



# AUSTRALIA'S YOUTH JUSTICE AND INCARCERATION SYSTEM

LEGAL AND CONSTITUTIONAL AFFAIRS REFERENCES  
COMMITTEE INQUIRY

## Submission of the Community Restorative Centre (CRC)

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## 1. ACKNOWLEDGEMENTS

CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community and pay respects to Elders, past and present. This always was, always will be Aboriginal Land.

The overrepresentation of First Nations children and young people in criminal justice systems across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations individuals, families and communities to reduce the criminalisation of their kin. Given the significant proportion of young people in the criminal justice and child welfare systems, any conversations about the criminalisation of young people must centre the voices and expertise of First Nations individuals – including young people – their families, communities, and Aboriginal community-controlled organisations, and their solutions must be adequately resourced and supported.

## 2. ABOUT COMMUNITY RESTORATIVE CENTRE

The Community Restorative Centre (CRC) is the lead NGO in New South Wales (NSW) providing specialist support to people affected by the criminal justice system, with a particular emphasis on the provision of post-release and reintegration programs for people with multiple and intersecting needs. CRC has over 70 years of specialist experience in this area. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal justice system involvement, and build pathways out of the criminal justice system. CRC works holistically to do this, addressing issues such as homelessness, drug and alcohol use, social isolation, physical and mental health, disability, employment, education, family relationships, financial hardship, and histories of trauma. CRC has historically focused on the provision of services to adults, however we noticed a significant gap in community-based service provision for young people at risk of criminal justice system contact and those leaving custody. Since 2021 CRC have supported young people through our Pathways Home Program.

### The Pathways Home Program

Pathways Home supports young people 10-24 who have a history of problematic alcohol and other drugs (AOD) use whilst in custody and post-release. Youth Transition Workers offer pre-release support and planning, and long-term holistic case management in the community. The program provides a through-care model of support for young people exiting custody or previously incarcerated residing in Central, Eastern and Western Sydney. Pathways Home aims to holistically address the individual, social and structural causes of incarceration, including drug and alcohol use, homelessness, social isolation, physical and mental ill health, disability, access to education, access to employment opportunities, family relationships, financial hardship and histories of trauma. Between 1 January to 30 June 2024, the Program supported 47 young people. 53% were Aboriginal and Torres Strait Islander young people.

## 3. INTRODUCTION

Thank you for the opportunity to provide comment on the youth justice and incarceration system. This submission is informed by our expertise as an organisation working in frontline service delivery with criminalised communities for over 70 years, as well as research by our



Research, Policy and Advocacy Unit at CRC. In this submission, we provide responses to (a)-(f) of the terms of reference.

### CRC's philosophical approach to youth incarceration

CRC does not believe that children belong in carceral systems (Community Restorative Centre 2020, p.23), and instead advocates for appropriate diversionary programs and community supports. Given the relatively low numbers of young people in NSW youth prisons during the 2023-2024 period (an average of 212 people daily), and the fact that 75% had not been sentenced (Youth Justice NSW 2024)<sup>1</sup>, CRC's position is that emptying youth prisons is in fact entirely achievable. While youth detention facilities still exist, CRC supports minimising the harms of such facilities through some of the actions recommended in this submission.

While locking up children is often justified under the dominant guise of making the public safer (Cunneen, Allison and Beaufils 2024), CRC recognises the reality: that detention does not in fact make communities more safer (Australian Human Rights Commission 2024, p. 5). In an Australian Human Rights 2024 report on transforming child justice, the Children's Commissioner recognised that: 'our communities will not be safer if we just keep punishing and locking up children who have complex needs caused by poverty, homelessness, disability, health and mental health issues, domestic, family and sexual violence, systemic racism and intergenerational trauma' (Australian Human Rights Commission 2024a).

CRC also recognises that young people we work with are experts in their own lives, are remarkably strong, resilient, and frequently highly motivated to break free of the justice system. Too often, however, the pathway out of this system is thwarted by over-policing, over-surveillance, over-supervision, stigma, discrimination and a lack of appropriate community-based support.

## **2. RESPONSES TO THE TERMS OF REFERENCE (TOR)**

### **a) the outcomes and impacts of youth incarceration in jurisdictions across Australia**

#### The failure of carceral systems to achieve their crime control ambitions

Exposure to the youth justice system breeds more youth justice involvement for young people, rather than breaking cycles of involvement. Notably, for young people aged 10-16 in Australia, about two-thirds (66%) released from sentenced detention received another supervised sentence within 6 months, and more than 4 in 5 (85%) within 12 months (Australian Institute of Health and Welfare 2023, p. v).

#### The impact of youth incarceration for First Nations peoples

##### *Potentially fatal consequences*

Youth incarceration can have fatal consequences for First Nations young people. 2 First Nations teenagers died by suicide in a WA youth detention facility, Banksia Hill Detention Centre, in 2024 (Charles 2024). More broadly, there have been 573 First Nations deaths in custody since the Royal Commission into Aboriginal Deaths in Custody in 1991, which

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<sup>1</sup> Similarly high rates of unsentenced young people are housed in detention centres nationally, with almost 4 in 5 (77%) being unsentenced (Australian Institute of Health and Welfare 2023a).



includes youth detention facilities (Australian Institute of Criminology 2024). First Nations young people are overrepresented in relation to deaths in custody, which speaks to the racism, harm, neglect and denial of healthcare experienced by First Nations people in carceral systems in Australia.

#### *Trauma and disconnection caused by incarceration*

First Nations overrepresentation in the justice system contributes to intergenerational trauma and grief, in addition to disconnection from Culture, family and community (Deadly Connections 2022).

#### Impacts of detention on young people with disabilities

People with disabilities, in particularly people with cognitive and psychosocial disabilities, are overrepresented in the criminal justice system (McGee et al. 2024, p. 8), and experience deleterious treatment while inside (McGee et al. 2024). A recent report by academics at UNSW documented that many people with disabilities experience inhumane, cruel and degrading treatment in detention (McGee et al. 2024, p. 1). Examples of the negative treatment of young people with disabilities in detention include repeated subjection to solitary confinement, staff disregarding people's needs to be screened and diagnosed, staff refusing to link young people with psychosocial supports and lack of access to education, with one young person only receiving 4 hours of education for an entire year (McGee et al. 2024, pp. 10, 29). CRC caseworkers have communicated the prevalence of cognitive disabilities that have gone undiagnosed amongst young people they support, particularly in relation to fetal alcohol spectrum disorder (FASD). They stress that without diagnosis young people will not get the support they needed for their disabilities whilst in detention.

#### Impacts of detention on trans and gender diverse (TGD)<sup>2</sup> young people

The impacts of incarceration on TGD youth are under-researched (Watson et al. 2024, p. 88), and there is inadequate government data on TGD people in youth detention in Australia to better understand their experiences (Watson et al. 2024, p. 89). Current international literature provides insights into TGD youth detention experiences, and demonstrates a slew of harms caused by such systems, including: misnaming and misgendering, being denied medical and psychological supports to affirm one's gender, detaining trans youth according to sex assigned at birth, violence and excessive use of force by staff, and staff having limited understanding of TGD identities, with some not understanding differences between sexual orientation and gender (Watson et al. 2024, pp. 101-103). Similar issues are evident in TGD adult experiences of prisons in Australia, which evidence: 'day-to-day experiences of discrimination [which] include the use of the wrong names and pronouns, and restricting access to gender-affirming healthcare and clothing. Verbal, physical and sexual abuse and harassment are common' (Jo Farmer Consulting 2024, p. 6).

Despite data showing an overrepresentation of TGD people in the criminal justice system in Western nations (Winter 2024, p. 131), demographic data on TGD young people is not currently publicly reported on by the Australian government - for example, in the *Youth Justice in Australia* yearly report (AIHW 2024) (Watson et al. 2024, p. 89). A lack of data

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<sup>2</sup> 'Trans and gender diverse' is an umbrella term describing people whose current gender is different to that which was assigned to them at birth.



makes the impacts of incarceration (for instance, in relation to rates of re-incarceration and deaths in detention) harder to track for TGD people.

Additionally, splitting youth detention centres into male and female facilities can limit people's expression of gender diversity (Jo Farmer Consulting 2024, p. 7; Brömdal et al. 2024, p. 167) and inherently misgender non-binary young people, who are not exclusively either male or female.

## **Recommendations**

### **Recommendation 1. Data and more research on TGD young people in detention is needed**

Government across Australia should collect and report demographic data on TGD young people in detention, to firstly respect their right to gendered self-determination, and secondly for the public and researchers to better understand the experiences of this cohort. Ensuring client data systems are equipped to record this information, that detention centre staff are trained in how to do so,<sup>3</sup> and that this anonymised data is reported on publicly will address the issue of this missing data.<sup>4</sup> The Australian Bureau of Statistics has a publicly accessible Standards about questions services can ask to glean such data called the 'Standard for Sex, Gender, Variations of Sex Characteristics and Sexual Orientation Variables' (Australian Bureau of Statistics 2021). This Standard, which is not restricted to a specific age range (Australian Bureau of Statistics 2021), can be incorporated into client data systems if this is not already the case to ensure this data is collected and capable of being reported on.

Academics have also indicated more research is needed on the experiences of TGD youth in the youth justice system to better elucidate outcomes of incarceration (Watson et al. 2024, p. 88). Governments financially supporting and resourcing such research, particularly that which is led, co-led or at minimum done in consultation with trans and gender diverse communities, including those with lived experience of incarceration, is advisable to address the need for more insights into the impacts of incarceration for TGD youth.

### **Recommendation 2. Better supporting the specific needs of young people in detention**

While youth detention centres still exist, these environments should better support the unique social, health, cultural and mental health support needs of people who are incarcerated, such as First Nations young people, people with disabilities and trans and gender diverse young people.

#### ***Improving conditions for TGD youth***

For TGD youth, for instance, this would include ensuring staff name and gender young people correctly, that young people have access to gender affirming healthcare, that staff

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<sup>3</sup> For an example of online training that is used to build worker's capacity and confidence to ask about data relating to gender diversity, and understand why it is important, refer to the Network of Alcohol and Other Drugs Agencies (NADA) e-learning module 'NADA- Asking questions on gender and sexuality' (Insight 2024) and its video, 'Asking the Question: Safer spaces for the G&SD community' (NADA 2022).

<sup>4</sup> Understandably, some TGD people will not want to disclose their TGD status in prisons, given the way it can make them the subject of transphobic targeting (Brömdal et al. 2024, p. 168) or cause fear of negative consequences from staff (Watson et al. 2024, p. 107). However, providing people with the opportunity to disclose this data by simply asking about it (which people can opt not to answer) is necessary for accurate data collection and reporting.



have literacy in trans and gender diverse identities, and that young people are not subjected to transphobic comments and violence from staff. The intersections of young TGD people's identities also needs to inform service provision (Phelan and Oxley 2021, p. 25).

*Improved support for people with cognitive disabilities*

CRC caseworkers who support young people have recommended:

- Better screening young people for co-morbidity (that being, the simultaneous existence of two or more medical conditions) in detention
- Increased use of the adverse childhood experiences (ACEs) screening on young people, which can elucidate the way emotional stressors and trauma impact young people's wellbeing and behaviour in detention. Using the tool involves inquiry about the emotional stressors impacting the young person's health. The score generated through the tool is important information which should inform treatment planning (Watson 2019), to support young people's health and wellbeing in detention.
- The NSW government should prioritise funding for the diagnoses of cognitive disabilities and mental health support for people with cognitive disabilities in detention.

*The need for community led, culturally safe First Nations support (at every point in the justice system)*

For First Nations young people specifically, it is crucial they have access to culturally appropriate support at every critical point in the justice system. This support should be independent from government institutions that are responsible for policing and punishing and should be led by First Nations communities. This includes post-release support (for example, through the CRC Pathway Homes Program), support in police stations, and support in courts. Such support should always have movement away from both prisons and state supervision as its goal.

First Nations young people in detention must have access to:

- Strong, holistic, community-based, long-term support provided by paid workers in the communities in which they live
- Housing and education options that are safe and secure in the communities in which they live
- An opportunity to live lives free from over-policing, over-surveillance and overcriminalisation.

Recommendation 3. Decarceration and diversion to community supports

Notably, a key to reducing harms to young people caused through incarceration, including deleterious treatment faced by First Nations communities, young people with cognitive disabilities and trans and gender diverse young people, is through decarceration, reducing their involvement with criminal justice and diversion to appropriate community supports.

*Diverting funds from imprisonment to community supports is financially and socially beneficial*

Alarmingly, **the average cost of detaining a young person in detention was \$2759.13 per day in NSW in 2022-23** (Productivity Commission 2024). Such financial resources would be



better spent on providing and supporting services to address the social drivers to incarceration, such as socio-economic inequity, racism, the ongoing harms caused by colonisation, and funding for community services to support vulnerable and minoritised communities (such as First Nations and trans and gender diverse communities), which evidence has shown are more effective at reducing young people's involvement in the youth justice system.

Strategies of decarceration for First Nations communities specifically should always be focused on building community resources and community support. Such strategies should always be led by First Nations people who know their communities and know what is needed to build sustainable pathways that divert people from the criminal justice system. Strategies are required that prevent involvement with the justice system entirely- including involvement with police, courts, youth justice, and corrections (including parole and non-custodial forms of punishment), but in tandem with these, reform is required at every point of justice system involvement to ensure people are safe, and wherever possible have the option of a pathway out.

#### *An example of CRC's mode of community-based support for diversion*

CRC's model of community-based support has shown to be effective in supporting people to break cycles of imprisonment and disadvantage (for example, see Sotiri et al. 2021, p. 116). CRC's model is based on the following principles:

1. **Reintegration framed outside the lens of individual rehabilitation:** There is a need to create and facilitate pathways for people leaving prison that are not explicitly focused on addressing offending behaviour, but rather focused on the creation of an identity outside of the criminal justice system and addressing systemic barriers to reintegration.
2. **Service delivery incorporating systemic advocacy:** service delivery must include a significant advocacy component that addresses the structural barriers for individuals (such as access to housing, employment, education, health and social security benefits), and advocates systematically for change when this is required. Systemic advocacy sees workers walking alongside people leaving custody and challenging the multiple and forms of perpetual punishment experienced by people with criminal records.
3. **Pre-release engagement:** Meeting and working with people prior to release is necessary for respect to building the engagement needed to sustain casework relationships, building trust between someone in prison and the community organisation on the outside, and practically planning for re-entry into the community.
4. **Holistic, relational and long-term casework models:** People with long histories of trauma in combination with 'referral fatigue', require long-term support in order to build engagement and trust. Long-term support also allows people the opportunity to develop the skills to navigate frequently hostile or unwieldy service systems. Many CRC clients also require support with living skills and adjusting to life outside of institutional environments. For First Nations peoples, support must be culturally safe.





5. **Community based outreach:** services that work with people with long histories of criminal justice system involvement need to operate outside of the criminal justice system, and in the communities in which people are living.
6. **Housing first approaches:** Most people require a solid base from which they can try and make the changes required to stay out of prison.
7. **Genuine collaboration and work with people with lived experience of incarceration:** at all levels of program delivery. The expertise of people who have been to prison is critical in both the design and the delivery of community-based reintegration services.

For First Nations people, there are additional and critical elements of cultural support that are required in order to empower individuals and communities to move *away* from criminal justice system involvement. Models of Indigenous through-care share many of the features of the holistic model described above. In addition, however, the following elements are critical:

1. **Employment of First Nations people** to provide holistic and culturally safe throughcare support
2. **Engagement with First Nations families and communities** (the post-release journey is not just an individual one)
3. **Engagement with culture and land** (including, for instance, language, Country, and art)
4. **Trauma Informed** post-release support that understands and engages with intergenerational disadvantage, trauma and imprisonment
5. Post-release support that understands and works with legitimate mistrust of white organisations (particularly those attached to institutions of punishment like police, courts, prisons)
6. Support and organisations that can work with genuine flexibility (particularly with regards to outreach work, and flexibility in terms of appointment times)
7. Support that acknowledges that in some communities, although spending time in prison is such a regular event that it has in many ways become 'normalised', this in no way diminishes the damaging impact that continued incarceration and institutionalisation has of both individuals and communities.
8. Support that acknowledges that over-incarceration has a dramatic impact on First Nations communities, especially when people with significant community roles and responsibilities are imprisoned

*Program example of community- based support for young people: CRC's Pathways Home*  
 CRC's youth Pathways Home Program is based on CRC's model of support and endeavours to break young people's involvement with the criminal justice system. The program delivers an age-appropriate response and works with families to support young people. 2 out of 3 of the funded positions for this program are First Nations identified. Pathways Home was originally funded as a two-year pilot program but received funding until the end of 2024. As it is a relatively new project of CRC, it has not yet been independently evaluated, however the following case studies provide insight into the way it supports young people.





### Pathways Home client case study – Kelly

Kelly is an 18-year-old pregnant First Nations young person. Kelly was referred to Pathways Home while she was in custody. Kelly has an extensive history of criminal justice involvement, childhood trauma, experience of the out-of-home-care system, mental ill health and distorted attachments. Kelly has worked with many support services over the years and struggles to trust and connect with support staff.

Kelly commenced working with the Pathways Home case worker five weeks prior to being released from custody. This timeline was extremely important as it allowed Kelly to build a relationship and the foundations of trust with her case worker. Kelly engaged well with her case worker and discussed her goals around accommodation, her baby's health, her substance use and transitioning back into the community. Kelly's goals also included diversion away from past problematic relationships and engaging in illegal activities.

In the lead-up to her release, plans were put in place for Kelly to be supported in a rehabilitation program in Far West NSW. Kelly was offered autonomy and supported by her case worker to explore her options, including alternatives, before she committed to this plan.

On the day of her release from custody Kelly felt sufficiently comfortable with her case worker to further discuss her goals and plans. Based on the relationship they had built prior to her release, Kelly was able to communicate openly. She decided not to attend the rehab program and was supported by her case worker to explore all suitable options for accommodation and ante-natal supports. Kelly has faced challenges being back in the community, however she is managing well with trusted supports to continue to walk alongside her.

Kelly has maintained contact with her case worker following her release from custody and is being supported to attend parole and medical appointments. She is also working towards other case plan goals, including those around her pregnancy and substance use. Kelly engages positively in case management, working and communicating positively with her case worker. Kelly has maintained ongoing contact with the program and continues to work towards maintaining a positive position in the community.

### Pathways Home client case study - Nathan

Nathan is an 18-year-old young person with a history of involvement in the youth justice system with experiences of both custodial sentences and community supervision under Youth Justice. Nathan was 12 years old when he suffered the loss of his father. He struggled mentally with this loss and found himself coping with the grief by engaging in polysubstance use, which led to his initial contact with the youth justice system.

Nathan has strong relationships with his siblings and his mum, but he has struggled at times to maintain a positive relationship with his stepdad. On multiple occasions, police were called to the family home as Nathan had become aggressive with his family, which ultimately led to his arrest. An AVO was put in place to protect his mum, siblings and stepdad. Following Nathan's departure from the family home, his offending slowly became more consistent, which saw him spending prolonged periods in custody throughout his formative years. On occasion, Nathan chose not to apply for bail and was resistant to exit planning as he felt he was 'better off' in custody. Nathan was supported in navigate these



feelings and emotions and ultimately engaged in pre-release case management support to address his goals, concerns and needs for his return to the community.

Nathan's plans included securing accommodation, support with his substance use and decision-making, employment, repairing damaged relationships, therapeutic support to address grief and loss and adhering to his Probation Order.

This was Nathan's first time being supervised as an adult by Parole. Nathan was also supported to become job-ready before his release by working with a Pathways Home (PH) case worker to gain understanding and skills to become more employable. PH's case worker was able to facilitate family visits whilst Nathan was in custody, which significantly contributed to the repair of relationships.

After serving several months in custody, Nathan was released into temporary accommodation close to his family home. He was immediately supported with personal hygiene products, clothing, an Opal card, and to obtain a Centrelink benefit. He visited his family regularly and worked extremely hard to holistically reintegrate into the family unit and the community. Nathan spent several weeks in temporary accommodation before moving into more stable accommodation.

Once settled into his accommodation, Nathan had a secure base from which to find employment, which he independently sourced. PH staff were able to access financial client assistance through the program to assist Nathan with work clothing and footwear. Nathan has maintained his accommodation with support from his case worker, as well as maintaining his employment. Nathan regularly visits the family home and has rebuilt trust to spend nights with his family. Although the relationships will continue to evolve, Nathan has developed skills to manage his emotions and unresolved trauma to be able to continue visits and maintain family bonds.

Nathan has remained in the community and is adhering to his parole orders. He has also been able to disengage from anti-social behaviours, which could lead to further incarceration. Nathan continues to be supported by the Pathways Home program.

Ultimately, CRC advocates for community service supports, such as its program Pathways Home, to support young people to move away from criminal justice involvement. Diverting funds from imprisonment to community supports is more effective, as community supports like Pathways Home can address and support young people with the broader social drivers contextualising their criminal justice involvement (for instance, AOD dependence and homelessness) in ways that incarceration cannot.

## **b) the over-incarceration of First Nations children**

In NSW, First Nations children make up 6.2% of those in the general population but **50%** of the youth detention population (NSW Bureau of Crime Statistics and Research 2024a). In the June quarter of 2023 at a national level, First Nations young people were **29 times as likely** to be in detention than non-Indigenous young people (AIHW 2023a). The overrepresentation of First Nations young people at a national level is more pronounced for those in custody (53%) in comparison to those who are supervised in the community (43%) (AIHW 2023b).



While the number of young people in prison has reduced significantly in NSW in recent years (Clancey, Evans and Friedlander 2023, pp. 15, 17),<sup>5</sup> the proportion of First Nations young people in prison increased between 1996 to 2021 (Clancey, Evans and Friedlander 2023, p.23). Concerningly, from March 2022-March 2024, the number of Aboriginal young people in detention in NSW increased by 56% (NSW Bureau of Crime Statistics and Research 2024). Government data shows that First Nations young people are not benefiting from the same reductions in youth prison populations in comparison to non-Indigenous young people (Clancey, Evans and Friedlander 2023, p.23).

### The settler colonial context and the overrepresentation of First Nations children

The contemporary reality of the overrepresentation of First Nations children in the criminal justice system cannot be divorced from the historical and ongoing processes of colonisation. First Nations people continue to experience significant health inequalities in comparison to non-Indigenous people. First Nations people have been exposed to systematic injustices, and that as a result they have higher rates of chronic disease, mental illness and substance use issues than the general population, all of which can drive cycles of criminalisation and imprisonment (Australian Law Reform Commission 2017). Health disparities are driven by complex social, cultural and historical factors, including the ongoing impacts of colonisation, racism and intergenerational trauma. Alongside this, First Nations children are subject to disproportionate levels of surveillance, intervention, punishment which has compounding negative impacts (Goldson et al. 2021; Sentas and Pandolfini 2017).

### The intersections of child welfare and criminal justice system

There is notably no way to talk about the over-representation of First Nations young people in prison without examining the over-representation of First Nations young people in Out of Home Care. There is now considerable research exploring the (out-of-home) Care to Prison pipeline, and there is an urgent need to look at this interaction to disrupt the incarceration of First Nations children. Across Australian states and territories, more than half (**53%**) of the children who are in contact with the criminal justice system have also had an interaction with the child protection system (Australian institute of Health and Welfare 2022). Young people in prison are **more likely** than those supervised in the community to have had contact with the child protection system. These figures are higher for **First Nations children**, where **64%** have also had an interaction with the child protection system. Research has found children and young people are criminalised in the context of their placement in out of home care (McFarlane 2018). For instance, police may be called in circumstances which would not ordinarily warrant police attention (Goldson et al. 2021).

CRC workers have highlighted clients' difficulty in attempting to disrupt trajectories of their children being taken into out of home care, noting this is a particular concern for First Nations communities who are overrepresented in having children removed from familial care (Krakouer 2023, p. 108). A lack of government support enabling women to bring their children home was noted in Community Restorative Centre's internal Advocacy Registry.

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<sup>5</sup> This decline is not unique to NSW, with other jurisdictions like Victoria, Western Australia and South Australia showing a similar phenomenon in recent years (Clancey, Evans and Friedlander 2023, p. 19). Jurisdictions like the NT and Queensland have contrastingly experienced an increase in the number of young people in detention recently (Clancey, Evans and Friedlander 2023, p. 19).



This Register provides a space for workers to draw attention to individual and structural issues faced by people the organisation supports. Such issues included:

- Mothers not properly understanding the child removal process and being unclear about their rights
- A lack of support from the Department of Communities and Justice (DCJ) to complete the goals required for child restoration. For instance, one client faced, 'multiple appointments (nearly 1 appointment a day) plus engaging with a family lawyer'. The CRC worker further relayed, 'there are no specialist services to support parents in this situation and they are highly vulnerable, at risk of relapse, often living in poverty'.

Some clients would adopt maladaptive behaviours to cope with the stress and anxiety of barriers to bringing their children back into their care, which may further inhibit their capacity to receive children back into their care. While the Registry entry captures the experiences of both First Nations and non-First Nations parents and carers, the staff member considered barriers to reuniting with children a particular concern for First Nations communities, given disproportionate rates of child removal and out of home care.

## **Recommendations**

### Recommendation 4. Better support from government (through funding or service provision) for parents impacted by child removal

Some suggestions by a CRC caseworker about how DCJ barriers to parents reuniting with children could be addressed in the NSW context include:

- DCJ caseworkers better trained in providing culturally appropriate support to First Nations parents, and in employing an anti-oppressive, person-centred approach.
- If the removal of children is necessary, more wrap around community support referrals by DCJ
- DCJ ensuring parents know their rights and responsibilities
- DCJ developing clear, realistic planning for parents to get their children back, and supporting parents to understand this plan.
- Wrap around community supports receiving more government funding to develop their specialist knowledge and capacity to support women seeking child restoration, which would enhance the ability of workers to understand DCJ policies, procedures and research in this area. CRC's caseworker noted a CRC program called the Miranda Project was keen for support to develop staff in this area. The Miranda Project supports women who have experienced both domestic violence and criminal justice system involvement, and has two specialist First Nations workers.
- ceasing blame and shame on mothers by DCJ workers when violence is perpetrated by partners, which could be addressed through DCJ training.

### Recommendation 5. Government supporting and funding First Nations-led efforts to keep children out of child protection systems

Ultimately it is necessary for less children to be removed from First Nations families in the first place, noting the ongoing role racial bias and structural racism play in informing the



disproportionate rate of First Nations child removal in Australia (Krakouer 2023, p. 107; Wilson 1997). Jacynta Krakouer, a Mineng Noongar academic who has expertise in child protection and out of home care, explains that one of the ways white colonial norms inform child protection systems in Australia is the way, ‘whiteness operates through normalising Western, middle-class cultural norms of parenting and simultaneously, demonising other cultural ways of parenting that do not accord with Western, middle-class cultural norms’. Krakouer notes the need for ‘Indigenous ownership of solutions’ to disrupt the overrepresentation of First Nations children in out of home care (Krakouer 2023, p. 107), which, as noted, is linked to the overrepresentation of First Nations children in youth detention.

### **c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention**

#### Strip searches on young people

Strip searches are still carried out on young people in youth detention, which is an affront to their dignity and human rights. Between 2017 to 2022, strip searches on young people in youth detention were documented in most states and territories (barring South Australia, Victoria and Queensland) (Mackay 2023, p. 92). In NSW, youth justice officers are legally only meant to conduct partial strip-searches – meaning children in detention cannot be searched while naked. However, there exists a memorandum of understanding between Corrective Services NSW and youth justice, which allows for this legal rule to be circumvented during a ‘riot or disturbance’ at detention facilities. Whilst the NSW Ombudsman has recommended closing this legal loophole (Ombudsman NSW 2022), this recommendation has not been implemented by state government (McGowan 2022).

Strip searches have a range of harmful effects on young people. They can cause shame, trauma, embarrassment, and a fear of law enforcement (Lee and Raj 2023, p. 6). Additionally, Michael Grewcock and Vicki Sentas, legal academics at the University of NSW, explain: ‘strip searching has been found to trigger prior experiences of trauma and abuse and can generate harmful psychological conditions including PTSD. For young people and those who have suffered trauma, the long term impacts of strip searching on identity formation and wellbeing can be significant’ (Grewcock and Sentas 2019, p. 16).

The NSW Ombudsman has recommended that the NSW government should pass law to ‘expressly prohibit’ strip searches of young people in youth detention where they are forced to be completely naked (Ombudsman NSW 2022), which CRC supports. Additionally, the Royal Commission into Institutional Responses to Child Sexual Abuse recommended that states and territories encourage governments consider implementing alternative strategies for detecting contraband, such as risk assessments or body scanners, to minimise the need for strip searching of children (Commonwealth of Australia n.d., p. 46).

### **Recommendation**

#### Recommendation 6. Legal prohibition on strip searches

Legislation should be passed and followed across all states and territories to prohibit strip searches of people who are incarcerated, including in youth detention. Alternatives means



of preventing the circulation of prohibited items, including body scanners, wands, and other risk management strategies, should instead be used only when necessary. As the Human Rights Law Centre and Flat Out, a Victorian advocacy service for communities who have been criminalised note, ‘alternative search methods [like wands and scanners] should remain a last resort and should not be used as punishment or for any other improper purpose’ (Flat Out and Human Rights Law Centre 2024, p. 17).

#### **d) the Commonwealth’s international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights**

##### High rates of detention and out of home care for First Nations peoples

The high rates of incarceration and out of home care experienced by First Nations young people sits in tension with rights set out in the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), which Australia has endorsed. Article 7(2) of UNDRIP confirms the right of Indigenous peoples to: ‘live in freedom, peace and security as distinct peoples and...not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group’. The deprivation of freedom through youth detention and disproportionate rates of First Nations children being removed from their families through government intervention sits in tension with this UNDRIP provision.

##### Spit hoods

There are still jurisdictions in Australia that allow the use of spit hoods on young people, despite them contradicting a number of international human instruments. Jurisdictions like NSW (Brennan 2024) and South Australia- through the *Statutes Amendment (Spit Hood Prohibition) Act 2021*- have implemented legislative bans. Spit hoods are put over people’s heads in environments like custodial settings with the stated aim of preventing them from spitting at others, and this is usually coupled with force (National Ban Spit Hoods Coalition 2022, p. 1). Notably, ‘if a spit hood is occluded with spit, vomit or sweat from a restrained person, it can pose a risk to breathing’ (National Ban Spit Hoods Coalition 2022, p. 1). Spit hoods, combined with force and restraint manoeuvres have been implicated in people’s deaths (National Ban Spit Hoods Coalition 2022, p. 1). Despite the issues with spit hoods, locations like the Northern Territory have no legislative ban on their use, which sits in tension with a recommendation by the Northern Territory Ombudsman to do so (Office of the NT Children’s Commissioner 2023, p. 2). The new government in the Northern Territory has confirmed an intention to bring back spit hoods (Charles 2024a).

The use of spit hoods has been described as inhumane, and as a form of torture (National Ban Spit Hoods Coalition 2022, pp. 1- 2), and contravenes international human rights instruments, including:

- the Convention on the Rights of the Child, of which Article 37(c) states that: ‘No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment’. Article 37(c) additionally states that, ‘Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person’. Australia is a signatory to this Convention.
- the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, of which Article 2.1 instructs states to: ‘take effective, legislative, administrative and judicial or other measures to prevent acts of torture’. Australia is





a signatory to this Convention. Notably, in 2022 the UN Committee Against Torture condemned the use of spit hoods at the Don Dale Youth Detention Centre in the Northern Territory, describing it as a 'clear breach' of its obligations under the Optional Protocol to the Convention, which was ratified by Australia in 2017.

## Recommendations

### Recommendation 7. Legal ban on spit hoods across all states and territories in Australia

Legislative bans, as opposed to operational or policy bans, prevent the easy reversal of policies banning spit hoods (National Ban Spit Hoods Coalition 2022, p. 2). Banning spit hoods will ensure practice across Australia is consistent with international law (National Ban Spit Hoods Coalition 2022, p. 2). In line with the recommendation by the national Ban Spit Hoods Coalition, which includes groups like Amnesty International, the Jumbunna Institute for Indigenous Education, Sisters Outside and the First Peoples' Disability Network Australia, such legislation should include: 'civil sanctions if the laws were not followed (e.g. workplace disciplinary proceedings against employees). The Bill should not include criminal penalties or the introduction of new criminal offences' (National Ban Spit Hoods Coalition 2022, p. 3).

### **e) the benefits and need for enforceable national minimum standards for youth**

There should be a national approach to safeguarding the human rights of children and young people enmeshed in the criminal justice system. This includes reforms to the minimum age of criminal responsibility, installing a National Minister for Children and banning the use of spit hoods (see our recommendation in response to part (d) of the TOR).

## Recommendations

### Recommendation 8. Raise the age of criminal responsibility to 14 across all jurisdictions in Australia

The minimum age of criminal responsibility is the primary legal barrier to entry into the criminal justice system. CRC supports calls by academics, community sector workers, and Aboriginal leaders to raise the minimum age of criminal responsibility to at least 14 years (Cunneen 2020). CRC is part of the 'Raise the Age' Network. This call is based on evidence about better practice for when children come into contact with the criminal legal system and police. We note that a low age of criminal responsibility **particularly affects** vulnerable communities. For example, those aged 10–12 at first sentenced supervision were highly likely to return at some point, with a return rate of 90% (Australian Institute of Health and Welfare 2023). Across Australian states and territories, of those aged 10 at their first youth justice supervision **81%** had also had an interaction with the child protection system (Australian Institute of Health and Welfare 2022). We note that the system **does not work** for young children who have particularly high rates of reoffending.

Raising the age of criminal responsibility would better recognise the way children are in a state of intense physiological development during the ages of 10-14, which impacts their capacity to make decisions and understand the consequences of their actions (Sawyer and Vijayakumar 2024). Professor Susan Sawyer from The University of Melbourne and Dr Nandi Vijayakumar from Deakin University explain that children in early adolescence are more likely to engage in impulsive behaviour given the effects of puberty hormones on the





brain (Sawyer and Vijayakumar 2024). They also explain that young people aged 10-14 have a compromised ability to understand the consequences of their actions as they are still physiologically developing.

#### Recommendation 9. Install a National Minister for Children

Similarly to the Australian Human Rights Commission (Australian Human Rights Commission 2024, p. 28), CRC supports the appointment of a National Minister for Children to better advocate for the rights and wellbeing of children at a national level. CRC welcomes the recent announcement of a National Minister for Aboriginal and Torres Strait Islander Children and Young People specifically (Department of Prime Minister and Cabinet 2024). CRC recommends the introduction of a Minister for Children, who could work collaboratively with the newly appointed National Minister for Aboriginal and Torres Strait Islander Children and Young People to better advocate for the needs of young people within and outside of First Nations communities.

#### **f) any related matters**

##### Bail law tightening in NSW

In 2023, bail law reform was announced in NSW by the state government to make it more difficult for young people aged 14-17 to be granted bail for offences including specific break and enter and car theft while on bail (Open letter to NSW Premier Minns and the Labor Government 2024). There is concern by CRC, legal practitioners, academics and other community workers that the legislative amendment- which has passed, but is subject to a 12 month sunset clause, which will be followed by an evaluation (Attorney General 2024)- will increase the number of young people in youth detention facilities (Open letter to NSW Premier Minns and the Labor Government 2024). There is also public concern that the new law will inhibit the capacity of the NSW government to meet its Closing the Gaps targets (Open letter to NSW Premier Minns and the Labor Government 2024, p. 1). One such Closing the Gap target is Target 11, which is aimed at reducing the rate of Aboriginal and Torres Strait Islander young people (10-17 years) in detention by at least 30 percent (Commonwealth of Australia, Department of the Prime Minister and Cabinet n.d.). The first driver listed for high rates of detention in the text of this target is, notably, 'unsentenced detention rates' (Commonwealth of Australia, Department of the Prime Minister and Cabinet n.d.). The Law Society of NSW said the law is, 'likely to result in the incarceration of some children and young people who are unlikely to be found guilty of any offence... in practice, many charges against children and young people are ultimately withdrawn or dismissed, as they are not adequately supported by evidence' (McGrath 2024, p. 2). Additionally, some CRC caseworkers noted that, prior to the reform, it was already difficult for young people they were supporting to get bail and keep them out of the harmful cycle of youth detention.

The new bail law additionally sits in tension with Article 37(b) the United Nations Convention on the Rights of a Child which states that the detention of young people should always be a, 'last resort' (Office of the United Nations High Commissioner for Human Rights 1989).

##### Concern about breaches of young people's confidentiality in detention

Some CRC caseworkers have expressed concern that detention staff have shared young



people's personal information without their consent. For instance, caseworkers reported incidents where information about the suburb young people live and their offences circulated amongst other young people in detention centres without being disclosed by the young person themselves. This has made some CRC caseworkers worried that detention staff may be breaching the confidentiality of young people, as they are unsure how else the personal information would have been disclosed. Notably, detention centre staff have a responsibility to protect young people's information under the NSW Youth Justice *Privacy and Personal Information Policy* (Youth Justice NSW 2024a). Where personal information about young people has circulated in centres without the young person disclosing it, there has been negative impacts on the physical and psychological safety of young people CRC supports.

#### Improving links to non-government services post release

CRC caseworkers have indicated a need for increased government effort to learn about, develop relationships with, and refer young people to non-government services in preparation for young people's release from detention.

### **Recommendations**

#### Recommendation 10. Improving linkages between government and non-government to support young people post-release

CRC suggests improved NSW government efforts to establish relationships with, and refer young people to, appropriate non-government services post-release to better support young people and their life outside detention.

#### Recommendation 11. Detention centre staff must uphold the confidentiality of young people

All detention centre staff must abide by organisational policy and protect the personal information of young people in detention (such as charges and suburb of residence).

#### Recommendation 12. Aforementioned bail law tightening in NSW should be rolled back to keep more young people out of detention

CRC recommends this noting the financial, social and community benefits of keeping young people out of detention.

## **3. CONCLUSION**

CRC draws attention to the harms caused to young people through contact with the youth justice system and advocates for diversion from the detention system into community supports, which must be appropriately funded by government, be culturally appropriate for First Nations young people and inclusive. CRC advocates for national minimum standards for youth, including through installing a National Minister for Children, raising the age of criminal responsibility to 14 in all jurisdictions and a legal ban on spit hoods across the continent. Additional recommendations CRC makes include better data collection about, and supports for, TGD young people in detention, the legal prohibition on full strip searches in youth detention, ensuring the confidentiality of young people's information, and



advocacy against bail law tightening in NSW.

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