

Inquiry into Youth Justice Centres in Victoria

APS Response

March 2017

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**Some of the content of this submission may cause sadness
and/or distress to the reader**

Summary of Recommendations

The Australian Psychological Society makes the following recommendations in response to the Terms of Reference:

1) Indigenous culture and culturally and linguistically diverse backgrounds

- Any proposal to reform the law, policies and procedures, and management processes must be cognisant of the culture of Indigenous Australians and those from culturally and linguistically diverse backgrounds
- Reform must consider that for Aboriginal and Torres Strait Islander people, health is holistic and encompasses mental, physical, cultural, and spiritual health
- The law should recognise that all detainees have the same right to access, equity and quality of health care as the general population
- Institutional racism must continue to be addressed through on-going strategies to reduce racism at a whole-of-society level.

2) Law reform

- The Victoria Government should adopt a human rights framework regarding disciplinary regimes in youth justice facilities and restrict the use of force or restraint in juvenile detention facilities.

3) Model of care

- Youth detention facilities must be culturally appropriate, family inclusive and trauma-informed.

4) Policies and procedures: Screening, assessment and care

- There should be appropriate protocols for screening and assessing young people upon entering detention facilities (and on-going monitoring) in order to plan the appropriate interventions and address potential issues of risk. This should include a structured assessment of risk for re-offending and also level of risk of harm to self and others. Additional assessments should include:
 - Physical and mental wellbeing
 - Substance use
 - Cognitive, language and communication difficulties
 - Life experiences with a focus on trauma and appropriate cultural assessments
 - Assessment should be conducted by appropriately qualified practitioners
 - There must be protocols in place for access to treatment for young detainees with physical/mental health concerns. This treatment should be evidence-based and delivered by appropriately qualified health professionals.

5) Quality interventions for behaviour management

- The Victorian Government should implement behaviour management policies in youth detention facilities that are underpinned by evidence of their effectiveness, such as Positive Behaviour Support.

6) Reform of oversight measures and safeguard

- All Victorian youth detention facilities must continue to be exposed to regular and rigorous oversight by independent authorities
- Rigorous legislation and policies be strengthened to protect whistleblowers, both

internal and external

- Ongoing education is provided to staff about bullying and harassment, both staff-detainee and staff-staff.

7) Suitability of officers working in youth detention system

- The criteria for employment should include capacity to understand trauma and its impact on individuals, and ability to acknowledge and demonstrate respect for people from other cultures
- Recruitment policies are reformed to allow for comprehensive screening of staff.

8) Staff education and training

- All staff receive on-going mandatory (not one-off) cultural responsiveness training and there is regular monitoring of the application of cultural responsiveness within each organisation. Training should be provided by appropriately qualified individuals and be relevant to the context of young people in detention who are likely to have a history of trauma and mental health disorder. The Australian Indigenous Psychologists Association (AIPA) cultural responsiveness training is an example of a program specifically targeted to people working with such individuals. A key resource for staff working in youth detention centres should be the book: *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*
- Staff undertake mandatory and on-going training in the delivery of culturally-appropriate trauma-informed care
- Staff receive appropriate mandatory and on-going training in Positive Behaviour Support and are up-skilled in the delivery of effective de-escalation techniques
- Staff complete mandatory training in mental health first aid
- Staff with the appropriate competencies are trained to undertake dynamic risk assessments to reduce the subjectivity of risk assessment, particularly in regards to future violence
- Leaders within facilities undertake leadership training and mentoring, including values-based leadership and training in giving feedback on the identification and management of ethical dilemmas.

9) Interventions to address risk factors and strengthen protective factors

- Prevention strategies should address risk factors and strengthen protective factors across the community to reduce the initial onset of offending among at risk children and families
- There must be increased diversion of funds for imprisonment to local communities where there is a high concentration of offenders to address the underlying causes of crime (justice reinvestment policy)
- Early intervention should also focus on improved access to evidence-based culturally appropriate mental health care for young people. Treatment of mental health issues should be occurring before incarceration is required
- Interventions should include:
 - A mechanism for coordinating multiple services
 - Attention to behavioural, cognitive and social skills
 - Counselling and mentoring
 - Evidence-based mental health treatment include psychological interventions
 - Restorative justice programs, and
 - Family and parent training programs.

1. Introduction

The Australian Psychological Society (APS) is the largest professional association for psychologists in Australia with over 22,000 members and has a long history of working with government, various Parliamentary Inquiries and Royal Commissions to provide expert psychological advice and support in meeting the needs of vulnerable populations.

About this submission

This submission is a whole-of-organisation response developed by the APS that addresses the relevant Terms of Reference for the Victorian Parliamentary Inquiry into Youth Justice Centres in Victoria (the Inquiry). Members' views were sought for the Inquiry and are reflected in the submission. The APS encourages the Inquiry to consider engaging with psychologists to obtain information about access to appropriate and best practice services and the conditions under which such services should be delivered to young people in detention in Victoria.

Given the expertise of psychologists and the APS, the submission provides an evidence-based/best practice response to Terms of Reference 3, 4, 5 and 6 as follows:

3. *reasons for, and effects of, the increase in the numbers of young people on remand in the last 10 years;*
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;*
5. *additional options for keeping young people out of youth justice centres;*
6. *the culture, policies, practices and reporting of management at the centres.*

The APS is not in a position to provide information on the nature of the events that have taken place in Victorian youth detention facilities during the relevant periods of time. Rather, the APS will provide responses to the relevant Terms of Reference, in terms of what best practice medical, psychiatric, and psychological care for young people in detention should look like.

The APS acknowledges the Law Institute of Victoria for its recommendations in its submission to the Inquiry, noting that they are broadly consistent with those of the APS as follows:

In the submission the LIV makes a number of recommendations, including more investment in early intervention, prevention and justice reinvestment and more use of diversion and other alternatives to remand and sentencing. It also calls for trauma-informed management, better responses to the needs of Aboriginal and Torres Strait Islander young people, reform of behaviour management practices in residential care, expediting cases of young people refused bail to reduce length of stay on remand, and the use of evidence-based programs to reduce recidivism,

particularly targeting high-risk, high-volume offenders.¹

Model charter of rights for children and young people detained in youth justice facilities

The Australian Children's Commissioner and Guardians model charter of rights for children and young people detained in youth justice facilities² emphasises the importance of access to mental and physical health services. It also acknowledges that for many young people, being in custody provides the opportunity to better understand personal health and wellbeing, for example, learning to recognise symptoms and know when to see a health professional.

The Charter includes the following health-related rights:

- To be treated equally, and not treated unfairly because of your sex, sexuality, race, religion, disability or other status
- To be treated with respect and dignity by staff and to be kept safe while you are in the youth justice centre
- To be given a copy of the rules of the centre, and information about your rights and responsibilities, in a language that you can understand
- To see a doctor or nurse whenever you need to, and to receive proper healthcare
- To receive help for your mental health if you need it, and to be transferred to a mental health facility for treatment if required
- To get help if you have problems with drugs or alcohol
- To have special care and protection if you are vulnerable or have special needs
- To have regular contact with your family and friends through visits and phone calls
- To have an interpreter for formal meetings or medical examinations if you are not fluent in English
- To have a say in decisions about your rehabilitation and other issues that affect you
- To participate in activities and programs that help your rehabilitation
- To get exercise every day, and to go outside every day except in bad weather
- To have enough good food (including food that is suitable for your culture or religion, or dietary requirements), and to have drinking water available whenever you need it
- To have clean clothes, and to wear your own clothes if you go out of the centre.

Implementation science

The good intentions of the Victorian Government to reform youth justice in the past have perhaps lacked attention to how difficult it is to get systems and individuals to change. Helping to understand the significance of successful implementation is the emerging field of 'implementation science', which is:

the study of methods to promote the use of integration of research into policy and practice. It is relatively new and emerging field of study in juvenile justice. Over the last few decades there has been a steady growth in the number of evaluations examining the effectiveness of juvenile justice programs and practices that seek to reduce criminal behavior and improve the lives of youths. However, there has not been a parallel growth in research examining methods to implement programs and

¹ Law Institute of Victoria, Media Statement, 6 March 2017: <https://www.liv.asn.au/Staying-Informed/Media-Releases/Media-Releases/March-2017/Understaffing-and-overcrowding-causing-unrest-in-y>.

² Australian Children's Commissioners and Guardians. *A model charter of rights for children and young people detained in youth justice facilities*. <https://www.humanrights.gov.au/our-work/childrens-rights/projects/model-charter-rights-children-and-young-people-detained-youth>.

practices into everyday settings. This research-to-practice gap presents a problem for policy makers and practitioners who may want to implement evidence-based interventions in their jurisdictions, but do not have sufficient information to do so. Implementation science is focused on bridging the gap between what research has shown to work and what is actually practiced. The ultimate goal of this emerging field of study is to improve the processing, supervision, rehabilitation, and treatment of risk at-risk and justice-involved youth by using research that shows what works.³

Successful implementation of any changes to the Victorian youth justice system will be critical.

2. Response to Terms of Reference Number 3

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

Numbers of young people on remand (unsentenced detention) in Victoria

The Australian Institute of Health and Welfare⁴ has reported that for the year 2014-2015 that whilst the number of young people in Victoria unsentenced⁵ detention increased on an average day (see figure below) the number of young people in sentenced detention on an average day declined.

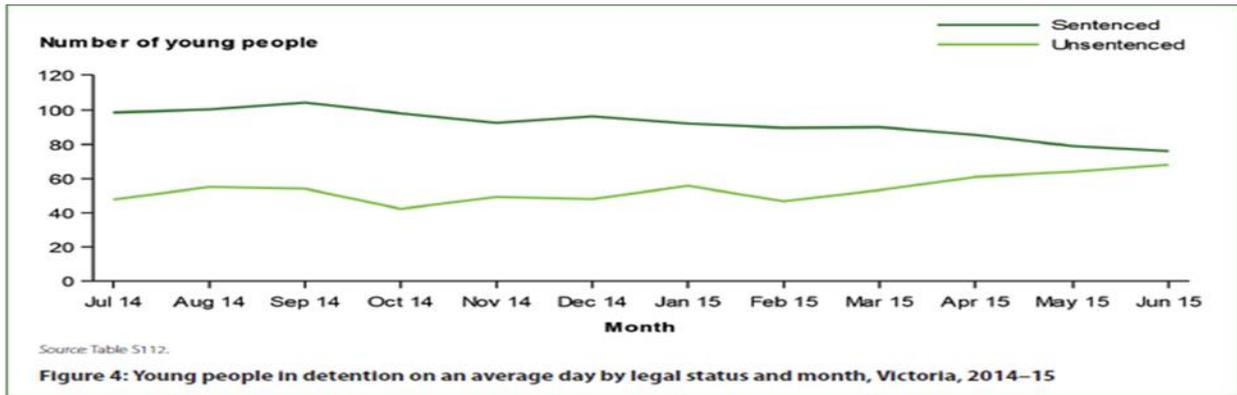
The number in sentenced detention on an average day was highest September 2014 at 104 young people, before steadily declining to 76 in June 2015. The number in unsentenced detention was lowest in October 2014 at 42 young people, before rising to 68 in June 2015.⁶ See figure below.

³ https://www.ojjdp.gov/mpg/litreviews/Implementation_Science.pdf and see also Damschroder, L.J., Aron, D.C., Keith, R.E., Kirsh, S.R., Alexander, J.A., & Lowery, J.C. *Fostering implementation of health services research findings into practice: a consolidated framework for advancing implementation science*. *Implementation Science* 2009, 4:50 doi: 10.1 186/1748-5908-4-5, 7 August 2009.

⁴ AIHW 2016. Victoria: youth justice supervision in 2014-15. *Youth Justice Sact sheets no. 62_*. Cat. No. JUV 82. Canberra. Viewed 2 February 2017: <http://www.aihw.gov.au/WorkArea/DownloadAsset.aspx?id=60129554899>

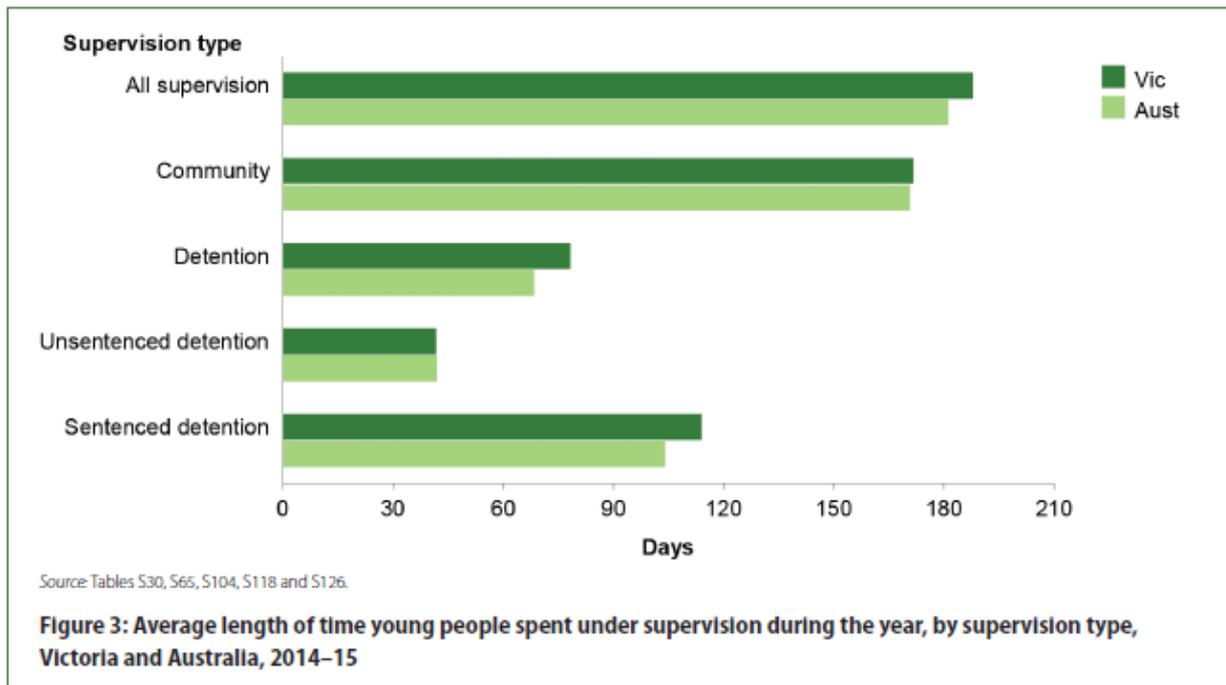
⁵ Young people may be under supervisions when they are unsentenced. That is, when they have been charged with an offence and are awaiting the outcome of their court matter, or when they have been found guilty or pleaded guilty and are awaiting sentencing.

⁶ *Ibid*, page 4.



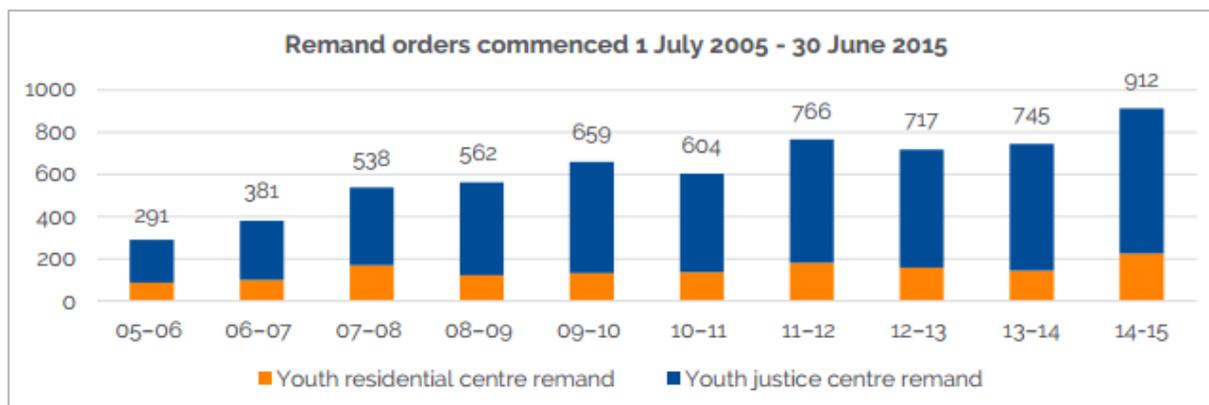
The AIHW also reports that recent trends in the 5 years (see figure below) from 2010 to 2011 to 2014-15 were that:

The majority (63-79%) of young people in detention in Victoria on an average day were sentenced. Overall, the size of the sentenced population decreased over the 5 year period, with the largest decrease among sentenced Indigenous young people. There were 36-54 young people in unsentenced detention on an average day each year.⁷



⁷Ibid, page 4.

The table below illustrates in the Victorian context, the dramatic rise in remand orders in the previous 10 years.



Aboriginal and Torres Strait Islander young people

Aboriginal and Torres Strait Islander young people have a long history of over-representation in both the youth and adult justice systems in Australia. In Victoria, Indigenous young people constitute only 2% of the state's population aged 10-17 but made up around 15% of those aged 10-17 under supervision on an average day in 2014-15. This was substantially lower than the national result (46%).⁸

Reasons for and effects of the increase in numbers of young people on remand

The reasons for and effects of the increase in numbers of young people on remand (or unsentenced detention) in the last 10 years is complex. APS is of the view that further research is required to understand these causes further. Research could include the following:

- Longitudinal studies to determine the reasons young people offend, including school attendance rates, job and training opportunities
- Drug use and interrelationship with offending, particularly violent offences
- Rates of recidivism after a young person has served a period of time in detention (whether that time was unsentenced or sentenced detention) to consider link between this and reoffending
- A scoping research project that analysis the changing nature of who amongst the population of young people are committing crimes and the nature of those crimes.

A 2015 paper by the Jesuit Social Services examined the issue of the increased remand of young people in Victoria.⁹

⁸ *Ibid*, page 3.

⁹ Jesuit Social Services. *An escalating problem: Responding to the increased remand of children in Victoria*, October 2015: http://jss.org.au/wp-content/uploads/2016/01/An_escalating_problem_-_Responding_to_the_increased_remand_of_children_in_Victoria.pdf.

In 2014 and 2015 the number of children held on remand in Victoria has dramatically increased, including a significant increase in children under 15. This is being driven by reforms to the Bail Act in December 2013 that imposes the same conditions and restrictions on children as are applied to adults.

Failing to distinguish between children and adults in this way puts Victorian practice out of step with the core principles of the *Children Youth and Families Act 2005* to act in the best interests of children and to use prison only as a last resort, and is also inconsistent with our international commitments under the UN Convention on the Rights of the Child.¹⁰

The Jesuit Social Services paper goes on to explain when a young person can be placed on remain in Victoria as follows:

How the police decide to deal with a child who has allegedly committed a criminal offence directly affects their risk of remand. Where police issue a caution or commence proceedings by issuing a summons, the question of bail or remand will not arise. However, where police choose to arrest and charge a child, decisions over whether or not to grant bail or remand must be made. A child can be placed on remand (i.e. refused bail) after being arrested by police in relation to a suspected criminal offence, before entering a plea, while awaiting trial, during trial or awaiting sentence.¹¹

Other contributing factors to the increased rates of demand are explored in the Jesuit Social Services paper and it is suggested that they include the following:

- Changes in police practice – which coincided with changes to the Bail Act, with police issuing more summons and more strictly policing bail
- Responses to children in out of home care who are vulnerable to being placed on remand
- Inadequate availability of suitable accommodation and other supports:

The Victorian Sentencing Advisory Council (2012) report into the sentencing of children and young people describes how practical difficulties such as lack of appropriate accommodation can influence bail and remand decisions. The report highlights how factors such as mental health issues, intellectual disability, family violence, substance abuse issues, and limited family support contribute to young people being placed on remand rather than granted bail. Further the report finds that Youth Justice staff at the Melbourne Children's Court experience difficulty finding residential unit vacancies for young people awaiting trial or sentence.¹²

- Uneven access to diversion, bail support and assessment.

Other possible drivers of custodial remand for young people as outlined by the Australian Institute of Criminology¹³ include the following:

- Domestic violence offences and some jurisdictions, where police do have discretion to

¹⁰ *Ibid*, page 2.

¹¹ *Ibid*, page 2.

¹² *Ibid*, page 4.

¹³ Australian Institute of Criminology: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125/10_drivers.html.

refuse bail

- Young people are committing more (or more serious offences)
- Increasingly complex needs of young offenders in trouble with the law
- Homelessness and related accommodation issues
- Young people not applying for bail
- Lack of access to legal representation
- Judicial attitudes
- Punitive community attitudes
- Court delays as increase in the length of court proceedings may increase the length of time young people spend on custodial remand
- Difficulties locating 'responsible adults' to support young people's bail applications
- Pre-court decisions made by police and prosecutors
- Breaches of bail
- Risk aversion
- The influence of victims' rights advocacy
- Inappropriate and/or arbitrary use of bail conditions
- Policing performance measures
- Policing practices
- Administrative errors
- Lack of access to services/programs.

Effects of, the increase in the numbers of young people on remand

The effects of more young people being held on remand include higher costs to the community as follows:

both in terms of the financial cost of remand but also the costs to the community when young people are more likely to go on to reoffend. The rising rates of remand places pressure on youth detention facilities, police, courts and custodial services in general. The Victorian Government estimates that it currently costs approximately \$528 a day to keep a young person in a youth justice facility, compared to approximately \$52-54 a day for community based supervision.¹⁴

The Australian Institute of Criminology¹⁵ summarises the impacts of custodial remand on young people as follows:

Adverse effects for young people include:

Separation from family and community. Youth detention centres are often far from young people's homes, limiting family and friends' capacity to regularly visit young remandees (NSW LRC 2012). Moreover, custodial remand involves removing the young person from their usual social support structures at a time of vulnerability, thereby increasing the risk of potential physical and psychological harm to the young person (Mazerolle & Sanderson 2008). For example, young people in remote areas of Western Australia face 'severe and potentially traumatic' impacts if they are remanded in custody, as they are often 'transported great distances to be held in adult facilities or placed in the Perth remand centre' (Clare et al. 2011: 31; see also Bailey 2009; Brignell 2002);

¹⁴ *Ibid*, page 5.

¹⁵ Australian Institute of Criminology: http://www.aic.gov.au/publications/current%20series/rpp/121-140/rpp125/05_introduction.html.

Disruption to education and employment (Bailey 2009; NSW LRC 2012). Young people who are engaged in schooling and/or employment have these disrupted when placed on custodial remand. This is concerning given the strong protective role that engagement with school and employment can play in reducing young people's offending;

Association with sentenced young offenders (Bailey 2009). This may have a criminogenic effect and result in young people creating delinquent peer groups, which in turn may result in offending in the future (Brignell 2002; Ericson & Vinson 2011). Gatti, Tremblay and Vitaro's (2009) longitudinal study of male young offenders in Montreal, Canada, demonstrates the criminogenic influence of youth justice interventions on criminal behaviour. This study compared the occurrences of further criminal activity into adulthood with the participation of young males in various levels of youth justice interventions. It was concluded that although contact with any intervention increased the likelihood of further criminal activity into adulthood, the negative impacts increased with the level of severity of the intervention. This issue is particularly concerning in very small jurisdictions in Australia, as sentenced and remanded young people are not always separated in detention due to the very small number of young people detained;

Being inappropriately held in police lockups or facilities that are not designed to meet the needs of young people (Auditor General For Western Australia 2008; NT Government 2011; Stubbs 2010); this is particularly the case for young people who live in regional, rural or remote areas (Auditor General For Western Australia 2008);

Not being able to access therapeutic programs. As the Queensland Commission for Children and Young People and Child Guardian's (2011) research found, therapeutic programs, which address young people's criminogenic needs and are an important corollary to educational and recreational programs, are usually only accessible to sentenced young people. Criminogenic needs are broadly recognised as risk factors for offending that are 'dynamic or amendable to change through intervention' (Day, Howells & Rickwood 2004: 2). Examples for young people include '...drug and alcohol use, anger and violence problems, and beliefs or attitudes that support offending' (Day, Howells & Rickwood 2004: 2). As Mazerolle and Sanderson (2008: 10) argue (see also NT Government 2011):

it is difficult to plan and provide appropriate programs for these [remanded] individuals, as detention centre staff do not know how long they will be detained or what the outcome of their charge will be;

Being more likely to receive a remand period following a future court appearance. Mazerolle and Sanderson's (2008) Queensland study showed that past remand experiences strongly influenced the chance of receiving remand for subsequent court appearances. This is unsurprising as prior remand episodes are included in Queensland's bail legislation as an important consideration for evaluating the risk of reoffending; and

Being more likely to be given a sentence of incarceration than young people who received bail. As Kellough and Wortley (2002: 187) claim (see also Allan et al. 2005):

even when type of charge and prior criminal record are controlled for,

research shows that offenders who are remanded in custody before trial are more likely to be sentenced to a period of incarceration than their bailed counterparts.¹⁶

The Australian Institute of Criminology report highlights other important considerations in the adverse effects of increased numbers of young people on remand as follows:

This is particularly concerning given that research has shown that very poor people and people from ethnic minority groups are more likely to be remanded in custody than others (Ericson & Vinson 2011; Kellough & Wortley 2002). Kellough and Wortley (2002) argue that remandees may feel pressured to plead guilty for a variety of reasons (e.g. not wanting to serve 'dead time' or believing they will receive a discount for time already served) and that this may explain higher rates of incarceration among remandees. It could also be a result of the limited ability to prepare for court appearances that being remanded in custody places on young people (Bailey 2009). In addition those on remand have fewer resources to prepare their defence, they may make a less favourable impression when they appear in court (they will probably be less well dressed and have experienced a loss of morale). They also miss the opportunity to impress the court by showing that they have met their bail conditions and appeared in court (Brignell 2002: np; see also NSW Law Reform Commission 2012).¹⁷

The Australian Institute of Criminology report also questions the primary reason for remand for young people is often community safety:

Vignaendra et al.'s (2009) study on the remand of young people in New South Wales found no statistically significant relationship between rates of youth property crime and an increase in the use of custodial remand for young people. While this research suggests that remanding more young people will not translate into a reduction in property crime, it did not consider the relationship between custodial remand for young people and the prevalence of violence in the community, which is likely to be of more concern to the community than property crime.

Snowball's (2011) research, which also focuses on New South Wales, found that while police rarely erroneously remand in custody young people who pose a low risk of offending, they do grant bail to a small proportion of high-risk young people. While this study appears to support the notion that the increased use of custodial remand (or at least the better targeting of custodial remand) will result in a decrease in crime, it is important to note that it considered only risk, not potential harm. That is, while those young people remanded in custody might pose a high risk of offending while on bail, it is not known whether the harm from this predicted offending is sufficiently serious to justify detaining the young person. In addition, although young people remanded in New South Wales may be at high risk of offending, research demonstrates that only a small proportion of young people remanded in custody are subsequently sentenced to a period of detention (see e.g. AIHW 2012a; Noetic Solutions 2010; NSW LRC 2012). It seems somewhat incongruous to claim that police only remand high-risk young people if it is the case that those young people do not subsequently serve a term of sentenced detention (although as discussed in more detail later in this report), it may be that in some instances, a process of 'backdating' occurs, whereby time spent by young people on remand is taken into account at sentencing (see NSW LRC 2012 for a discussion).

¹⁶ *Ibid*, Australian Institute of Criminology.

¹⁷ *Ibid*, Australian Institute of Criminology.

Research in Victoria (JSSEC 2013) shows that of all young people for whom a custodial remand order was the first youth justice order made during 2010 (n=302, not including 43 cases for which an offence was not recorded), over a quarter were placed on remand for non-violent offences such as crimes against property (27%, n=94), driver licence offences (n=1) and disorderly conduct (n=1). While no indication of the criminal history of these young people is given, these figures suggest that it is not always the case that only high-risk young people are placed on custodial remand (or rather that young people are sometimes placed on custodial remand for offences that are not very harmful to the community).¹⁸

3. Response to Terms of Reference Number 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 response to this Term of Reference overlaps with the response of the APS to Terms of reference nos. 3 and 6.

4. Response to Terms of Reference Number 5

Additional options for keeping young people out of youth justice centres

The APS commends the Inquiry for including in its Terms of Reference an examination of additional options for keeping young people out of youth justice centres. This will need to consider the strategies that could be put in place to improve early identification and pathways for young people at risk of anti-social behaviour. It is obviously important not only to improve the conditions for young people in detention but also to improve efforts to prevent the need for incarceration.

Interventions to address risk factors and strengthen protective factors

There has been extensive research examining the effectiveness of interventions aimed at reducing anti-social behaviour among children and adolescents. Prevention strategies that address risk factors and strengthen protective factors across the community can reduce the initial onset of offending among at risk children and families, with enduring positive outcomes.¹⁹ Addressing risk factors can include focusing on family dysfunction, peer group, school absence, or alcohol abuse; strengthening of protective factors can include a

¹⁸ *Ibid*, Australian Institute of Criminology.

¹⁹ Hawkins, J.D., Catalano, R.F., Miller, J.Y. (1992). *Risk and protective factors for alcohol and other drug problems in adolescence and early adulthood: implications for substance abuse prevention*. *Psychology Bulletin*, 112: 64-105.

focus on engaging in pro-social activities, increased education levels,²⁰ effective parenting, positive role models and part-time employment.²¹

The largest review of interventions involved a meta-analysis of 548 evaluation studies of delinquency interventions. The most effective interventions involved a coordination of multiple services; developing behavioural, cognitive and social skills; group counselling and mentoring; and restorative justice.²² Interventions with families and parent training programs also have a key role in both preventing the onset of offending, and reducing continued antisocial behaviours among young people.²³ Such interventions have been developed and trailed within Australia focusing on communities with high levels of disadvantage.²⁴ Engagement in community events, activities and education and focus on cultural connection have been demonstrated to strengthen relationships and reduce anti-social behaviour.²⁵ Education and employment opportunities should also be explored as preventative strategies.

In considering improvements to early intervention and prevention programs for young Indigenous Australians it must be noted that a number of reports have concluded that funding is often directed toward non-Indigenous agencies/strategies rather than towards Indigenous agencies.^{26,27,28} Moreover, funding to address Indigenous issues has been cut significantly at both State/Territory and Federal levels and this is highly problematic given the levels of need among Indigenous people.

Research on youth violence

The following literature on the research on youth violence indicates that we need to identify and address the predictors of youth violence:

Research on youth violence has increased our understanding of factors that make some populations more vulnerable to victimization and perpetration. Risk factors increase the likelihood that a young person will become violent. However, risk

²⁰ For an Australian sample of youth highlighting the important role of pro-social involvement and education for protecting against youth recidivism, see Shepherd, S. M., Luebbers, S., & Ogloff, J. R. P. (2016). *The Role of Protective Factors and the Relationship With Recidivism for High-Risk Young People in Detention*. *Criminal Justice and Behavior*, 43(7), 863-878. doi:10.1177/0093854815626489.

²¹ Noetic Solutions Pty Ltd (January 2010). *Review of Effective Practice in Juvenile Justice: Report for the Minister for Juvenile Justice*, NSW.

²² Lipsey, M.W. (2009). *The Primary Factors that Characterize Effective Interventions with Juvenile Offenders: A Meta-Analytic Overview*. *Victims and Offenders*, 4, 124-147.

²³ Piquero, A.R., Jennings, W.G., Diamond, B., Farrington, D.P., Tremblay, R.E., Welsh, B.C., Reingle Gonzalez, J.M. (2016). *A meta-analysis update on the effects of early family/parent training programs on antisocial behavior and delinquency*. *Journal of Experimental Criminology*, 12, 229-248.

²⁴ Homel, R., Freiberg, K., Branch, S., & Le, H. (2015). *Preventing the onset of youth offending: The impact of the Pathways to Prevention Project on child behaviour and wellbeing*. Australian Institute of Criminology. Trends & issues in crime and criminal justice no. 481. Australian Institute of Criminology. <http://www.aic.gov.au/publications/current%20series/tandi/481-500/tandi481.html>.

²⁵ National Empowerment Program. *Voices of People Community Report*. 2014. Voices of the Peoples National Summary Report. Voices of the Peoples Research Report.

²⁶ *The Third Conversation: Has anything changed? The Aboriginal and Torres Strait Islander Mental Health and Suicide Prevention Roundtable*. June, 2014. See <http://aboriginal.telethonkids.org.au/media/880917/The-Third-Conversationv-final.pdf>.

²⁷ *The Elders' Report into Preventing Indigenous Self-harm and Youth Suicide*. See <https://bepartofthehealing.org/EldersReport.pdf>.

²⁸ Dudgeon, P., Cox, K., D'Anna, D., Dunkley, C., Hams, K., Kelly, K., Walker, R. (2013). *Hear our voices. Community Consultations for the Development of an Empowerment, Healing and Leadership Program for Aboriginal people living in the Kimberly, Western Australia, Final Research Report*. http://aboriginal.telethonkids.org.au/media/394426/hear_our_voices_final_report.pdf.

factors are not direct causes of youth violence; instead, risk factors contribute to youth violence.²⁹

Identifying and addressing the predictors of youth violence at appropriate points in youth development is important for prevention. Unfortunately, there have been few high-quality longitudinal studies of the predictors of youth violence. The Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Study Group on Serious and Violent Juvenile Offenders (Study Group) brought 22 researchers together for two years to analyse current research on risk and protective factors and the development of serious and violent juvenile offending careers.³⁰

What causes someone to punch, kick, stab or fire a gun at someone else or even him/herself? There is never a simple answer to that question. But people often commit violence because of one or more of the following:

- Expression. Some people use violence to release feelings of anger or frustration. They think there are no answers to their problems and turn to violence to express their out of control emotions.
- Manipulation. Violence is used as a way to control others or get something they want.
- Retaliation. Violence is used to retaliate against those who have hurt them or someone they care about.
- Violence is a learned behavior. Like all learned behaviors, it can be changed. Since there is no single cause of violence, there is no one simple solution. The best you can do is learn to recognize the warning signs of violence and to get help when you see them in your friends or yourself.³¹

Justice reinvestment

In 2013, the Australian Human Rights Commission recognised the potential of justice reinvestment to reduce over-representation of Aboriginal and Torres Strait Islander peoples in the prison system:

Justice reinvestment is a criminal justice policy that diverts a portion of the funds for imprisonment to local communities where there is a high concentration of offenders. The money that would have been spent on imprisonment is reinvested into services that address the underlying causes of crime in these communities.^{32 33 34 35}

²⁹ <https://www.cdc.gov/violenceprevention/youthviolence/riskprotectivefactors.html>.

³⁰ <https://www.ncjrs.gov/pdffiles1/ojjdp/179065.pdf>.

³¹ <http://apa.org/helpcenter/warning-signs.aspx>.

³² Australian and Human Rights Commission. (2013). *Value of a justice reinvestment approach, Australian and Human Rights Commission Submission to the Legal and Constitutional Affairs Committee*. https://www.humanrights.gov.au/sites/default/files/20130313_jr.pdf.

³³ Schwartz, M. (2010). *Building Communities not Prisons: Justice Reinvestment and Indigenous Over-Imprisonment*. *Australian Indigenous Law Review*, 14, 2-17. <http://www.austlii.edu.au/au/journals/AUIndigLawRw/2010/1.pdf>.

³⁴ Community Development and Justice Standing Committee, Parliament of Western Australia. (2010). *Making our Prisons Work: An Inquiry into the efficiency and effectiveness of prisoner education, training and employment strategies*. Report No. 6, [http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3812920a5e13ce34046c81b6482577ea0014ae9c/\\$file/2920+-+cdjsc+-+report+6.pdf](http://www.parliament.wa.gov.au/publications/tailedpapers.nsf/displaypaper/3812920a5e13ce34046c81b6482577ea0014ae9c/$file/2920+-+cdjsc+-+report+6.pdf).

³⁵ Vinson, T. (2004). *Community adversity and resilience: the distribution of social disadvantage in Victoria and New South Wales and mediating role of social cohesion*. The Ignatius Centre for Social Policy and Research. <http://cathnews.acu.edu.au/403/doc/jss/p1-11%20Title%20Pref%20Exec%20Sum.pdf>.

Justice reinvestment helps to identify the needs and issues of local communities and prioritises the most efficient spending on community development, by addressing the systemic socio-economic factors contributing to crime. It can target high recidivism rates and patterns of intergenerational offending through its community based approach.³⁶

Drawing on the comments in this submission about the factors that promote culturally-appropriate trauma-informed care, other improvements that should be made to the Victorian youth detention system include:

- On-going cultural responsiveness training for all youth justice staff at all organisational levels and monitoring of implementation
 - Ensuring appropriate levels of staffing and flexible work arrangements to reduce burn out
 - Provision of appropriate supervision, support and mentoring for frontline staff
 - The implementation of a culturally-appropriate trauma-informed model of care throughout the system and monitoring of implementation
- Values-based leadership training for organisational leaders.

5. Response to Terms of Reference Number 6

The culture, policies, practices and reporting of management at the centres

This part of the submission sets out evidence-based/best practice recommendations for reform across a number of key areas that go to addressing the culture, policies and practices and reporting of management at youth justice centres.

Model of care

Youth detention facilities commonly employ a case management process to manage young people and their needs. The 2010 Victorian Ombudsman's investigation³⁷ into the adequacy of responses to detainees found that their mental health is a particularly important matter in a custodial environment and that:

The Precinct is struggling to meet adequately the needs of children who are seriously mentally ill.

Failure to ensure that adequate support is available for mentally ill detainees is incompatible with the department's Charter of Human Rights responsibility.³⁸

APS recommends that, as a priority, facilities in Victorian youth justice precincts adopt a culturally-appropriate trauma-informed model of care that underpins all activities within the organisations, including case management.

Youth justice at all levels (community and custody) needs to be culturally appropriate, family inclusive and trauma-informed. This is vitally important in Victoria where many young detainees are Indigenous Australians, or are from cultural and linguistically diverse

³⁶ Smart Justice Factsheet. (2012). *Justice reinvestment: Investing in communities not prisons*. www.smartjustice.org.au.

³⁷ *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct, Ombudsman Victoria, October 2010*, page 13: [https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Whistleblowers-Protection-Act-2001-Investigati-\(2\)](https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Whistleblowers-Protection-Act-2001-Investigati-(2)).

³⁸ *Ibid*, page 14.

backgrounds and who are vulnerable to intergenerational trauma and likely to have themselves experienced multiple traumas.³⁹ The majority of detained youth have high levels of exposure to trauma, with more than half of the population having been exposed to more than six incidents of trauma.⁴⁰ Children who experience trauma are more prone to internalising and externalising problems, fear, depression, somatic complaints, anger, conduct disorder, and subsequent negative behaviours towards themselves and others such as self-harm, peer aggression, and victimisation of others.⁴¹ Victims/survivors of trauma are also more likely to adopt behaviours destructive to themselves and others. These behaviours include alcoholism and other drug misuse, sexual promiscuity, physical inactivity and smoking.⁴²

Research findings highlight that victimisation experiences and a history of child maltreatment (e.g., physical abuse, sexual abuse, and/or neglect) may contribute to young people's pathway into continued criminal justice involvement and undermine academic attainment, which in turn may perpetuate a recidivism cycle. It has been argued that:

Links to delinquency, maltreatment, victimisation, school/education problems and mental health disorders (including substance abuse) are associated with profound difficulties for many children and adolescents. These experiences and disabilities are often linked to later or subsequent offending and delinquent behaviours, which for some adolescents becomes an offending recidivism cycle, a negative outcome with serious repercussions.⁴³

Trauma-informed care is a framework for human service delivery that is based on an awareness and understanding of the consequences of trauma on people's lives and how this impacts on their service needs and service usage. Put simply, it is intentionally seeing all work within the facility through a trauma lens and using non-blaming, non-shaming, and non-violent communication with safety at the cornerstone. Trauma-informed services need not specialise in the formal treatment of people who have experienced trauma; rather staff in a culturally appropriate, trauma-informed facility go about their work with an understanding that many of their clients/detainees may have trauma in their background. Such facilities:

- Engage staff that understand trauma and its impact on individuals
- Develop environments in which young people feel physically and emotionally safe
- Foster the development of culturally competent staff who can employ practices that acknowledge and demonstrate respect for people from other cultures
- Support survivors of trauma to regain a sense of control over their daily lives
- Integrate and coordinate care for the young person
- Support safe relationship building as a means of promoting healing and recovery.⁴⁴

In the United States, the National Child Traumatic Stress Network (NCSTN)⁴⁵ describes the essential elements of a trauma-informed juvenile justice system as:

³⁹ Atkinson, J. (2013). *Trauma-informed services and trauma-specific care for Indigenous Australian children*. Resource sheet no.21. Closing the Gap Clearinghouse. AIHW/Australian Institute of Family Studies.

⁴⁰ Abram, K.M., Teplin, L.A. King, D.C., Longworth, S.L., Emanuel, K.M., Romero, E.G., McClelland, G.M., Dulcan, M.K., Washburn, J.J., Welty, L.J., Olson, N.D. *PTSD, Trauma, and Comorbid Psychiatric Disorders in detained Youth*. *Juvenile Justice Bulletin*. June 2013.

⁴¹ M. Vita (January, 2015). *Review of the Northern Territory Youth Detention System Report*.

⁴² Atkinson, *op. cit.*, p. 5-6.

⁴³ Mallett, C. (2014). *Youthful offending and delinquency: The comorbid impact of maltreatment, mental health needs and trauma on confinement in the juvenile justice system*. *Journal of Youth and Adolescence*, 42, 1824-36.

⁴⁴ Atkinson, *op. cit.*

- Trauma-informed policies and procedures
- Identification/screening of youth who have been traumatised
- Clinical assessment/intervention for trauma-impaired youth
- Trauma-informed programming and staff education
- Prevention and management of secondary traumatic stress
- Trauma-informed parenting with youth and families
- Trauma-informed cross system collaboration
- Trauma-informed approach to address disparities and diversity.

If overlooked, unresolved trauma can lead to escalation of a range of problems putting both the young person and workers at risk of further harm.^{46 47} Moreover, acting in such a way as to re-traumatise young people is clearly unhelpful and can lead to escalation and poorer outcomes.⁴⁸ With appropriate understandings and approaches, staff in detention facilities could avoid exacerbating experiences of trauma and facilitate healing.

Policies and procedures: Screening and assessment

It is well-evidenced that many young people enter detention facilities with multiple and complex physical and mental health issues as well as a range of disabilities. Policies and procedures that set out the appropriate screening and assessment needs of young people not only upon entering such facilities but also during their detention are paramount in order to plan the appropriate interventions and address potential issues of risk. It is necessary to include assessments of physical and mental wellbeing, drug and alcohol use; cognitive, language and communication difficulties; and life experiences with a focus on trauma, using culturally appropriate assessments. This should also include a structured assessment of risk for re-offending and also the level of the risk of harm to self and others.

Assessment should be approached from a multilevel framework, primarily:

- *Ongoing screening*: assessing for imminent risk, including in terms of basic health and risk of harm to self or others
- *Case classification*: assessing for risk of re-offending so that the level of intervention (service needs) can be appropriately matched to the level of risk. That is, more intensive services and programs can be delivered to detainees who are considered to be higher risk
- *Case needs identification*: identifying which areas of need require intervention in order to reduce the risk of reoffending but to also improve the health and wellbeing of the detainee, both within the detention facility and upon release

⁴⁵ See National Child Traumatic Stress Network. *Essential Elements of a Trauma-Informed Juvenile Justice System*. <http://www.nctsn.org/>.

⁴⁶ Papalia, N. L., Luebbers, S., Ogloff, J. R., Cutajar, M., & Mullen, P. E. (2016). *The long-term co-occurrence of psychiatric illness and behavioural problems following child sexual abuse*. *Australian & New Zealand Journal of Psychiatry*. doi:10.1177/0004867416667232.

⁴⁷ Ogloff, J. R. P., Cutajar, M. C., Mann, E., & Mullen, P. (2012). *Child sexual abuse and subsequent offending and victimisation: A 45 year follow-up study*. *Trends and Issues in Crime and Criminal Justice* (440), 1-6.

⁴⁸ Rasche, K., Dudeck, M., Otte, S., Klingner, S., Vasic, N., & Streb, J. (2016). *Factors influencing the pathway from trauma to aggression: A current review of behavioural studies*. *Neurology, Psychiatry and Brain Research*, 22(2), 75-80. doi:10.1016/j.npbr.2016.01.009.

- *Outcomes measurement*: re-assessing changes in need after the delivery of a program or intervention and/or changes in individual's circumstances during their period of detention.⁴⁹

There are a range of psychometrically valid instruments available to assess complex issues such as risk, cognitive capacity, language and communication, mental health and social and emotional wellbeing. However, it is important to note that many of these instruments lack evidence of their cultural appropriateness and must therefore be used with extreme caution among young detainees from Indigenous and cultural and linguistically diverse backgrounds.⁵⁰ The instruments need to be administered and interpreted by appropriately qualified professionals. Deficits in the evidence base for assessments need to be specified as a limitation to the assessment among young detainees from Indigenous and other culturally diverse populations.

The importance of implementing quality assessment policies and procedures is paramount as research has identified that placement in juvenile justice settings can increase the young person's risk, with the more entrenched they are in the system, the more likely they are to offend as an adult.⁵¹ A 'one size fits all' approach to service provision, including treatment, is ineffective - an individualised approach that targets the young person's specific criminogenic needs is considered a more effective approach.^{52 53} Consequently, the conduct of high quality assessments followed by planned interventions will facilitate integrated and reliable approaches to reducing recidivism and improving young people's long term outcomes.

Mental health of youth detainees

Many young detainees are likely to have complex mental health needs, with mental health concerns being among the most prominent needs of young people in contact with the juvenile justice system, particularly those entering custody.⁵⁴ Detained young people have elevated rates of mental health disorders, with two-thirds of all youth found to be experiencing a mental health disorder.⁵⁵ Research from Australian jurisdictions indicates that detainees are likely to present with psychological disorders, attentional and behavioural disorders, substance addiction, and engage in self-harming behaviours.^{56 57}

⁴⁹ Day, A., & Casey, S. (2012). *Assessing client outcomes in Youth Justice Services: Current status and future directions?* Journal of Juvenile Justice, 1, 112-124.

⁵⁰ Shepherd, S.M., Singh, J.P. & Fullam, R. (2015) *Does the Youth Level of Service/Case Management Inventory Generalize Across Ethnicity?* International Journal of Forensic Mental Health, 14:3, 193-204, DOI: 10.1080/14999013.2015.1086450.

⁵¹ Gatti, U., Tremblay, R. E. & Vitaro, F. (2009). *Iatrogenic effect of juvenile justice.* Journal of Child Psychology & Psychiatry, 50, 991-998.

⁵² Vieira, T. A., Skilling, T. A., & Peterson-Badali, M. (2009). *Matching court-ordered services with treatment needs.* Criminal Justice and Behavior, 36(4), 385-401.

⁵³ O'Brien, K., Sullivan, D., & Daffern, M. (2016). *Integrating Individual and Group-based Offence-focused Psychological Treatments: Towards a Model for Best Practice.* Psychiatry, Psychology and Law, 23(5), 746-764. doi:10.1080/13218719.2016.1150143.

⁵⁴ Ombudsman Victoria (2010). *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct.* <https://www.ombudsman.vic.gov.au/getattachment/47eb3c0d-36fb-4b5b-b7fb-d584c03ca46f>.

⁵⁵ Teplin, L.A., Welty, L. J., Abram, K. A., Dulcan, M.K., Washburn, J.J., McCoy, K., Stokes, M., *Psychiatric disorders youth after detention.* Juvenile Justice Bulletin. September 2015. <http://www.ojjdp.gov/pubs/246824.pdf>.

⁵⁶ Ombudsman Victoria (2010). *Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct.*

There also remains concern for services and supports for young offenders with cognitive impairment. Within the corrections system, the term 'cognitive impairment' may encompass a range of conditions; including intellectual disability (ID), borderline intellectual disability, foetal alcohol spectrum syndrome, and acquired brain injury (ABI).

Whilst there is significant variation in the presentation of these conditions, common characteristics associated with a cognitive impairment include: difficulties with comprehension and communication, memory loss and attentional deficits, cognitive rigidity, emotional and behavioural dysregulation, and serious mental health concerns relating to depression, anxiety and psychotic conditions (some of which are likely to be drug-related in their origin).

The consequences of these impairments are that these young people may exhibit difficulties with comprehension, planning, and problem-solving, and notably difficulties understanding the requirements of their detention and engaging in educational, therapeutic and other programmes of rehabilitation. These young people are highly vulnerable to abuse while in custody, and on release are at high risk for recidivism.

Often these young people are difficult to identify when they enter the justice system, especially where they are not already known to the Department of Health & Human Services (DHHS) Disability Services. Some are in fact very accomplished in covering for their disability (and will not self-report), due to their experience of the social stigma associated with having an identified disability.

As a discipline, psychology specialises in clinical matters relating to both cognition and behaviour. Given the vulnerabilities of these young people with cognitive impairments, the difficulties they experience engaging in rehabilitation, and their high risk of recidivism, it is evident that the provision of specialised psychological services are required. Such services are needed to conduct clinical assessments, implement specialised rehabilitation programmes, and provide consultancy to corrections staff concerning the management, education, and rehabilitation of young people with cognitive impairment.

Young detainees with mental health concerns must have access to treatment. This treatment should be evidence-based and delivered by appropriately qualified health professionals. It may be appropriate for such treatment to be delivered within a standard facility if adequate services are available and safety needs are met. However, it is critical to point out that when an adult with a significant mental health disorder is sentenced to imprisonment, the system may provide such detention in an appropriate forensic health care facility that is staffed by highly qualified mental health professionals. Young offenders with mental health disorders who are incarcerated in the Victoria must have or continue to have access to similar facilities with qualified staff. This is one of the key principles of the Australian Medical Association (AMA) Position Statement on Health and the Criminal Justice System.⁵⁸ The Statement calls for:

- Prisoners and detainees have the same right to access, equity and quality of health care as the general population
- Health services in custodial settings should be resourced and designed to provide a level of care that is commensurate with the health needs of prisoners and detainees

⁵⁷ Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J., Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P & Whitton, G. (2011). *2009 Young People in Custody Health Survey: Full Report*. Justice Health and Juvenile Justice. Sydney.

⁵⁸ Australian Medical Association (2012). *Position Statement on health and the Criminal Justice System – 2012*. <https://ama.com.au/position-statement/health-and-criminal-justice-system-2012>.

and should accommodate the diverse and complex needs of vulnerable and highly disadvantaged subgroups

- An adequately resourced and nationally coordinated, whole-of-government approach is needed to health in the criminal justice system, which ensures greater consistency of policies and practices across jurisdictions and better integration of health and social support services
- Health service policy and provision in prisons and juvenile detention facilities must be provided independent of corrections authorities
- The concept of 'throughcare' should be central to the design and delivery of health services, ensuring coordinated and continuous health care from an offender's first point of contact with the criminal justice system through to successful reintegration into the community
- Prisoners should retain their entitlement to Medicare and the PBS while in prison
- A harm minimisation approach should be incorporated into health policy, services and standards of care in custodial settings
- The high rates of incarceration of Aboriginal and Torres Strait Islander people must be addressed as a priority by all levels of government
- A commitment to addressing the factors that lead to imprisonment and the determinants of poor health amongst prisoners and detainees needs to be embedded in existing national strategies and intergovernmental agreements relating to public health, mental health, Indigenous health, disability, and homelessness and housing
- Addressing the association between incarceration and poor health requires investment in upstream measures that address the social determinants of incarceration.

A major focus of early intervention should be improved access to evidence-based culturally appropriate mental health care for young people. The majority (87%) of young people in custody have at least one psychological disorder, and three in four (73%) have two or more mental health disorders.⁵⁹ Treatment of these issues should be occurring before incarceration is required.

Other health issues

There is also a significantly higher than average incidence of communication impairments in offending populations. For example, over 50 per cent of young offenders in Victoria have communication impairment, with a significant correlation existing between severity of offending and degree of communication difficulty.⁶⁰ Adequate health care should include screening and early identification and treatment of communication impairments.

Young people in detention centres and on community orders also have elevated rates of intellectual impairment compared to community comparisons.⁶¹ Consequently, all youth entering detention facilities ought to be screened and provided with evidence-based interventions delivered by appropriately trained health professionals.

⁵⁹ Indig, D., Vecchiato, C., Haysom, L., Beilby, R., Carter, J, Champion, U., Gaskin, C., Heller, E., Kumar, S., Mamone, N., Muir, P., van den Dolder, P & Whitton, G. (2011) *2009 Young People in Custody Health Survey: Full Report*. Justice Health and Juvenile Justice. Sydney. Page 145.

⁶⁰ Snow, P., & Powell, M.B. (2011). *Oral language impotence in incarcerated young offenders: Links with offending severity*. International Journal of Speech Language Pathology. <http://informahealthcare.com/doi/abs/10.3109/17549507.2011.578661>.

⁶¹ Kenny, D.T. & Nelson, P. K. (2008). *Young offenders on community orders. Health, welfare and criminogenic needs*. Sydney, Australia: Sydney University Press. <http://www.justicehealth.nsw.gov.au/publications/ch1-3.pdf>.

Quality interventions for behaviour management

It is acknowledged that many detainees display challenging behaviours that have the potential to put themselves and facility staff at risk of harm. It is essential that appropriate policies and procedures are in place to address these issues and there is clear evidence that the use of physical restraint is not an appropriate procedure. It is also well established that aversive and punishment-based interventions have little if any utility in bringing about long-term adaptive behaviour change, and represent an unethical and in many jurisdictions an illegal approach.⁶² For instance, a report into the use of physical restraint in South Australian residential facilities for young people concluded that physical restraints do not reduce either the frequency or intensity of challenging behaviours; instead this practice often leads to further escalations in aggressive behaviours.⁶³ The report also found that restraining children is potentially dangerous and can cause significant injury and even death. In conclusion, the report recommended that restraint should only be used as an intervention of last resort and only when part of a planned intervention, harm minimisation approach that works to maintain the dignity of the young person.

Research shows that a range of psychological interventions are effective and considered best practice in targeting underlying, challenging behaviours across a range of settings. Positive Behaviour Support (PBS) is an approach that seeks to understand what the individual with the challenging behaviours is trying to achieve. PBS is based on the well-established Communication Hypothesis⁶⁴ to explain challenging behaviour. It posits that all behaviour serves a legitimate purpose for the person in that it is an attempt by the person to use the knowledge, skills and resources available to them at the time to communicate their basic needs.⁶⁵ Where these basic needs are recognised and addressed, the person is unlikely to resort to the use of the challenging behaviour.

Building on the Communications Hypothesis, a core concept underpinning effective intervention is Functional Behaviour Assessment (FBA). FBA is the most widely used approach to understanding the issues underpinning challenging behaviour in people with cognitive impairments, but also has application to the wider population. Once a FBA has been conducted, a PBS plan can be developed for the individual. There are evidence-based guidelines, already adapted for use in Australia, to inform comprehensive plan development and to audit these plans.^{66 67 68} The fundamental elements of an effective PBS plan include environmental adjustments (policy, physical characteristics, operational procedures and staffing), and educational strategies to teach the person alternative

⁶² McVilly, K. (2009). *Physical restraint in disability services: current practices; contemporary concerns and future directions*. A report commissioned by the Office of the Senior Practitioner, Department of Human Services, Victoria.

⁶³ Day, A. & Daffern, M. (2009). *Inquiry into the Policy and Practice in the Use of Physical Restraint in South Australian Residential Facilities for Children and Young People, Guardian for Children and Young People*. Adelaide, Australia. <http://gcyp.sa.gov.au/wp-content/uploads/2010/01/Use-of-Restraint-Report.pdf>.

⁶⁴ Carr, E.G., Dunlap, G., Horner, R.H., Koegel, R.L., Turnbull, A.P., Sailor, W., Anderson, J.L., Albin, R.W., Koegel, L.K., & Fox, L. (2001). *Positive Behavior Support. Evolution of an Applied Science*. *Journal of Positive Behavior Interventions*, 4(1), Winter.

⁶⁵ Durand, V.M., & Crimmins, D.B. (1983). *The Motivation Assessment Scale: A preliminary report on an instrument which assesses the functional significance of children's deviant behaviour*. Paper presented at the meeting of the Berkshire Association for Behavior Analysis and Therapy, Amherst, MA.

⁶⁶ McVilly, K., Webber, L., Paris, M., & Sharp, G. (2012). *Reliability and utility of the Behaviour Support Plan Quality Evaluation tool (BSP-QEII) for auditing and quality development in services for adults with intellectual disability and challenging behaviour*. *Journal of Intellectual Disability Research*, 57, 703-715.

⁶⁷ McVilly, K., Webber, L., Sharp, G., & Paris, M., (2012). *The content validity of the Behaviour Support Plan Quality Evaluation tool (BSP-QEII) and its potential application in accommodation and day support services for adults with intellectual disability*. *Journal of Intellectual Disability Research*, 57, 716-727.

⁶⁸ See also *Positive Environments, Network of Trainers* at <http://www.pent.ca.gov/beh/bsp/bsp.htm>.

adaptive behaviours to communicate their needs, meet their needs, and cope with situations in which their needs cannot be met as they would like. When implementing educational strategies, reward and reinforcement are critical for effecting change in human behaviour.^{69 70}

The Positive Behaviour Support and Trauma Informed Care approaches to intervention, support and rehabilitation represent contemporary evidence-based psycho-social programs to address serious behaviours of concern. The implementation of such programs draw on a 'bio-psycho-social' understanding of challenging behaviour, and represent best practice in the provision of services that are clinically effective and which maximise the safety of both clients and support staff.

In summary, the Victorian Government should implement behaviour management policies in youth detention facilities that are underpinned by evidence of their effectiveness such as Positive Behaviour Support.

Reform of oversight measures and safeguards

All Victorian youth detention facilities must be exposed to regular and rigorous oversight by independent authorities. To support the uptake of this approach, internal policies need to address any organisational culture barriers, and there will need to be ongoing education to staff about bullying and harassment (both staff-detainee and staff-staff). Such policies must be modelled by leaders within the facilities.

It should be noted that a further safeguard against the use of restraint and other aversive practices in facilities is the protection offered by a positive work culture. The importance of the organisational culture as a protective mechanism is discussed in a later section of this submission.

Suitability of officers

The material presented in this submission indicates that a lot is expected of the workforce in youth detention facilities in the Victoria. To undertake this role effectively, staff require a broad range of skills, considerable on-going training and support, supportive and values-based leadership. The criteria for employment should include capacity to understand trauma and its impact on individuals, and ability to acknowledge and demonstrate respect for people from other cultures. There may be value in reform of recruitment policies to allow for comprehensive screening of staff.

Indigenous culture and culturally and linguistically diverse backgrounds

As noted in the introduction to this submission, any proposal to reform law, policies and procedures, management processes and so on must be cognisant of the culture of Indigenous Australians and those from culturally and linguistically diverse backgrounds. Reform must consider that for Aboriginal and Torres Strait Islander people, health is holistic and encompasses mental, physical, cultural, and spiritual health and land is central to well-being.⁷¹ Crucially, it must be understood that when the harmony of these

⁶⁹ Lloyd, B.P. & Kennedy, C.H. (2014). *Assessment and Treatment of Challenging Behaviour for Individuals with Intellectual Disability: A Research Review*. *Journal of Applied Research in Intellectual Disabilities*, 27, 187-199.

⁷⁰ Chowdhury, M., Benson, B.A. (2011). *Use of differential reinforcement to reduce behavior problems in adults with intellectual disabilities: A methodological review*. *Research in Developmental Disabilities*, 32, 383-394.

⁷¹ Swan, P. & Raphael, B. (1995). *Ways Forward: National Consultancy report on Aboriginal and Torres Strait Islander Mental health Policy*. Canberra: Commonwealth of Australia.

interactions is disrupted, ill health in Indigenous Australians will persist. Therefore, wherever detention centres are located, it is critical that reform facilitates the engagement of community members and leaders in order for detainees to remain connected to culture and country. Policy reform must also ensure that detainees have access to cultural supports and resources.

In seeking to reform the youth detention system (and child protection/mental health/early intervention systems that could avert the need for detention), it is vital that Government listens to Aboriginal and Torres Strait Islander Elders, communities, academics, and researchers and appropriately consult the relevant communities in relation to young people from cultural and linguistically diverse backgrounds. This is likely to be the most effective way to develop sustainable change that both prevents young Indigenous people and those from culturally and linguistically diverse backgrounds from entering the justice system and supports them through it.

Organisational culture and management practices

The APS considers it vital to provide the Inquiry with evidence-based information about the role of organisational culture in and management in creating a climate that could avoid normalising mistreatment and the inappropriate management of the young offenders.

Organisational culture refers to the basic assumptions in a group about what is and is not acceptable behaviour in organisational settings. Pressure to conform to organisational expectations and culture is an important contributor to subsequent staff behaviour.⁷² For example, organisational culture has been shown to impact on levels of mistreatment of elders in long term care facilities.⁷³ When restraint is used, staff may be influenced to collude or take on that practice as they are immersed in a workplace cultural that supports that thinking and behaviour. Therefore, organisational culture may also be a reason that staff in a service view restraint as a legitimate, effective and useful, because ‘....that is how we get things done around here’ or ‘everyone else is doing it’.

Other aspects of organisational culture related to the incidence of maltreatment that should be addressed include: closed, inward-looking cultures; managers who are closed to possibilities for change; overly bureaucratic cultures; poor communication and entrenched routines that can objectify residents; and lack of renewal of expectations and new ideas. Personal and organisational values also appear to become blurred the longer one stays with an organisation and/or advances up the hierarchical level.⁷⁴ Other organisational ‘ways of doing things’ that can contribute to unethical behaviour include concealing information, lack of concern for long term effect of actions, being unfair to individuals, and behaviours of others in the organisation appearing to be more influential than formal, written organisational guidelines.⁷⁵

⁷² Soutar, G., McNeil, M. M., & Molster, C. (1994). *The impact of the work environment on ethical decision making: Some Australian evidence*. *Journal of Business Ethics*, 13(5), 327-339.

⁷³ Hyde, P., Burns, D., Killest, A., Kenkmann, A., Poland, F., & Gray, R. (2014). *Organisational aspects of elder mistreatment in long term care*. *Quality in Ageing & Older Adults*. 15(4), 197-209. doi:10.1108/QAOA-06-2014-0010.

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

Geller's work on behaviour-based safety⁷⁶ should be reviewed for applicability in Victorian youth detention facilities as it offers a value-based model of organisational culture that is designed to prevent harm:

In implementing behaviour-based safety (BBS) processes with leading organisations around the world, it is stressed that one of the main benefits of BBS is improved organizational safety culture and communication throughout the organization. Improving safety communication through BBS fosters a more positive and healthy organizational safety culture and reduces the chances that employees will get hurt on the job.⁷⁷

Unethical behaviour by staff within an organisation has also been associated with a range of workplace factors that should be addressed as part of the reform of youth detention facilities in Victoria. In particular, there is evidence that high staff workloads, under-resourcing and staffing shortages can result in staff shifting their beliefs on the acceptability of risk and quality care in order to manage workloads.⁷⁸ There is also evidence to suggest that working in challenging environments can impact on staff health and wellbeing which in turn impacts on the quality of care.^{79 80 81 82 83} The Victorian Government has a responsibility to ensure that staff in youth detention facilities have mental health training and support readily available.

It is apparent that organisational leaders are a critical factor in the creation and maintenance a positive and ethical organisational culture. Leaders can impact the climate of an organisation by displaying values-based leadership, setting a positive example and displaying personal integrity, providing clear explanations of ethical conduct, and providing feedback and support to staff on ethical behaviour.^{84 85 86}

The 2010 Victorian Ombudsman investigation found the following:

Several staff said that their colleagues had encouraged fights between detainees who 'deserved' it or as a way to encourage detainees to resolve their issues.

⁷⁶ Geller, E. Scott & Robinson, Z. J. (2016). *Behaviour-based approaches to occupational safety*. In Clarke, S., Probst, T.M., Guldenmund, F., & Passmore, J. (Eds.). *The Wiley Blackwell handbook of the psychology of occupational safety and workplace health*. (pp.301-316). Wiley-Blackwell.

⁷⁷ See http://www.safetyperformance.com/Behavior_Based_Safety.asp and http://www.safetyperformance.com/Behavior_Based_Safety.asp.

⁷⁸ Reader, T. W., & Gillespie, A. (2013). *Patient neglect in healthcare institutions: a systematic review and conceptual model*. *BMC Health Services Research*, 13(1), 1-15. doi:10.1186/1472-6963-13-156.

⁷⁹ Spinaris, C. G., Denhof, M. D., & Kellaway, J. A. (2012). Posttraumatic stress disorder in United States corrections professionals: Prevalence and impact on health and functioning (Vol. 10, pp. 32). Florence, CO: Desert Waters Correctional Outreach.

Misis, M., Kim, B., Cheeseman, K., Hogan, N. L., & Lambert, E. G. (2013). *The Impact of Correctional Officer Perceptions of Inmates on Job Stress*. *SAGE Open*, 3(2).

⁸⁰ Woodall, J. (2013). *Identifying Health Promotion Needs Among Prison Staff in Three English Prisons: Results From a Qualitative Study*. *Health Promotion Practice*, 14(2), 256-262.

⁸¹ Owen, S. S. (2006). *Occupational Stress Among Correctional Supervisors*. *The Prison Journal*, 86(2), 164-181.

⁸² Morgan, W. J. (2009). *Correctional officer stress: A review of the literature 1977-2007*. *American Jails*, 23(2), 33-43.

⁸³ Misis, M., Kim, B., Cheeseman, K., Hogan, N. L., & Lambert, E. G. (2013). *The Impact of Correctional Officer Perceptions of Inmates on Job Stress*. *SAGE Open*, 3(2).

⁸⁴ Grojean, M. W., Resick, C. J., Dickson, M. W., & Smith, D. B. (2004). *Leaders, Values, and Organizational Climate: Examining Leadership Strategies for Establishing an Organizational Climate Regarding Ethics*. *Journal of Business Ethics*, 55(3), 223-241.

⁸⁵ Selart, M., & Johansen, S. (2011). *Ethical Decision Making in Organizations: The Role of Leadership Stress*. *Journal of Business Ethics*, 99(2), 129-143. doi:10.1007/s10551-010-0649-0.

⁸⁶ White, D., & Lean, E. (2008). *The Impact of Perceived Leader Integrity on Subordinates in a Work Team Environment*. *Journal of Business Ethics*, 81(4), 765-778.

Staff have assaulted detainees and at times have attempted to conceal an assault during a restraint of a detainee.⁸⁷

A final but vitally important consideration that must be addressed is structural or organisational racism and societal racism.⁸⁸

Institutional racism or systemic racism describes forms of racism which are structured into political and social institutions. It occurs when organisations, institutions or governments discriminate, either deliberately or indirectly, against certain groups of people to limit their rights. This form of racism reflects the cultural assumptions of the dominant group, so that the practices of that group are seen as the norm to which other cultural practices should conform. It regularly and systematically advantages some ethnic and cultural groups and disadvantages and marginalises others.⁸⁹

It has been argued that institutions are based on the “cultural stance of the population” they serve and that “cultural values should provide the value base” for effective service systems.⁹⁰ Preventing the inappropriate treatment of young people in detention, who are often from Indigenous and culturally and linguistically diverse backgrounds, will therefore require on-going efforts to address racism at a whole-of-society level.

Staff education and training

There is clearly a need for facility staff to be adequately knowledgeable, skilled and supported to be able to implement the reforms recommended in this submission. It is recommended that staff:

- Receive on-going mandatory (not one-off) cultural responsiveness training (in relation to Indigenous youth and youth from culturally and linguistically diverse backgrounds) and that monitoring of the application of cultural responsiveness within each organisation is undertaken.^{91 92 93} This training should be undertaken by all staff, operational and non-operational
- Undertake mandatory and on-going training in the delivery of culturally-appropriate trauma-informed care
- Receive appropriate mandatory and on-going training in Positive Behaviour Support and are up-skilled in the delivery of effective de-escalation techniques
- Complete mandatory training in mental health first aid

⁸⁷ *Opcit* no. 6, page 11.

⁸⁸ See <http://www.tandfonline.com/doi/full/10.1080/10439463.2012.703198?src=recsys> and http://heinonline.org/HOL/Page?handle=hein.journals/kentlj100&div=4&g_sent=1&collection=journals.

⁸⁹ <http://www.racismnoway.com.au/teaching-resources/factsheets/32.html>.

⁹⁰ Henry, B.R., Houston, S. & Mooney, G.H. (2014). *Institutional racism in Australian healthcare: a plea for decency*. *Medical Journal of Australia*, 180 (10), 517-520. (page 518).

⁹¹ Indigenous Allied Health Australia (IAHA) (2015). *Cultural responsiveness in action: An IAHA framework*. IAHA: Canberra. <http://iaha.com.au/wp-content/uploads/2015/08/2015-IAHA-Cultural-Responsiveness-Framework-WEB.pdf>.

⁹² Training should be provided by appropriately qualified individuals and be relevant to the context of young people in detention who are likely to have a history of trauma and mental health disorders. The Australian Indigenous Psychologists Association (AIPA) cultural responsiveness training is an example of a program specifically targeted to people working with such individuals. See <http://www.indigenouspsychology.com.au/workshop/about-the-workshops>.

⁹³ A key resource for staff working in youth detention centres should be the book by Dudgeon, P., Milroy, H. & Walker, R. (Eds.) (2014). *Working Together: Aboriginal and Torres Strait Islander Mental Health and Wellbeing Principles and Practice*. See [http://aboriginal.telethonkids.org.au/kulunga-research-network/working-together-2nd-edition-\(2014\)/](http://aboriginal.telethonkids.org.au/kulunga-research-network/working-together-2nd-edition-(2014)/).

- With the appropriate competencies are trained to undertake dynamic risk assessments to reduce the subjectivity of risk assessment, particularly in regards to future violence. This would enable staff to monitor risk so that heightened states can be detected early, thus facilitating interventions to reduce the risk of violence.

It is also strongly recommended that leaders within the facilities undertake leadership training and mentoring, including:

- Values-based leadership
- Training in giving feedback on the identification and management of ethical dilemmas.