

13/04/2017

The Secretary Legal and Social Issues Committee Parliament House,  
Spring Street  
EAST MELBOURNE  
VIC 3002

Dear Mr O'Brien,

**Re: Inquiry into Youth Justice Centres in Victoria**

The Change the Record (CTR) Coalition welcomes the opportunity to provide a brief submission to the Standing Committee on Legal and Social Issues' Inquiry into Youth Justice Centres in Victoria ('Inquiry').

The CTR Coalition<sup>1</sup> is a group of leading Aboriginal and Torres Strait Islander, legal, community and human rights organisations working collaboratively to address the disproportionate rates of violence and imprisonment experienced by Aboriginal and Torres Strait Islander people. The CTR Coalition is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety, address the root causes of violence against women, cut re-offending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition has identified two overarching goals, to:

- (a) Close the gap in rates of imprisonment between Aboriginal and Torres Strait Islander and non-Indigenous people, by 2040; and
- (b) Cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children.

Our brief submission to this Inquiry relates to our collective concern about the recent deterioration of Victoria's youth detention facilities and, more broadly, the over-imprisonment and mistreatment of Aboriginal and Torres Strait Islander young people in detention facilities nationally. These issues require urgent attention and sustained government leadership to address.

This submission does not endeavour to respond in detail to all of the Terms of Reference for this Inquiry. Instead we seek to make some general comments about the recent reports of mistreatment of young people in Victoria and the broader context of the over-imprisonment of Aboriginal and Torres Strait Islander young people. We also outline a series of recommendations related to improving treatment and conditions in detention and, alternatives to detention (ToR 4 & 5).

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<sup>1</sup> See *Appendix 1* for further information on the Change the Record Coalition.

## Background

In recent months there have been numerous concerning reports of disturbances and mistreatment in youth justice centres in Victoria. This has included the alleged use of capsicum spray, tear gas, batons and isolation, by detention staff at Parkville and Malmsbury youth justice centres, as well as the gazetted Grevillea Unit in Barwon adult prison. The detention of young people must only be used as a measure of last resort, and it is entirely unacceptable that children could be subjected to this type of treatment whilst in the care of the state. As a result we strongly welcome the Inquiry's focus on investigating these specific instances of alleged mistreatment and looking to alternatives to detention.

In investigating the specific allegations of mistreatment of young people in Victorian youth detention facilities and prisons, it is also critically important that the Inquiry takes into consideration the wider context of this issue. At a national level Aboriginal and Torres Strait Islander young people are vastly overrepresented in the youth justice system, and this is a trend which is mirrored within Victoria. In 2014-15, Aboriginal and Torres Strait Islander young people in Victoria were 11 times more likely to be under youth justice supervision than non-Indigenous young people, and 12 times more likely to be in detention.<sup>2</sup>

The high rates of both imprisonment and victimisation of Aboriginal and Torres Strait young people have been directly linked to broader issues of social and economic disadvantage, which Aboriginal and Torres Strait Islander people and communities also experience at disproportionate rates.<sup>3</sup> Some of these driving factors include high levels of poverty, unemployment, drug and alcohol addiction, mental illness and disability, experience of family violence, poor education outcomes, homelessness, over-representation in the child protection system and a loss of connection to community and culture. This Inquiry provides an important opportunity to provide recommendations to the Victorian Government which seek to address some of these underlying causes.

The current national trend of a punitive 'tough on crime' approach to youth offending and misbehaviour fails to recognise that young people are still developing and that far more appropriate opportunities for support and positive reinforcement exist than putting children behind bars. In addition, exposure to youth detention also substantially increases the likelihood of involvement in crime as an adult. As a result the CTR Coalition strongly recommends that the Victorian Government increases its focus on investing into early intervention, prevention and diversion initiatives, which will support young people at risk to achieve their full potential.

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<sup>2</sup> AIHW 2016. Young people in child protection and under youth justice supervision 2013–14. Data linkage series no. 21. Cat. no. CSI 22. Canberra: AIHW.

<sup>3</sup> The Royal Commission into Aboriginal Deaths in Custody (1991); Law Reform Commission of Western Australia, *Aboriginal Customary Laws*, Discussion Paper (2005) (in particular, see pp 97–99); House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time —Time for Doing* (2011).

A recent report by the Commissioner for Children and Young People in Victoria found that 4,829 separate episodes of isolation were recorded in an 18-month period, and that Koori kids were disproportionately subjected to isolation.<sup>4</sup> At Malmesbury, 30 per cent of children and young people in isolation were Koori, despite Koori clients only making up 16 per cent of the youth justice population. found that Koori kids were disproportionately subject to isolation whilst in detention.<sup>5</sup>

We urge the Victorian Government to commit to take immediate steps to improve youth detention conditions. This should include a commitment to end the use of solitary confinement in all youth detention facilities, immediately remove all children from adult prisons, and an increased focus on ensuring the provision of culturally appropriate education and treatment programmes within youth detention facilities.

### **Alternatives to detention**

The CTR Coalition strongly urges Victoria to shift towards policy responses which are not only aimed at immediately improving detention conditions, but also work to prevent children from having contact with the justice system in the first place.

Given the enormous social and economic costs of incarceration, and youth detention in particular, it is clear that a different and smarter approach is needed. Numerous studies have found that increasing custodial sentences does not have positive impact on crime rates, and imprisonment is also ineffective in reducing rates of reoffending. Current approaches by governments to address community safety are not working, as they largely focus only on the operation of the criminal justice system and thereby fail to address the underlying reasons why individuals come into contact with the criminal justice system in the first place.

The evidence clearly demonstrates that strong, healthy communities are the most effective way to prevent crime and make communities safer. Every dollar spent on prisons is one less dollar available to invest in reducing social and economic disadvantage through education, health, disability, housing, employment and other programs.

The CTR Coalition therefore argues that government funding should be reinvested into early intervention, prevention and diversion initiatives that address the underlying causes of crime. This will have positive outcomes for communities and lead to cost-savings over time.

This approach of re-focusing or redirecting funds into broader prevention and intervention initiatives is often referred to as justice reinvestment, and there is a growing support for the implementation of community-led and evidence-based justice reinvestment sites in Australia.

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<sup>4</sup> Commission for Children and Young People, *The same four walls: inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* (Melbourne: Commission for Children and Young People, 2017).

<sup>5</sup> *Ibid.*

Former Aboriginal and Torres Strait Islander Social Justice Commissioner Mick Gooda described justice reinvestment as:

*“...a powerful crime prevention strategy that can help create safer communities by investing in evidence based prevention and treatment programs. Justice reinvestment looks beyond offenders to the needs of victims and communities. Justice reinvestment 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.”<sup>6</sup>*

There are a number of overseas examples which highlight the potential benefits of implementing a justice reinvestment approach. For example, the US state of Texas decided in 2007 to invest a portion of funds that were to be allocated to build more prisons to alternative programs, such as drug and mental health treatment programs. Since this time, Texas has closed prisons, with similar positive results seen in other parts of the United States, and other overseas countries.

Community-led justice reinvestment initiatives are currently being explored in Australia, including for example a pilot project in the community of Bourke in NSW, which is seeing positive outcomes for the Aboriginal and Torres Strait Islander community.

The CTR Coalition urges the Inquiry to place emphasis on alternatives to detention for young people in Victoria, including exploring the potential development of justice reinvestment approaches and investing in early intervention, prevention and diversion programs.

## **Recommendations**

The CTR Coalition would like to draw the Inquiry’s attention to our *Blueprint for Change*, which was launched in November 2015. The CTR Coalition’s *Blueprint* is a concrete plan for Federal, State and Territory Governments to change the record on the disproportionate rates of violence experienced by Aboriginal and Torres Strait Islander people, and high levels of imprisonment.

CTR’s *Blueprint for Change* makes a number of recommendations which are of particular relevance to this Inquiry, including to:

1. *Ensure legislation is in place that mandates that the principle of detention as a measure of last resort be observed at all times for any person up to and including the age of 17;*
2. *Increase the age of criminal responsibility to age 12 (in line with recommendations from the Committee on the Rights of the Child), and ensure the presumption of legal*

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<sup>6</sup> See M Gooda, Social Justice and Native Title Report 2014, Australian Human Rights Commission (2014), p.102, accessed online 17 April 2015 at: <https://www.humanrights.gov.au/sites/default/files/document/publication/SJNTR%20FINAL.pdf>.

*incapacity continues to apply to 12, 13 and 14-year-olds;*

3. *Whilst observing the principle that detention must only be used as a measure of last resort, ensure that any person up to and including the age of 17, is detained in appropriate facilities. Youth detention facilities should be built for purpose and provide the supports that vulnerable children need in an appropriate and therapeutic environment;*
4. *Support the development of specialist youth courts;*
5. *Ensure that legislation in each jurisdiction dictating bail considerations and presumptions includes a presumption in favour of bail for young people and ensures that bail conditions take account of social and cultural factors and can be reasonably met by Aboriginal and Torres Strait Islander peoples;*
6. *Ensure that exclusion from school is used as a matter of last resort and that all appropriate supports are provided to enable Aboriginal and Torres Strait Islander children and young people to succeed at school. This should include the provision of restorative justice initiatives and healing programmes within school to enable the early resolution of issues.*
7. *Improve detention conditions, particularly practices which can re-traumatise individuals with lived experience of violence*

In addition, the CTR Coalition also recommends that the Victorian Government:

8. *Increase its investment in funding and partnering with Aboriginal and Torres Strait Islander community-led prevention, early intervention and diversion programs;*
10. *Fund an Aboriginal and Torres Strait Islander community-led, and evidence-based, justice reinvestment pilot;*

For further information and additional principles for reform please see the CTR Coalition's *Blueprint for Change* which has been attached at *Appendix 2* and is also available online at: <https://changetherecord.org.au/blueprint-for-change> .

## **Conclusion**

The nation once looked to Victoria as one of the leaders in youth justice, with its system of dual orders and strong focus on rehabilitation and diversion options for children. However recent reports of mistreatment illustrate that the state is now heading in the opposite direction.

The CTR Coalition urges the Victorian Government to urgently rethink its approach to youth justice, and place emphasis on measures which support vulnerable children and see detention as a matter of last resort.

In addition, as an immediate step, it is critical that all allegations of assault within the Victorian Youth Justice system be immediately and independently investigated. The Andrews Government must also take urgent steps to ensure the safety of all young people, including by immediately removing all young people from Barwon Jail.

If you have any questions in relation to this brief submissions please contact Shannon Longhurst, Principal Advisor to the CTR Coalition, by phone [REDACTED] or via email [REDACTED]

Yours Sincerely,



Shane Duffy  
Co-Chair, Change the Record Coalition

## Appendix 1

The 'Change the Record' (CTR) Coalition is a group of leading Aboriginal and Torres Strait Islander, community and human rights organisations working collaboratively to address the disproportionate rates of incarceration and violence experienced by Indigenous Australians.

The CTR Coalition has identified two goals:

- Close the gap in rates of imprisonment by 2040; and
- Cut the disproportionate rates of violence to at least close the gap by 2040 with priority strategies for women and children.

The CTR Coalition is calling for greater investment in early intervention, prevention and diversion strategies. These are smarter solutions that increase safety; address the root causes of violence against women, cut re-offending and imprisonment rates, and build stronger and safer communities.

The CTR Coalition Steering Committee includes:

- Aboriginal and Torres Strait Islander Social Justice Commissioner
- ANTaR
- Amnesty International
- Australian Council of Social Service
- Federation of Community Legal Centres (Vic)
- First Peoples Disability Network (Australia)
- Human Rights Law Centre
- Law Council of Australia
- National Aboriginal Community Controlled Health Organisations
- National Association of Community Legal Centres
- National Aboriginal and Torres Strait Islander Legal Services
- National Aboriginal and Torres Strait Islander Women's Alliance
- National Congress of Australia's First Peoples
- National Family Violence Prevention Legal Services Forum
- Oxfam Australia
- Secretariat of National Aboriginal and Islander Child Care
- Sisters Inside
- Victorian Commissioner for Aboriginal Children and Young People