

**Submission to the Inquiry into  
Youth Justice Centres in Victoria by the  
Standing Committee on Legal and Social Issues  
Parliament of Victoria**

April 2017

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**Abolitionist and Transformative  
Justice Centre**

The Secretary  
Legal and Social Issues Committee  
Parliament House, Spring Street  
EAST MELBOURNE VIC 3002  
Emailed to: youthjusticevic@parliament.vic.gov.au

**Dear committee members,**

ATJC welcomes the opportunity to make a submission to the Standing Committee's Inquiry into Youth Justice Centres.

Our submission is guided by the collective experience of our members in working with imprisoned people, both pre and post release, and during periods of their incarceration.

**About us**

The Abolitionist and Transformative Justice Centre (ATJC) is a collective of lawyers, social workers, activists, researchers, community organisers and educators who are deeply committed to prison abolition and transformative justice.\*

Our work on unceded and stolen Aboriginal land is based on the recognition and advancement of continuous Aboriginal and Torres Strait Islander Sovereignty, Lore and Struggle.

We centre the resilience of criminalised people, honour their activism and resistance.

Our members have worked alongside and advocated for imprisoned people, their friends and families, pre and post release, and during their periods of incarceration.

We have led research and driven policy and law reform impacting on imprisoned and criminalized people throughout Victoria and other states in Australia.

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Members of ATJC work in a range of different areas and are members, staff and volunteers of various organisations including: Fitzroy Legal Service, Melbourne Activists Legal Support, Flemington Kensington Community Legal Centre, Darebin Community Legal Centre and Flat Out Inc.

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## SUBMISSION RECOMMENDATIONS

1. **RECOMMENDATION ONE** - End youth imprisonment, close down Parkville and Malmsbury youth detention facilities and release young people from Barwon Prison.
  
2. **RECOMMENDATION TWO** - Abandon the decision to build a new youth prison at Cherry Creek.
  
3. **RECOMMENDATION THREE** - Invest in intensive decarceration strategies by ensuring access to housing, healthcare, education, employment and non-carceral transformative justice and community accountability processes for young people, their families and communities.
  
4. **RECOMMENDATION FOUR** – Centre “youth voices, the human rights of children and young people and youth participation” in all decision-making processes involving young people.
  
5. **RECOMMENDATION FIVE** - Ensure that an empowerment model of decision-making is adopted in order for young people to self-govern.
  
6. **RECOMMENDATION SIX:** Promote young peoples achievement through the narrative of growth, potential, reasoning, creativity and capacity.

## INTRODUCTION

A world without prisons demands of us the courage to imagine a total transformation of our current way of being. The responsibility is on us to imagine what an abolitionist world looks like and how we can achieve it.

Prison abolition is not an idea that sits outside the realm of possibility. Recently a Senior Research Fellow from Harvard, Vincent Schiraldi, wrote about changes he made as head of the youth justice agency in Washington when he began to close down youth prisons and introduce a range of programs to engage young people in education, work, volunteering, art and sport.<sup>1</sup> This approach is being adopted throughout the U.S. where there has been a 53% decline in youth detention between 2001 and 2013.<sup>2</sup>

The following submission calls for the closure of Parkville and Malmsbury youth detention facilities, the removal of young people from Barwon Prison, and the abandonment of plans to build a new youth super-max facility at Cherry Creek. It also advocates for real and substantial investment in housing, education, healthcare and employment opportunities for young people, their family and friends so that their communities stay strong and free from violence.

The A.T.J.C. invites the Committee in this abolitionist moment to consider what a world without harm looks like for young people and engage with young people to bring about this world. This submission will make several recommendations on the current state of youth justice, imprisonment and social support in Victoria, and will address the Committee's terms of reference five and eight.

Most importantly, the A.T.J.C. calls for a world in which no young person will ever see the inside of a cell, in which no young person will have their liberty deprived, and in which no young person will be silenced.

A world without harm is a world without prisons.

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<sup>1</sup> Vincent Schiraldi, 'Australia could alleviate its youth justice crisis by importing the right ideas from the US' *The Conversation* (24 March 2017) Accessed online on 13 April 2017: <https://theconversation.com/australia-could-alleviate-its-youth-justice-crisis-by-importing-the-right-ideas-from-the-us-74535>

<sup>2</sup> Ibid.

## PRISON ABOLITION AND HEALTHY COMMUNITIES

### The need to abolish youth prisons

Imprisonment in this country is inextricably linked with the attempted genocide of Aboriginal peoples and Sovereign Nations. This countries' inception as a settler penal colony created the birth of a prison nation; a place where First Nations, people of colour, and the poor and working classes are subject to carceral control. In order to shed this violent pattern of dispossession, segregation and punishment, we must put an end to prisons and incarceration.

Prison abolition can be defined, as “the creation of genuinely safe, healthy communities that respond to harm without relying on prisons and punishment”.<sup>3</sup> Prison abolition “acknowledges that prisons are not a just, efficient or moral solution to the problems that shape violence in our communities”<sup>4</sup> and that to tackle violence we must see it as affected by wider social constructs of inequity, power and privilege.

Prison abolition is important for this Inquiry to consider because the young people in youth detention facilities share the same or similar characteristics to any person of any age faced with incarceration.

The Youth Parole Board surveyed 176 incarcerated young people and found that:

- 63% were victims of abuse, trauma or neglect;
- 62% had previously been suspended or expelled from school;
- 30% presented with mental health issues;
- 18% had a history of self-harm or suicidal thoughts;
- 24% presented with issues concerning their intellectual ability;
- 66% had a history of both alcohol and drug misuse;
- 45% had previously been involved with child protection;
- 38% had a family history of imprisonment; and
- 10% were homeless or living in insecure housing prior to custody.<sup>5</sup>

In 2014-15 the rate of Aboriginal and Torres Strait Islander young people in detention in Victoria was 9.4 people per 1,000 compared with 0.7 people per 1,000 for non-Aboriginal young people, making Aboriginal young people 13 times more likely to be imprisoned than their non-Aboriginal peers.<sup>6</sup> This over-representation is consistent across all Australian states and territories and

<sup>3</sup> Erica R. Meiners, 'Ending the School-to-Prison Pipeline/Building Abolition Futures' (2011) 43 *The Urban Review* 547-565, 500. (Critical Resistance, n.d.).

<sup>4</sup> Ibid 500.

<sup>5</sup> State of Victoria, Department of Health and Human Services, *Youth Parole Board Annual Report 2015–16*, (August 2016) 30.

<sup>6</sup> State of Victoria, Sentencing Advisory Council, *Young Indigenous People in Detention* (2017) Accessed online on 12 April 2017

<https://www.sentencingcouncil.vic.gov.au/statistics/sentencing-statistics/young-indigenous-people-in-detention>.

researchers argue that over-policing, racial discrimination and the ongoing affects of colonisation all contribute to the hyperincarceration of First Nations communities.<sup>7</sup>

Youth imprisonment is not about rehabilitation but about punishment by the State for being Aboriginal, a person of colour, poor, for experiencing violence, and for experiencing trauma housing, health, and educational disadvantage.

Of the young people that enter into the youth justice system 40% reoffend within two years and 61% reoffend within six years.<sup>8</sup> Prisons expose, enable and secure young people in a cycle of criminalisation.

This snapshot of young people affected by incarceration highlights the falsity of seeing prison as a rehabilitative facility and instead shows us that prisons are a place to hide and punish social inequality.

Abolition of prisons requires us to build “strategies for decarceration” and align ourselves “with the struggles of criminalized, imprisoned and oppressed communities”.<sup>9</sup>

**RECOMMENDATION ONE: End all imprisonment, youth detention and close down Parkville and Malmsbury youth detention facilities and release young people from Barwon Prison.**

### Abandon the new youth super-max

On 10 January 2017, 190 young people were detained in youth detention facilities in Victoria.<sup>10</sup> Of these young people, 91 were on remand and 99 were sentenced. In the last ten years, the use of remand has increased by two thirds,<sup>11</sup> which indicates an increasingly punitive response to young people in the courts.

Recently in Victoria, the media’s circulation of dramatic images of young people resisting their conditions of confinement has contributed to a discourse of widespread youth dangerousness, which government appears to have embraced. Young people’s actions have been detached and decontextualised

<sup>7</sup> Chris Cunneen, ‘Racism, discrimination and the over-representation of Indigenous people in the criminal justice system: Some conceptual and explanatory issues’ (2006) 17(3) *Current Issues in Criminal Justice*, 329-346; Anthony Thalia, *Indigenous people, crime and punishment* (2013) Routledge, New York.

<sup>8</sup> Victorian Ombudsman, *Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville* (February 2017).

<sup>9</sup> Emma Russell and Bree Carlton, ‘Pathways, race and gender responsive reform: Through an abolitionist lens’ (2013) 17(4) *Theoretical Criminology* 474-492, 476.

<sup>10</sup> Victorian Ombudsman, above n 4, 9.

<sup>11</sup> State of Victoria, above n 3, 42.

from the everyday violence of the youth justice system. Instead, young people are reduced to ‘thugs’.<sup>12</sup>

Despite the escalation of fear and punishment directed towards young people, official statistics suggest that the youth offender rate in Victoria is declining. Between 2008 and 2016 there was a 43% decline in the youth offender rate in Victoria, the third largest decline in youth offending behind the Australian Capital Territory and Tasmania.<sup>13</sup>

When viewed together, the above statistics paint a very different picture to the current government’s plans to expand youth detention. The decision to build a new super-max facility with the capacity to detain 224 young people, with the inclusion of a maximum-security unit, does not fit with the downward trends in youth offending and the small numbers of young people being sentenced.

The new maximum-security facility, to be built at Cherry creek, will be another punitive and ineffective approach to dealing with young people and harm. It will work to further marginalize and criminalise young people, especially those already caught in the system, and prevent them from engaging in community life.

**RECOMMENDATION TWO: Abandon the decision to build a new youth prison at Cherry Creek.**

## Investing in decarceration strategies

Decarceration can be broadly defined as ‘reducing the numbers of people going to and returning to prison’.<sup>14</sup> It is a ‘coalitional strategy that works to shrink the prison system’ through a combination of pragmatic demands and open-ended critique of carceral violence: it is ‘reform in pursuit of abolition’.<sup>15</sup> It can be used as a method of creating abolitionist futures as it “provide[s] a means to look beyond imprisonment as a solution to complex social issues”.<sup>16</sup> Decarceration demands have long been articulated by imprisoned people and

<sup>12</sup> Mark Buttler, Anthony Galloway and Cassie Zervos, ‘Barwon Prison: Reports of trouble at Grevillia unit’, *Herald Sun*, 13 February 2017, <http://www.heraldsun.com.au/news/law-order/barwon-prison-reports-of-trouble-at-grevillia-unit/news-story/3f908a67f7d7ebc586bd1db8cc2d4b83>; State Government of Victoria, *Media Release, Sweeping reforms to crack down on youth crime* (5 December 2016) Accessed online on 12 April 2017: <http://www.premier.vic.gov.au/sweeping-reforms-to-crack-down-on-youth-crime/>

<sup>13</sup> Australian Bureau of Statistics, *4519.0 - Recorded Crime - Offenders, 2015-16 Victoria*, Accessed online on 11 April 2016: <http://www.abs.gov.au/ausstats/abs@.nsf/Lookup/by%20Subject/4519.0~2015-16~Main%20Features~Victoria~9>

<sup>14</sup> Centre for the Human Rights of Imprisoned People (CHRIP), *An End to Prisons* (2011) Flat Out; Brett Garland, Nancy Hogan, Eric Wodahl, Aida Hass, Mary K Stohr, Eric Lambert, ‘Decarceration and its possible affects on inmates, staff and communities’ (2014) 16(4) *Punishment & Society*, 448-473, 449.

<sup>15</sup> Dan Berger, ‘Social movements and mass incarceration’ (2013) 15(1-2) *Souls*, 3-18, 14.

<sup>16</sup> Emma Russell and Cara Gledhill, ‘A prison is not a home: Troubling 'therapeutic remand' for criminalised women’ (2014) 27 *Parity* 27-28, 28.



their advocates in Victoria: increased access to safe and affordable housing, affirming health care and education are key starting points.<sup>17</sup> Decarceration 'works not only to shrink the prison system but to expand community cohesion' and maximise freedom.<sup>18</sup>

There are clear links between social and economic disadvantage and imprisonment that have been demonstrated in government, academic and social sector research. We know that imprisonment is connected to personal and collective histories of abuse, institutionalisation, problematised substance use, homelessness and mental health issues.<sup>19</sup>

The Australian Research Alliance for Children and Youth's (ARACY) *Nest Action Agenda* prioritises five areas in which young people must be supported in order to live full, safe and happy lives. These include:

1. The need to feel loved and safe and be placed in a positive and supportive environment, and *if possible*, a family environment. Importantly ARACY notes that the young people should not be placed in state care or in youth detention.
2. The young person must have material basics and wellbeing, such as, income equality, the possibility to undertake training and education, access to housing and amenities, internet access and educational materials.
3. The young person must be able to live a healthy and active life and have access to doctors, dentists, mental health support, and alcohol and other drug support.
4. The young person should be involved in education and learning.
5. Finally, the young person should participate in civic life including voting, organised activities, community groups, and decision-making.<sup>20</sup>

All of these principals must be underpinned by a "positive sense of culture and identity"<sup>21</sup> that recognises differences of race, ethnicity, culture, language, religion, sexuality, gender, age and ability.

A social support network relying on quality and abundant housing, healthcare, education, and income security must underpin the building of a strong and safe society free from harm.<sup>22</sup> These social rights should not only be afforded to young people but to all people, as the health and safety of young people is reliant on that of their families, friends and wider communities.

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<sup>17</sup> CHRIP above at 12; Fitzroy Legal Service, *Women and Imprisonment: A report* (1988).

<sup>18</sup> Berger above at 13.

<sup>19</sup> Victorian Ombudsman, *Investigation into the rehabilitations and reintegration of prisoners in Victoria* (September 2015).

<sup>20</sup> Australian Research Alliance for Children and Youth, *The Nest Action Agenda*, (2<sup>nd</sup> ed. March 2014) 7.

<sup>21</sup> *Ibid* 7.

<sup>22</sup> Emma Russell and Cara Gledhill, 'A prison is not a home: Troubling 'therapeutic remand' for criminalised women' (2014) 27 *Parity* 27-28, 28.

Incarceration is financially burdensome for the public. At approximately \$105,788 per year to keep a person in prison,<sup>23</sup> this money should instead be invested in proper social support that keeps people out of prison.

But we must not forget that aside from the financial cost to the public, imprisonment has “severe emotional impacts” and contributes to personal economic costs “through lost income, community participation, and care for dependents”.<sup>24</sup>

When we aspire to decarceration through the creation of a complex and robust well-resourced net of social support, then we can begin to understand that prisons will cease to exist when the necessary needs of people and communities are met.

**RECOMMENDATION THREE: Invest in intensive decarceration strategies by ensuring access to housing, healthcare, education, employment and non-carceral transformative justice and community accountability processes for young people, their families and communities.**

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<sup>23</sup> State Government of Victoria, *Corrections Statistics: quick reference* (2016) Accessed online on 12 April 2017: <http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/corrections+statistics+quick+reference>.

<sup>24</sup> Olive McRae ‘Prison reform on the path to prison abolition’ (2014) *Socialist Review* Accessed online on 12 April 2017: <https://iso.org.nz/2014/09/15/prison-reform-on-the-path-to-prison-abolition/>

## YOUTH CENTRED APPROACHES TO PARTICIPATION

### Youth voice and participation

The defining principle of the ‘best interests of the child as paramount’ is the foundational premise for all decision-making relating to young people in Victoria.<sup>25</sup>

Collaboration and participation between a state agency, a young person, and their family is recommended during a decision-making process, however, there are exceptions to prevent collaboration if the decision-maker believes there is risk to the young person.<sup>26</sup>

The ‘best interests of the child’ premise is limited in that discretion is held by the decision-maker as to what should happen to the young person rather than what the young person and their family believes to be the best course of action.

According to these principles the scope of ‘best interest of the child’ does not incorporate youth voice and participation as key to decision-making relating to young people.

The International Association for Public Participation presents a spectrum of five categories documenting the various levels of public participation that governments can adopt. These include:

1. Inform: To provide information to the public to assist them to understand an issue.
2. Consult: To obtain feedback from the public on a policy or decision.
3. Involve: To work with the public throughout the policy or decision-making process.
4. Collaborate: To partner with the public to assist in developing policies and decisions.
5. Empower: To place the final decision-making process in the public’s hands.<sup>27</sup>

This submission recommends a governmental approach to youth accountability based on category five; an empowerment model to participation for young people.

Research shows that public policy is more effective and efficient when “people’s perspectives are engaged”.<sup>28</sup> An empowerment model increases

<sup>25</sup> *Children Youth and Families Act 2005*, s 10.

<sup>26</sup> *Ibid* s 11.

<sup>27</sup> IAP2 International Federation, *Public Participation Spectrum* (2014) Accessed online on 12 April 2017: [https://www.iap2.org.au/Tenant/C0000004/00000001/images/Resources/IAP2\\_Public\\_Participation\\_Spectrum.pdf](https://www.iap2.org.au/Tenant/C0000004/00000001/images/Resources/IAP2_Public_Participation_Spectrum.pdf)

<sup>28</sup> Brian W. Head, ‘Why not ask them? Mapping and promoting youth participation’ (2011) 33 *Children and Youth Services Review* 541–547, 544.

effectiveness for harm accountability procedures because it builds on individuals and communities ability to self-govern. When young people make decisions and take ownership of their future they have the potential to build awareness of community issues, develop the necessary understanding and skills to be accountable for their actions and increase their role civic participation.<sup>29</sup>

**RECOMMENDATION FOUR: Centre “youth voices, the human rights of children and young people and youth participation” in all decision-making processes involving young people.**

**RECOMMENDATION FIVE: Ensure that an empowerment model of decision-making is adopted in order for young people to self-govern.**

### Fostering young peoples development and drawing on their perspectives

Adolescent development theories are often concentrated on the idea of “lacking”, meaning that young people’s behavior, and in particular violent behavior is based on the idea that the adolescent brain is “underdeveloped” and therefore associated with higher levels of “risk-taking”.<sup>30</sup>

This view of young people is steeped in negative assumptions and determined by a normative understanding that the adult brain is the right kind of brain and that any other is somehow wrong. It is imperative that these negative assumptions are replaced with positive understandings of youth development as full of potential and growth.

When we consider moments that lead a young person to commit an act of harm we must see the harm as occurring within a particular context. The premise that young people are “at risk” due to deficiencies in their development “threatens to expand the civil and social disadvantage” that many young people experience.<sup>31</sup> A.T.J.C. recommends encouraging young peoples capacity to engage in transformative practices by having particular sensitivity to their unique context and creating grassroots community accountability projects for young people to take ownership and to self-govern.

Young people during their adolescent years encounter a period of growth and opportunity that should be viewed as having a greater capacity for “moral reasoning” with the chance to be “more integrated in the political-cultural

<sup>29</sup> Ibid 544.

<sup>30</sup> Department of Health & Human Services, Youth Justice and Disability Forensic Unit, *Youth Justice in Victoria* (2016) Accessed on line on 12 April 2017: [www.dhs.vic.gov.au/\\_\\_data/assets/word\\_doc/.../Youth-Justice-in-Victoria-2016.doc](http://www.dhs.vic.gov.au/__data/assets/word_doc/.../Youth-Justice-in-Victoria-2016.doc)

<sup>31</sup> Judith Bessant, ‘Hard wired for risk: neurological science, ‘the adolescent brain’ and developmental theory’ (2008) 11.3 *Journal of Youth Studies* 347-360, 358.

domain”.<sup>32</sup> Instead of viewing young people as “underdeveloped” and “at risk” we should see their potential to add a unique perspective from within their own social and intellectual community. Young people should be encouraged to engage more in the social and political life of our community and state.

“Too often young people get excluded from matters of community yet are expected to behave in ways that are respectful, caring, and responsible to community”.<sup>33</sup> As a society we cannot expect young people to be accountable for the harm that they may create when governments make decisions about them, for them, without them.

**RECOMMENDATION SIX: Promote young peoples achievement through the narrative of growth, potential, reasoning, creativity and capacity.**

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<sup>32</sup> Scott D. Evans, ‘Youth Sense of Community: Voice and Power in Community Contexts’ (2007) 35 *Journal of Community Psychology* 693-709, 685

<sup>33</sup> *Ibid* 697.

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