



Yfoundations
PO Box 3115
Redfern NSW 2016

Select Committee on the High Level of First Nations People in
Custody and Oversight and Review of Deaths in Custody
Parliament House
Macquarie Street
SYDNEY NSW 2000

19th August 2020

Re: Yfoundations' Submission

Dear Minister Searle,

I am writing to you with Yfoundations' Submission into the Inquiry on the High Level of First Nations People in Custody.

Yfoundations has been working to advocate, support and amplify the voice of young people across NSW for over 40 years.

We work closely with youth homelessness prevention organisations, specialist homelessness services, and Local and State Government to make sure young people have positive flourishing outcomes into adulthood.

Yfoundations focuses on five pillars; Safety & Stability, Home & Place, Health & Wellness, Connections, and Education & Employment. We believe in order for young people to live flourishing and meaningful lives all five pillars need to be present.

We ask that you please consider the recommendations set forward in our submission. The troubling overrepresentation of Aboriginal and Torres Strait Islander young people in detention is symptomatic of a youth justice system that is in crisis across both NSW and Australia. One that is increasingly shifting from rehabilitation and reasoned, informed and evidence-based practices towards punishment.

I thank you and your colleagues in advance for your time and consideration into this very important issue.

Yours sincerely,

Pam Barker
Chief Executive Officer

About Yfoundations

For over 30 years Yfoundations has been the NSW peak body representing young people at risk of and experiencing homelessness, as well as the services that provide direct support to children and young people.

Our vision: Creating a future without youth homelessness. We believe that all children and young people have the right to safety and stability, home and place, health and wellness, connections and participation, and education and employment (together these are the foundations of our organisation). We know these are the foundations for the prevention of, and pathways out of, homelessness.

Our values underpin all the work we do. We value:

- Young people;
- Justice and human rights;
- Diversity and inclusion;
- Optimism and hope;
- Courage and Integrity.

We know that homelessness is an interrelated issue. It requires a whole of government and service response. We need to be innovative, collaborative, and determined if we are going to end homelessness.

Safety and Stability



It is vital that all young people not only feel safe, but also are actually protected from risk factors that may impede their developmental process. During childhood and adolescence young people must receive the necessary support to ensure they develop a strong safety system, both internally and within their external networks. A strong and stable foundation will foster confidence and independence within a young person, which will promote active participation in community life.

Home and Place



It is vital that all young people have access to a safe, non-judgemental home and place. A comfortable place that they identify with and feel a strong connection to. A Home and Place should be an environment that promotes growth and fosters positive development.

Health and Wellness



It is vital that all young people, particularly during the formative stages of their growth and development, are physically, socially and emotionally well. To ensure this, young people must have access to all the necessary prerequisites for achieving health and wellness. Being well and feeling healthy, will promote self-worth, and ensure young people feel competent to participate in their communities.

Connections and Participation



It is vital that all young people are given the opportunity to develop and nurture the connections in their lives. Connections to friends, family, community and society promote resilience and social inclusion. Young people must be listened to and have the opportunity to influence outcomes. Positive connections and genuine participation in community life during the formative stages of childhood and adolescence enables a young person to build a strong positive foundation and prepares them for adult life.

Education and Employment



It is vital that all young people are given the opportunity to pursue their educational and professional goals. Education and training is crucial to the growth and development of young people. Education and training, including formal tuition and practical life skills, promotes self-confidence and independence and provides young people with the skills and competencies.

Introduction

Australia is in the midst of an incarceration pandemic when it comes to the First Nations people of Australia. The overrepresentation of First Nations people is a persistent and growing problem. Indeed, the Royal Commission into Aboriginal Deaths in Custody highlighted, almost three decades ago in 1991, the gross overrepresentation of Aboriginal and Torres Strait Islander peoples in custody.[i] Twenty years after its publication, in 2011, the Inquiry into Indigenous Youth in the Criminal Justice System found that the rate of imprisonment of Aboriginal young people had continued to rise and was at its highest level since the Royal Commission's report.[ii]

Numbers continue to grow. Between 2006 and 2016, Aboriginal and Torres Strait Islander incarceration rates increased by 41%, and the gap between Aboriginal and Torres Strait Islander and non-Indigenous imprisonment rates widened.[iii]

The available national data shows that Aboriginal and Torres Strait Islander peoples:

- Represent just 3% of the total population, yet more than 29% of Australia's prison population. [iv] In December 2019, this equated to 2,536 prisoners per 100,000 adult Aboriginal and Torres Strait Islanders, compared with 218 prisoners per 100,000 non-Indigenous adults[v]
- Are 20 times more likely to be imprisoned than non-Indigenous people[vi]
- Are 11 times more likely to be refused bail by a court.[vii]

The national rates of detention for young people aged 10 to 17 are even more bleak. The available data shows that Aboriginal young people:

- Represent over half (57%) of all young people in detention, despite forming just 6% of the population between the ages of 10 and 17. [viii] In June 2019, this equated to 31 young people aged between 10 and 17 per 10,000 young Aboriginal and Torres Strait Islander Australians, compared with 1.5 per 10,000 non-Indigenous young people[ix]
- Are 21 times more likely to be in detention than non-Indigenous Australians, and this fluctuated, at 19 to 26 times the non-Indigenous rate over a four-year period[x]
- Under supervision are younger than their non-Indigenous counterparts[xi], with research showing that the earlier a young person comes into contact with the YJ system, the more protracted their exposure is likely to be.[xii]

This is a worrying trend. The overrepresentation of First Nations people comes at a cost to us all. Financially, in 2019, the detention of First Nations peoples cost us \$7.9bn.[xiii] Socially, detaining young people, even for short periods, harms their mental health, interrupts educational pursuits, and exacerbates existing trauma.

In March 2017 the UN Special Rapporteur on the Rights of Indigenous peoples conducted a country visit to Australia, identifying the situation as a major human rights concern. In their End of Mission statement, they said:

It is completely inappropriate to detain [Aboriginal and Torres Strait Islander] children in punitive, rather than rehabilitative, conditions. They are essentially being punished for being poor and in most cases, prison will only aggravate the cycle of violence, poverty and crime. I found meeting young children, some only twelve years old, in detention the most disturbing element of my visit.

Background Information

1) Impact of Detention on Aboriginal Young People and Communities

Research has long shown the adverse effects of detention, even for a short period, on a young person's health and wellbeing. It worsens mental health concerns, interrupts training and education and subsequent employment opportunities, and exacerbates existing trauma.[xiv] Aboriginal young people are particularly vulnerable to the impacts of detention because their identities are often shaped by their connection to Country, culture and family.[xv]

The impacts felt by young people are long-term and will affect their wellbeing not just in their immediate life but also throughout the course of their lives. Keenan Mundine, an Aboriginal YJ advocate who spent over 15 years in detention from the age of 14, spoke about the lasting impacts of his detention to the United Nations Human Rights Council in July 2018. He shared that he could still smell the tiny prison cell that he was first detained in.[xvi]

It is also widely recognised that detention fosters further criminality. In this way, it fails to protect the community. Australian figures demonstrate high rates of recidivism amongst children and young people subject to a control order. The available data shows that, for Aboriginal children and young people aged 10 to 17 years released from sentenced detention from 2000-01 to 2017-18, 62% received at least one more sentence before turning 18, compared with 45% of non-Indigenous young people.[xvii] Recidivism rates were even higher for younger children. Of those aged 10 to 12 years at the time of release, 94% returned within 12 months, the highest of any group observed.[xviii]

Detention is also not a cost-effective way of promoting public safety or meeting young people's needs. It costs the NSW Government \$1,334 per day to keep one young person in detention, roughly \$486,910 per year.[xix] Research by Jesuit Social Services found that young people who first experience remand between the ages of 10 and 12, cost the State of Victoria over \$3 million a year and this does not include collateral costs including policing, court time, legal aid, or social services.[xx] Governments also experience indirect costs through increased demand for health and welfare services during and after detention.

2) Neurobiological Development

The Royal Australasian College of Physicians (RACP) represent over 17,000 physicians in Australia and New Zealand in medical specialties including neurology, paediatrics and child health. In their submission to the Council of Attorneys-General Working Group tasked with reviewing the minimum age of criminal responsibility in Australia, they highlight the physical and neurocognitive vulnerabilities experienced by children towards the lower end of the current minimum age (10 to 13 years). In relation to neurocognitive vulnerability, the RACP notes:[xxi]

Functional neuroimaging indicates that the pre-frontal cortex of the brain, the part of the brain that controls "executive functions" (that is impulse control, planning and weighing up long term consequences of one's actions), is not fully developed until around 25 years of age.

Impulse control, the ability to plan and foresee the consequences of one's actions is vastly less developed in a 10-year-old than an adult. As such, when faced with a choice of jumping into a stolen car with peers, or being left on the side of the road alone, it is highly conceivable that a 10 year old may jump into the stolen car, and thus become an accessory to a crime, without having planned this or thought through the consequences.

The RACP further highlights mounting evidence that children and young people in detention in Australia have a very different neurodevelopmental and mental health profile compared to children and young people who are not in custody.[xxii]

A large multidisciplinary assessment of 99 young people aged between 10–17 years 11 months and sentenced to detention in the only youth detention centre in Western Australia, from May 2015 to December 2016 showed that 89% had at least one severe neurodevelopmental impairment. These impairments included Foetal Alcohol Spectrum Disorder, ADHD, learning difficulties, intellectual disability, speech and language disorders, anxiety, depression, and trauma.[xxiii]

Therefore, behaviours which typically bring children, especially young children, in conflict with the law are better understood and responded to 'as behaviours within the expected range in the typical neurodevelopment' for this group of children, particularly when considering children whose behaviours arise out of significant past trauma or severe disadvantage.[xxiv]

3) Profile of Young People in Detention

Research shows that young people who end up in detention tend to be extremely vulnerable and have serious and multiple health needs, often from an early age. To understand the health status of young people in detention, the NSW Government asks them to complete a survey: The Young People in Custody Health Survey (YPICHS). Results from the most recent survey found severe health disadvantages, which were particularly acute for Aboriginal and Torres Strait Islander young people:[1]

- Almost half of participants (47.8%) experienced at least one traumatic event, with girls significantly more likely than boys to witness or be the victim of sexual assault, and to be the subject of rape
- Young people in detention are 26 times more likely to be placed in OOHC during their childhood than a young person in the general population (211.5 per 1,000 vs. 8.1 per 1,000). Girls in OOHC are the most likely to end up in detention (315.8 vs. 8.1 per 1,000), followed by Aboriginal young people (232 vs. 52.5 per 1,000)
- Over 70% of young people did not attend school in the six months prior to entering detention. The median age of leaving school was 15 years and Aboriginal young people left school earlier than their non-Aboriginal counterparts (14 years vs 15.5 years)
- Parental incarceration is common with 53.6% young people reporting that at least one of their parents (including stepparents) had been incarcerated in the past, and 7.1% reported that both parents had been incarcerated. Aboriginal young people are significantly more likely to have a parent who had been incarcerated (67.5% vs. 36.6%)
- Over 80% had previous history of youth detention and Aboriginal young people were significantly more likely to have a history of custody than their non-Indigenous counterparts (89.7% vs 76.9%) and were significantly younger at their first entry into custody (14.6 years vs 15.6 years)
- The overwhelming majority of participants (92.5%) reported illicit drug use. In contrast, 22.9% of young Australians aged between 14 and 19 surveyed for the National Drug Strategy Household Survey had used an illicit drug. Almost two thirds (65.4%) of participants who had engaged in illicit drug use had committed a crime to obtain alcohol and/or other drugs. More than three-quarters reported that they were intoxicated at the time of their offence (77.6%)

- Most participants (83.3%) met the threshold for at least one psychological disorder, and 63% met the threshold for two or more psychological disorders. The population prevalence of psychological disorders for young people aged between 4 and 17 is estimated to be 13.9%. The most common disorders were attention and behavioural disorders (59.4%) and substance use disorder (57.8%).

These findings add to the body of literature that highlights that many young people who are involved with the criminal YJ system are not, for complex reasons, thriving socially, emotionally or physically. Even before they come into contact with YJ, they are among the most vulnerable in our society and face multiple layers of disadvantage.

Children and young people who engage in early offending behaviour need care, support and treatment, not punishment. Detention and criminalisation further damages children who are often traumatised. It also results in adverse developmental trajectories.

According to the RACP, adolescence is a time of transition between childhood and adulthood, during which one develops not only physically, but also mentally and socially. It is over this period that one's sense of self identity is fully developed. The most important positive influences on a successful transition from childhood to adulthood are:

- Connection with community
- A positive and supportive family environment
- Connection with the education system
- Positive peer experiences.[xxv]

If a young person enters the youth justice system and is removed from these positive influences, they are often sent on a different, less positive developmental trajectory. Furthermore, it would be expected that the removal from family or care, and isolation in police cells or incarceration, will further traumatise children who have already experienced significant past trauma, and trigger further mental health issues and problematic behaviour. Therefore, it is essential that the socioeconomic, physical, emotional, psychological and wellbeing needs of our young people are addressed to ensure that they do not have lifelong impacts on young people.

Solutions

Yfoundations welcomes the inclusion of targets in the new National Agreement on Closing the Gap to reduce the rate of Aboriginal and Torres Strait Islander young people in detention and out-of-home-care (OOHC) by 2031:

- Reduce the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30%
- Reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in OOHC by 45%.[xxvi]

Successfully meeting these targets now requires inter-agency collaboration to across government departments and portfolios and between support services.

A. Law Reform

1) Remand Legislation

When a child or young person is on remand, this means that they are detained until a later date when a defended or sentencing hearing takes place. The majority of young people on remand have not been convicted of a criminal offence and are awaiting a hearing following a not-guilty plea.[xxvii] In 2019, 55% of Aboriginal and Torres Strait Islander young people in detention were on remand.[xxviii] This is worrying for a number of reasons.

First, it undermines a number of key international legal principles of the criminal law, YJ and child protection. These are set out in a number of United Nations] (UN) treaties ratified by the Australian Government including the Convention of the Rights of the Child, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, all of which have been ratified by the Australian Government. All mandate that the detention of young offenders awaiting a hearing of their charge should be a measure of last resort and for the shortest possible period of time.[xxix]

In line with international legislation, a key recommendation of the Royal Commission into Aboriginal Deaths in Custody was that 'except in exceptional circumstances, juveniles should not be detained in police lock-ups' (recommendation 242).[xxx] Despite this, 20 years later, the NSW Law Reform Commission continued to raise the high rates of unsentenced Aboriginal and Torres Strait Islander young people as a concern, but young people continue to be remanded at a rate twice that of the adult remand population.[xxxi]

Second, most young people on remand do not go on to receive a custodial sentence. According to data from 2017/18, of the 1,489 instances of young people experiencing short-term remand, only 6% (less than 100 young people) were ultimately sentenced to a control order.[xxxii] Research undertaken by Yfoundations, the NSW peak body for youth homelessness, into the Bail Act 2013 (Bail Act) confirmed this, with many participants frustrated that vulnerable young people are deprived of their freedom for offences that are unlikely to result in a control order. [xxxiii]

This suggests that young people are being held on remand for reasons other than the wider safety of the community. For example, every year in NSW, children and young people who have been granted bail by the Children's Court of NSW - all of whom have not yet been found guilty of any crime - remain in detention simply because they are homeless. This is provided for under section 28 of the Bail Act, a pre-release requirement that stipulates that children and young people cannot be released on bail until suitable housing is found for them.[xxxiv]

This has had disastrous unintended consequences for young people experiencing, or at-risk of, homelessness at the time of their arrest. In 2018-19 alone, 260 homeless children and young people were remanded in custody for up to 45 days under this provision of the Bail Act.[xxxv]

The impact of remand on the wellbeing and future prospects of children and young people are severe and damaging. Freeman and Seymour (2010) interviewed young people (aged 16 to 21) on remand and found that most identified the sense of uncertainty on remand as the worst aspect of their experience of YJ. This sense of being 'in limbo' worsened existing vulnerabilities and difficulties the young people faced and had negative psychological and social consequences, including separation from family and community, lack of access to therapeutic programs,

disengagement from education, a greater likelihood of receiving a remand period following a future court appearance and receiving a sentence of imprisonment than young people who are released on bail, and it increases the likelihood of repeated contact in the future.[xxxvi]

The excessive use of remand in NSW shows that we are getting further out of touch with the basic premise of detention as a last resort for juvenile offenders. Research undertaken by Yfoundations suggests that one reason why this may be is because there are no 'other resorts' to turn to. Under section 28 of the Bail Act, youth detention centres are effectively being used as an alternative accommodation option for young people in situations where there are no immediate housing options available to them. Further research undertaken by Yfoundations due to be released in October 2020, identifies the under-resourcing of the youth homelessness sector alongside a lack of collaboration between government agencies as key contributing factors to this issue.

Recommendation 1: End the detention of young people who have not been sentenced and address legislation that breaches young people's rights. The arrest and detention of children and young people must be a measure of last resort, and remand should be the exception and not the rule.

2) Unequal Policing Practices

The Australian Law Reform Commission's Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples noted that 'research suggests that Aboriginal and Torres Strait Islander young people are more likely to be arrested than their non-Indigenous counterparts even after other factors such as the offence, offending history and background factors are considered.'[xxxvii]

Indeed, research undertaken by the NSW Youth Justice Coalition documents how the Suspect Targeting Management Plan (STMP), a police intelligence tool that uses risk assessment to identify suspects and a policing program that guides police interaction with individuals who are subject to the program, is disproportionately used against young people, particularly Aboriginal and Torres Strait Islander young people. Key findings from their research include:[xxxviii]

- Data shows the STMP disproportionately targets young people, particularly Aboriginal and Torres Strait Islander people, and has been used against children as young as 10, despite having no prior convictions in some cases
- The STMP has the effect of increasing vulnerable young people's contact with the criminal justice system and undermines diversion, rehabilitation and therapeutic programs. For example, the research identified several instances where Aboriginal young people on Youth Koori Court therapeutic programs have had their rehabilitation compromised by remaining on the STMP
- The STMP risks damaging relationships between young people and the police. Young people targeted on the STMP experience a pattern of repeated contact with police in confrontational circumstances such as through stop and search, move on directions and regular home visits.

Recommendation 2: The NSW Police Force to discontinue applying the STMP to children and young people under the age of 18. Young people suspected of being at medium or high risk of reoffending should be considered for evidence-based prevention programs that address the causes of reoffending (such as through Youth on Track, Police Citizens Youth Clubs NSW or locally based programs developed in accordance with Just Reinvest NSW), rather than placement on an STMP. The Police to amend the STMP policy so that any person considered to have a 'low risk' of committing offences not be subject to the STMP.[xxxix]

3) Age of Criminal Responsibility

In July 2020, the Council of Attorneys-General (CAG) Age of Criminal Responsibility Working Group tasked with reviewing the age of criminal responsibility in Australia confirmed that the age of criminal responsibility would remain at 10 until at least 2021.[xli] Research shows that children as young as 10 and 11 have been detained by police for alleged crimes as petty as breaching bail by missing school and arriving home moments after a bailed imposed curfew.[xlii]

This is disappointing and a missed opportunity to improve the wellbeing and mental health prospects of some of our most vulnerable children and young people. Australia's low age of criminal responsibility is a key driver of early and entrenched contact with the criminal YJ system for Aboriginal and Torres Strait Islander children.

The current age of criminal responsibility falls well below international human rights standards. An independent report presented to the UN by the Independent Expert leading the global study on children deprived of their liberty, recommends that the minimum age of criminal responsibility should be at least 14, as does the UN Committee on the Rights of the Child.[xliii] It also ignores calls from legal and medical professionals, educators, human rights and Indigenous groups, has drawn UN condemnation, and fails to act on recommendations from the UN Committee on the Rights of the Child and the Royal Commission into children in juvenile detention in the NT.[xliv]

The current minimum age of criminal responsibility disproportionately affects Aboriginal and Torres Strait Islander children and young people. Available data shows that Aboriginal young people tend to come into conflict with the law at a younger age than non-Indigenous young people. Notably, the greatest overrepresentation occurs between the ages of 10 and 14.[xlv] For example:[xlv]

- About half (48%) of Aboriginal and Torres Strait Islander young people under supervision on an average day in 2017-18 were aged 10 to 15, compared with one-third (33%) of non-Indigenous young people
- Two in five (39%) Aboriginal and Torres Strait Islander young people under supervision in 2017-18 were first supervised when aged between 10 and 13, compared with about 1 in 7 (15%) non-Indigenous young people
- Three in four (73%) boys aged 10 to 12 appearing before the Children's Court between 2006 to 2015 were Aboriginal and Torres Strait Islander, with Aboriginal and Torres Strait Islander girls representing three in five (60%) girls appearing before the Children's Court in the same age bracket
- Aboriginal and Torres Strait Islander young people aged 10 to 14 in 2010-11 were 23 times as likely as non-Indigenous young people aged 10-14 to be under community-based supervision and 25 times as likely to be in detention.

While children aged between 10 and 13 are subject to *doli incapax*, a common law legal presumption that children aged 10 to 13 lack the capacity to be responsible for their crimes, the Public Interest Advocacy Centre points out that the doctrine has been the subject of sustained criticism for failing to adequately safeguard children from contact with the criminal YJ system: [xlvii]

Particularly problematic is the fact that determination of *doli incapax* takes place at one of the last stages of the criminal justice process, during hearing. This means that a child aged 10 to 13 accused of a crime can be arrested, taken into police custody, handcuffed, searched (including strip searched), questioned, remanded in custody and subject to bail conditions, before eventually being found to be *doli* – resulting in charges being dismissed.

In light of current evidence on child development, Yfoundations is calling on the NSW Government to increase the minimum age of criminal responsibility to 14. As we have seen, research on the physical and neurocognitive vulnerabilities of young people between the ages of 10 and 13 is clear and unequivocal. Detention is an inappropriate, counter-intuitive and damaging response for addressing a young person's offending behaviour, particularly where there has been significant trauma.

Recommendation 3: The low age of criminal responsibility impacts disproportionately on Aboriginal and Torres Strait Islander children and young people because of their over-representation in the criminal justice system. The NSW Government to raise the age of criminal responsibility to 14.

B. System Reform: Early Intervention and Diversion Strategies

If we are to successfully stem the high rate of Aboriginal and Torres Strait Islander young people in custody, we must first address the key drivers of offending behaviour. Research highlights the interlinked nature of the causes and the factors leading to the over-representation of Aboriginal children and young people in detention. These include poverty, intergenerational disadvantage, lower levels of educational attainment, higher incidence of mental and cognitive disabilities, higher incidence of involvement with the child protection system, lack of employment opportunities and access to housing.

As a result, the key drivers of the over-representation of Aboriginal and Torres Strait Islander young people in youth detention cannot be addressed by a single government department or program. Instead, whole of system solutions are required across a range of government policy and portfolio areas, including education, health, community services, welfare and justice.[xlvi]

Research undertaken by PwC shows that there is a strong link between intergenerational disadvantage, poverty and incarceration. Tackling economic and social disadvantage, increasing income equality and improving access to high-quality health, education, employment and housing can directly influence rates of offending.[xlvii]

Programs and services based on early intervention, prevention and diversion that address the underlying causes of offending behaviour must be at the core of any YJ strategy. There are a number of early intervention and diversionary programs in place in NSW.

Youth on Track

Youth on Track is an early intervention program for young people aged between 10-17 years who have a medium-to-high risk of becoming entrenched in the YJ system. It is a voluntary program, and young people who are referred have already had formal contact with the YJ system.[xlix] The program is currently available in seven locations across NSW including

YJ funds three NGOs to deliver the scheme across seven sites in NSW including Blacktown, the Hunter, the Mid North Coast, the Central West, Coffs, Riverina and New England. After an assessment, the young person receives one-on-one case management and interventions to address the underlying issues that lead to their offending, which may include homelessness.

The scheme utilises a multi-agency response which includes schools, community groups, police and other stakeholders in order to provide consistent services in a non-duplicated way. Youth on Track does not require an admission of wrongdoing or a finding of guilty in relation to an offence, but operates on a referral system through police and local schools.[l] Automatic referrals are made by Youth on Track screening officers for young people with at least two formal contacts with the police and who are assessed as having at least a 60% likelihood of reoffending.[li]

The aims of the program are to:

- Reduce further contact with the criminal YJ system
- Offer support in a timely manner
- Address the young person's criminogenic needs and risks through coordinated evidence-based and offence focused interventions
- Increase access to and awareness of support services
- Provide education, employment, health and other community services
- Enhance engagement in learning, social and community activities
- Strengthen positive relationships between young people and their family.[lii]

Maranguka Justice Reinvestment Project

The Maranguka Justice Reinvest Project is the first major justice reinvestment initiative in Australia, delivered in partnership between the Bourke Aboriginal community and Just Reinvest NSW. Justice reinvestment aims to demonstrate that sustainable outcomes and savings can be achieved through redirecting funding from crisis response and youth detention. These funds are redirected towards preventative, diversionary and community development initiatives that address the underlying causes of crime.[liii]

Reducing Aboriginal young people's contact with the criminal justice system was a priority founding goal of the Maranguka Initiative, the representative body of the Bourke Aboriginal community in relation to the project. This was in part due to the high level of youth offending observed in Bourke, and community concern that not enough was being done to ensure existing programs and services provided to at risk children and families were sustainably funded, long-term and properly evaluated.

The Maranguka Project is community-led, using a collective impact framework that brings together a diverse range of organisations and services to work on a common agenda. It includes a school-based component, a family component, an out of school hours component, and an acute response and return to community component. The school-based component is known as the Our Place Program (OPP), and is designed specifically for children with complex needs, who have disengaged or are disengaging from school and are at risk of entering the criminal justice system. The out of school hours component, known as Save Our Sons/Sisters (SOS) emerged following community identification of school holidays as a high-risk period in relation to youth involvement in crime, and a need to ensure continued routine and engagement in OPP by participants following completion of a school term.

It was positively evaluated by KPMG in 2018, whose impact assessment report showed a 38% reduction in the number of juvenile charges in the five most common offence categories over a 1-year period, and a 27% reduction in bail breaches by young people.[liv]

Youth Koori Court

The Youth Koori Court was established in 2015 to reduce the numbers of Aboriginal children and young people in detention through the provision of interventions that target the drivers of offending behaviour. The view of the Youth Koori Court is that if key issues such as AOD, mental health, housing and education are addressed, there is a greater chance of keeping Aboriginal young people out of detention. There are two Youth Koori Courts in NSW: one in Parramatta and one in Surry Hills (Sydney Metro).

The Youth Koori Court brings Elders or respected Aboriginal community members, lawyers and Youth Justice around a table to discuss the issues that may be impacting a young person's offending behaviour. It puts sensible, tailored plans in place for each young person to encourage connection with family, community and culture to stop anti-social behaviour from escalating. Magistrate Sue Duncombe who has presided over the Youth Koori Court since its inception, told us: "We are a young person's voice. They tell us what they want and need, and we advocate for them from there."

The Youth Koori Court has capacity to support 24 young people each year and also has flexibility to relax bail conditions to ensure that they are culturally competent and not so onerous as to impact a young person's ability to be compliant with them.

While the positive outcomes from the Youth Koori Court are yet to be formally evaluated, it has extensive stakeholder support. Magistrate Duncombe said: "So far we are seeing some really positive indicators, including a reduction in the time young offenders are spending in detention. The second Youth Koori Court is great news because the more children we can work with, the more kids we can support to get their lives back on track." [iv]

The Youth Koori Court was designed as a sentencing court and progress made throughout the course of the 12 months is taken into account during the sentencing process. A limitation of this model is that, as a result, only young people who have either plead guilty to or been found guilty of an offence are eligible for casework support. A similar model of support, run and led by Aboriginal workers whether through or independent of the Youth Koori Court, should be extended to those Aboriginal young people whose matters are ongoing before the court.

Additionally, the capacity of the Youth Koori Court to support young people is limited as to be eligible to take part, young people have to reside in the Youth Koori Court's catchment area. Magistrate Duncombe would like to see a Youth Koori Court implemented at each of the State's Children's Courts. It should also be expanded to those catchments with high rates of Aboriginal young people in detention.

Growing evidence demonstrates that punitive youth detention facilities are counter-intuitive, exacerbate trauma, inhibit positive growth and fail to address public safety. Rather, youth detention should be replaced, in all but the most serious cases, with a continuum of community-based programs. For the few young people who require secure confinement as a last resort, this should be in smaller homelike facilities that prioritise age-appropriate rehabilitation.

In order to inform the discussions around YJ in Australia, Jesuit Social Services went on an international tour, taking in parts of Norway, Germany, Spain, the United Kingdom and the United States, visiting detention facilities and diversion programs. They found that good youth justice systems focus on early intervention and diversion, preventing young people from further contact with the justice system, using child-specific approaches and engaging families and communities. They have thorough assessment and planning processes that are supported by strong social infrastructure and well-resourced community alternatives to locking up young people. When prison is necessary, the focus is on strong education, addressing problem behaviour and underlying needs, and building social and practical skills through programs that prepare young people for reintegration into their community. They use facilities that are small and close to the homes of detainees, with positive cultures and well qualified staff who are trained to build relationships of trust, rather than punish. [v]

The overrepresentation of Aboriginal children and young people in detention must be addressed using strategies that address the underlying causal factors that led them to come into contact with the police. Finally, there is an urgent need for greater recognition of Indigenous culture as a positive support of children through Elders, law and justice groups, Aboriginal communities and organisations. Aboriginal designed and led prevention and diversion programmes for Aboriginal children and young people are the best chance for long-term, sustainable change. [vii]

Recommendation 4: Comprehensive service and program mapping should be completed by the NSW Government to identify the early intervention and diversionary programs and responses that already exist. This mapping should include what is provided, the age groups that are targeted, the location and any cost of the service, referral criteria (including whether or not some form of contact with the criminal justice system is currently required), referral pathways, any gaps and barriers to accessibility and service needs and available data on outcomes and evaluation. [viii] Funding for early intervention and diversionary programs can then be targeted to areas of greatest need.

Conclusion

The troubling overrepresentation of Aboriginal and Torres Strait Islander young people in detention is symptomatic of a youth justice system that is in crisis across both NSW and Australia. One that is increasingly shifting from rehabilitation and reasoned, informed and evidence-based practices towards punishment.

A recent report analysing the cost of intervening late in areas that affect a young person's quality of life found that Australian governments are collectively spending \$15.2bn each year on high-intensity and crisis services for problems that may have been prevented had we invested earlier and more wisely. It includes spending on child protection services, the YJ system, health services, social security payments and mental health treatment. The police, court and health costs of youth crime was identified as one of the most significant costs.[ix]

Stepping in with early intervention to provide support at the right time and in the right way can significantly reduce the demand for high-intensity and crisis services over time and is a smart investment. When we identify and tackle the challenges young people face earlier in their life, their chances of resilience and recovery are much greater so their need to rely on services throughout their life is significantly reduced. Ensuring young people have access to effective, targeted early intervention and effective support is a social and economic priority for Australia.

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