aboriginal and Torres Strait Islander children and young people in the child protection and youth detention system. The Australian Institute of Health and Welfare's December 2015 report on youth detention states that across the country, 54 per cent of juvenile detainees between the ages of 10 and 17 are of Aboriginal or Torres Strait Islander descent.

Specific programs are needed to address the complex needs of Indigenous and other culturally diverse children who continue to be over-represented in child neglect and abuse referrals and investigations. These programs need to acknowledge and respond systemically to the range of issues impacting on Indigenous children and families that result in significant social and economic disadvantage. These include housing, education, health, employment, intergenerational trauma including trauma caused by policies of forced removal and adoption, and drug and alcohol issues.

The implications of separating Aboriginal and Torres Strait Islander children and young people from their families, communities and culture are significant and enduring. In many cases their experience in the child protection system has resulted in separation from extended family and culture and has left the young people with residual trauma and grief. Many of these young people are living with mental health and drug and alcohol issues, either in response to or compounded by their experiences in child protection.²¹

¹⁹ Victorian Ombudsman (2017)

²⁰ Youth Affairs Council Victoria. (2016). *Isolation, separation and lockdowns in youth justice centres: A submission to the inquiry by the Commission for Children and Young people from Youth Affairs Council Victoria*. Melbourne: The Youth Affairs Council of Victoria Inc.

²¹ Youth Affairs Council Victoria (2016)

We note that the most recent report of the Victorian Youth Parole Board states that it plans to implement a trauma-informed approach to working with children and young people in youth justice centres, and we recommend to the Inquiry that this occur without further delay.²²

5. Additional options for keeping young people out of Youth Justice Centres

The AASW's position is that two key responses are required to keep children and young people out of youth justice centres.

The first is an extension of the existing early intervention services for vulnerable children and young people to incorporate a specialist response for adolescents and young people who are experiencing abuse and neglect. This service should be accessible from the existing universal service platforms, such as schools and general practitioners, who can play an important role identifying adolescents whose behaviour or emotional state suggests underlying vulnerabilities.

Many of our members already conduct specialist expert interventions with vulnerable children and young people. The experience of our members is that services, to be effective, need to be individualised, holistic, intensive, sustained, based on relationships and culturally-informed. Most importantly, effective services privilege the voice of the child or young person as an active participant in the design and delivery of the response.

Our members' experience has also shown that the solutions to the current situation extend beyond the level of service delivery and require complementary changes to the way services are funded and organised. Our members have raised concerns that the various sectors within government and non-government services still work in 'silos' when it comes to the crossover between health, education, child protection and youth justice. A more collaborative approach can be supported by the government by recognising, resourcing and rewarding services which 'wrap-around' the child or young person. The government can embed collaboration into all services by simultaneously establishing mechanisms for cross-sector planning and shared accountability for outcomes.

The second is an extension of the existing diversion programs that aim to direct children and young people away from the youth justice system. To effectively address the young person's needs these services will share the characteristics described above. They will need to be activated at the first point at which a child or young person comes into contact with the youth justice system, and should continue to provide intensive support for the child or young person long enough for the therapeutic elements of the response to take effect.

The AASW supports initiatives that allow Aboriginal and Torres Strait Islander children and young people to remain connected with their kin and community, such as the strategies outlined by the Healing Foundation (2013). These address the removal of Aboriginal and Torres Strait Islander children and from their families and communities, by:

- recognising and protecting the rights of Aboriginal and Torres Strait Islander people and communities to self-determination and the maintenance of spiritual and cultural practices;
- systemic and whole-of-life approaches to tackling economic and social disadvantage;
- significant investment in early intervention and prevention and targeted family support as a representative proportion of child protection expenditure;
- working in partnership with Indigenous organisations and communities; and
- a long-term community development approach.

We draw the Inquiry's attention to the variety of such diversion initiatives that have been operating in

²² Youth Parole Board (2016)

Victoria, many of which have demonstrated their effectiveness.²³ We are disappointed that the policy and funding environment has not adequately supported these initiatives and they have been available to a minority of the young people who could benefit from them. We call on the government to adopt a systematic approach to these services: to broaden their availability across the state, to extend the range of programs available, and to guarantee their funding into the future.

We are optimistic that the findings of the current *Review of youth support, youth diversion and youth justice services*, commissioned by the Department of Health and Human Services, will provide a framework for reforming the system with a view to ameliorating the existing challenges and establishing a progressive and humane youth justice system. We trust that the findings of other relevant inquiries such as the *Inquiry into the use of isolation, separation and lockdowns in youth justice centres* and the *Federal Settlement Outcomes Inquiry* will positively contribute to this important task.

8. Any other issues the committee consider relevant

Given the emphasis on treatment and support that characterises the AASW's recommended approach, it is logical that policy and programs for this group of children and young people should remain the responsibility of the Department of Health and Human Services. We are deeply disappointed at the recent decision to transfer management of the youth justice system to the Department of Justice and Regulation. We call on the government to reverse forthwith the recent decision that transferred responsibility to the Office of Corrections.

We also call for the government to show leadership in ensuring that a balanced and nuanced picture of youth offending is portrayed within the media and wider community. A focus on exposing and addressing the root causes of youth offending rather than the demonisation of children and young people should be a priority. It is critical to acknowledge that there is a distinct developmental and cognitive difference between children/young people and adults.

Conclusion

The AASW has grave concerns for the wellbeing of children and young people currently detained in youth justice centres in Victoria. While the government is charged with the unenviable task of responding to the challenges posed by these children and young people, they also have a duty of care to ensure the wellbeing of these individuals. It is in everyone's interest that children and young people who enter the youth justice system are supported and rehabilitated thereby enhancing their life chances and contributing to a safer community.

We are of the view that the recent use of isolation, separation and lockdowns amounts to cruel, inhumane and deeply unethical treatment of children and young people. Such treatment flies in the face of the available evidence and represents a gross breach of our international convention and treaty obligations.

We unequivocally oppose the detention of children in adult prisons under any circumstances. An adult prison is no place for a child.

We are concerned that Victoria, in line with all other Australian states and territories, is in breach of the recommendation by the UN Committee for the Rights of the Child that the minimum age of criminal responsibility should be 12 years.²⁴ The detention of children as young as 10 years of age within our

²³ Smart Justice for Young People, 2014 *Diversions Factsheet*. http://www.smartjustice.org.au/cb_pages/files/SJFYP%20Diversions%20fact%20sheet%20July%202014.pdf

²⁴ UNICEF (2016) *CRC25 Australian Progress Report*. <http://www.unicef.org.au/Upload/UNICEF/Media/Documents/CRC25-Australian-Progress-Report.pdf>

youth justice centres runs counter to the available evidence and international norms.

We call on the Victorian Government to demonstrate their commitment to a rights-based youth justice system by advocating at the national level for the Australian Government to take all necessary steps, in a timely fashion, to ratify the *United Nations Optional Protocol to the Convention against Torture and other forms of Cruel, Inhuman or Degrading Treatment or Punishment*. We support the view held by the Law Institute of Victoria that ratification of this particular Optional Protocol would provide:

*...a valuable opportunity to create a regulatory system that supports a therapeutic approach to youth justice and would enable organisations involved in detention management and oversight to share best practices in managing the children and young people in their care.*²⁵

Finally, we welcome the opportunity to contribute to reform of the youth justice system to enshrine a humane, trauma-informed, evidence-based, child-centred approach.

²⁵ Law Institute of Victoria, (2016). *Ratifying OPCAT in the Context of Youth Detention*. 14 June 2016. https://www.liv.asn.au/getattachment/95934b33-c097-4893-bff9-410079be8f29/20160610_LIVSubmission_RATIFYING-OPCAT-IN-THE-CONTEXT-OF-YOUTH-DETENTION_final.pdf.aspx



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