



Submission to the Select Committee on Youth Justice

by Community Restorative Centre (CRC)

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ACKNOWLEDGEMENT OF COUNTRY

CRC acknowledges the Traditional Custodians of the land on which we work and live. We recognise their continuing connection to land, water, and community. The offices of CRC stand on the lands of the Gadigal, Wangal, Bidjigal, Wiljkali, Baarkintji, Darug, Wiradjuri, Dharawal, Awabakal, and Worimi peoples. We pay respect to Elders, past and present. The overrepresentation of First Nations people in the criminal legal system¹ across this continent is a national shame. We recognise the harm caused by these systems and the tireless advocacy of First Nations people to reduce the criminalisation of their communities. Ultimately, incarceration is not part of First Nations cultures, and First Nations people have had, and continue to have, systems of accountability outside of the colonial carceral system.

ACKNOWLEDGING THE ROLE OF PARLIAMENT IN PROCESSES OF COLONISATION

CRC recognises that the establishment of Parliament is part of the histories and structures of colonisation, and that the processes underlying this inquiry are implicated in these colonial legacies. By engaging with this submission procedure, we remain mindful of how these frameworks may perpetuate inequitable power relations. Consequently, we approach this process with a critical awareness of its colonial origins, striving to foster practices that centre First Nations rights, experiences, and voices as we pursue meaningful healing.

First Nations communities have championed alternative ways of knowing, being, and doing that often diverge from the structures and protocols underpinning parliamentary processes. Central to these practices is yarning, a relational and community-embedded method of knowledge sharing that inherently challenges Western frameworks of governance and inquiry. Recognising the legitimacy and transformative potential of these First Nations methodologies is essential for fostering meaningful and equitable engagement in all legislative and policy spaces.

ABOUT COMMUNITY RESTORATIVE CENTRE

Community Restorative Centre (CRC) is a lead NGO in New South Wales (NSW) providing specialist support to people affected by the criminal legal system, with a particular emphasis

¹ We use the term ‘criminal legal system’, as opposed to ‘criminal justice system’ to reflect that the ‘justice system’ in Australia has been imposed on First Nations communities without their consent through settler colonialism. The term ‘criminal legal system’ also highlights the way the system-including police, courts and prisons- frequently fail to deliver justice. These failures are part of a broader, ongoing problem. This is evident in the fact that First Nations people in Australia have the highest imprisonment rate in the world, are racially targeted by police, and experience a lack of accountability from the ‘justice system’ when First Nations people die in custody. More broadly, the system criminalises people experiencing homelessness, poverty, mental illness, disability, alcohol and other drug dependency and trauma, and perpetuates cycles of marginalisation and disadvantage. In this way, the system does not deliver ‘just’ outcomes for individuals or communities. By using ‘criminal legal system’, we acknowledge the harmful effects of colonial systems and seek to validate people’s lived experiences. Changing language is one part of our effort to advocate for systems that are ‘just’ for all communities.



on the provision of post-release and reintegration programs for people with multiple and intersecting needs.

CRC has over 70 years of specialist experience supporting people involved with prison systems. All CRC programs aim to reduce recidivism, break entrenched cycles of criminal legal system involvement, and build pathways out of the criminal legal 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 children and young people at risk of criminal legal system contact and those leaving custody. Since 2021, CRC have supported children and young people through a program called Pathways Home.

Pathways Home

The Pathways Home Program is a throughcare case management service for young people aged 10-24 who are involved with the criminal legal system, and would like support around their alcohol and/ or other drug use. Workers support children and young people in prison in the lead-up to release, offering specialist pre-release support and planning, and long-term holistic case management in the community. The program supports those residing, or intending to reside in, the Metropolitan Sydney area.

INTRODUCTION

Many children and young people will keenly share what is needed to help themselves and others to build lives outside the prison system. Such needs, shared by children and young people accessing the Pathways Home program, include:

- ‘Better support in schools to help us and our families’
- ‘more money in programs and groups run by people who have been in prison and know what it’s like to be stuck in a cell, or have lived a life similar to the boys in here’
- ‘More programs like Pathways Home to work with young people in custody and help them get their shit together in the community’
- ‘more meaningful programs in custody about important stuff like drugs, DV, families and gangs’.

Similar and further needs were raised by 150 children and young people in the Human Rights Commission’s *Help Way Earlier* report (Australian Human Rights Commission, 2024). Here, children and young people across Australia communicated what was needed to keep them safe from legal system involvement, including safe housing, positive activities to occupy themselves with, cultural activities, and access to schooling (Australian Human Rights Commission, 2024, p. 32). CRC recognises the expertise of children and young people in indicating what is needed to live lives free of the prison system. However, we regularly see that their pathway out of this system is thwarted by a reliance on ineffective and harmful prison system responses, in addition to policing, as opposed to a reinvestment in community-based supports and resourcing.



In this submission, we highlight the need for governments to address the social drivers of incarceration for children and young people through prevention and diversionary programs, as opposed to relying on the prison system and policing to bring about social and behaviour change. This necessitates the genuine reinvestment of funds away from the prison system to appropriate, preventative community supports. We argue that better protecting the rights and wellbeing of criminal legal system involved children necessitates a range of legislative and policy changes, including raising the minimum age of criminal responsibility and creating a Commissioner for Aboriginal Children and Young People in NSW (Aboriginal Legal Service NSW/ACT, 2024).

Context

Problems with youth incarceration, and the need to support alternatives in NSW, are clear in the rising rates of incarceration, the costs of imprisonment, the ineffectiveness of prisons and harms caused by them. Rates of youth incarceration have increased by 34% over the past 2 years in NSW (BOCSAR, 2025). Concerns around the prison system include the hyperincarceration of First Nations children (BOCSAR, n.d.) and the fact that young people who are incarcerated are four times more likely to die prematurely than their counterparts (Kinner et al., 2025). Despite being harmful and ineffective at supporting behaviour change (Russell et al., 2025), governments continue to increase spending on prisons, which is costly for taxpayers. NSW spends \$2,573 per day incarcerating a young person (Productivity Commission, 2026), and Australia spends \$1 billion per annum imprisoning children and young people (Justice Reform Initiative, 2025). For CRC, this landscape highlights the urgent need to shift away from tough on crime approaches and incarceration, to approaches that are more cost effective and address the social drivers of incarceration.

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 2024-2025 period (an average of 226 people daily) (Youth Justice NSW, n.d.), and the fact that almost 3 in 4 had not been sentenced (BOCSAR, 2025), CRC's position is that emptying youth prisons is in fact entirely achievable. While youth prisons still exist, CRC supports minimising the harms of such facilities through some of the actions recommended in this submission.



SUMMARY OF RECOMMENDATIONS

Recommendation 1: Schools collecting and publicly reporting on demographic data of young people who are expelled or suspended, to monitor its impact on minoritised and disadvantaged children. Such data should also include the reasons for student expulsion or suspension (Thomas & Hand, 2025, p. 22).

Recommendation 2: Shifting investment away from behaviour models which focus on exclusion and punishment, to support systems in schools that ensure teaching staff and students are better supported (Thomas & Hand, 2025, p. 19). This includes shifting funds from youth custody to evidence-based prevention and post-incarceration programs for students in schools, increasing the number of culturally sensitive and inclusive counsellors available in schools, and funding independent research to examine the impact of this work (Thomas & Hand, 2025, p. 19).

Recommendation 3: Developing a discipline policy in NSW that makes children staying in school a priority, and which ceases, 'zero tolerance-style policies that assume exclusion changes behaviour' (Thomas & Hand, 2025, p. 20).

Recommendation: Ensuring curriculum and environment in NSW schools is culturally appropriate and engaging for First Nations children, and continuing to undertake targeted work to increase the First Nations teaching workforce.

Recommendation 4: Legislative reform to the *Anti-Discrimination Act NSW (1977)* to narrow exemptions that currently allow religious and private schools to discriminate against LGBTQ+ teachers and students, which precipitates educational exclusion in NSW for these cohorts.

Recommendation 5: That DCJ caseworkers are better trained in providing culturally appropriate support to First Nations parents, and in employing an anti-oppressive, person-centred approaches.

Recommendation 6: That DCJ staff ensure all parents and carers know their rights and responsibilities.

Recommendation 7: DCJ developing clear, realistic planning for parents to get their children back, and supporting parents to understand this plan.

Recommendation 8: The training of DCJ workers to ensure blame and shame on mothers does not occur when violence is perpetrated by partners.

Recommendation 9: Wrap around community services 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.



Recommendation 10: Ongoing government support and funding First Nations-led efforts to keep children out of child protection systems.

Recommendation 11: That government prioritises access to stable housing that is affordable, accessible and safe for children and families, particularly those with criminal legal system involvement (Australian Human Rights Commission, 2024c, p. 12).

Recommendation 12: That the NSW government support the Homelessness NSW campaign to increase funding to the specialist homelessness sector by 50% in NSW, to enable services to meet community need and provide preventative interventions (Homelessness NSW, n.d.).

Recommendation 13: Increasing funding and support for organisations that address the social drivers of incarceration, and divert young people from involvement with the criminal legal system at the earliest possible opportunity (Community Restorative Centre, 2025e, p. 11). This includes services providing long-term, individualised, outreach, holistic support, and that bolster the social and emotional wellbeing of young people, as well as their families.

Recommendation 14: The government investigates a universal basic income in Australia to address poverty.

Recommendation 15: Government support for a Makarrata Commission, to facilitate the creation of a treaty between First Nations people and government.

Recommendation 16: The need for community led, culturally safe First Nations support (at every point in the criminal legal system) (Community Restorative Centre, 2020).

Recommendation 17: Implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia (Thorpe, n.d.), to cement rights and promote self-determination for First Nations children and young people.

Recommendation 18: That NSW decision makers consider beneficial elements of policy and legislation in contexts like Scotland and Norway to inform changes to the way children at risk of criminal legal system involvement are supported to exit the prison system. This work should be conducted in consultation with communities most impacted by the prison system, particularly First Nations communities.

Recommendation 19: As with contexts like Scotland, Australia should introduce legislation to sediment the Convention on the Rights of a Child in domestic law through a specific act (Australian Human Rights Commission, 2024c, p. 12). Federal and NSW human rights acts are also needed to support the implementation of this convention.

Recommendation 20: Better screening of children for comorbidity, cognitive disabilities and adverse childhood experiences (ACEs) in prison, and government funding to support this.



Recommendation 21: A need for more access to NDIS assessments for children in prison.

Recommendation 22: For decision makers to more genuinely consider implementing recommendations from the Inspector of Custodial Services.

Recommendation 23: Implement outstanding recommendations from 1991 Royal Commission into Aboriginal Deaths in Custody.

Recommendation 24: Expanding and better resourcing services that support family members and kin of incarcerated communities in NSW.

Recommendation 25: Government and decision makers supporting genuine justice reinvestment.

Recommendation 26: Leadership by politicians and the media in challenging ‘tough on crime’ approaches, and stigmatising language around children with criminal legal system involvement.

Recommendation 27: Government engaging and supporting models of alternative first responders to the police.

Recommendation 28: Establishing an Aboriginal Commissioner for Children and Young People in NSW.

Recommendation 29: The creation of a federal Minister for Children role.

Recommendation 30: Raise the age of criminal responsibility to at least 14 in NSW.

Recommendation 31: Bail law tightening in NSW should be rolled back to keep more young people out of detention.

Recommendation 32: That NSW pass law to ‘expressly prohibit’ strip searches on children in prison.

RESPONSES TO THE TERMS OF REFERENCE (TOR)

(1) That a select committee inquire into and report on:

(a) the underlying drivers of children's contact with the criminal justice system, including but not limited to:

(i) school disengagement and educational exclusion

Children who have been incarcerated are disproportionately more likely to experience school disengagement and exclusion (Thomas & Hand, 2025). Notably, poor education is also connected to other factors which put children at a pronounced risk of incarceration, including poor health, homelessness and unemployment.



The school to prison nexus

Having a poor educational experience is a social driver of incarceration (McCausland & Baldry, 2023, p. 45). Research by the Australian Human Rights Commission shows numerous barriers to First Nations children having their needs met through the school system in Australia (Australian Human Rights Commission, 2024b, p. 37). These include an inadequate number of First Nations staff, a lack of cultural sensitivity and awareness, and not being taught in language. On this point, one First Nations young person stated, 'Some kids don't want to learn the white fella way' (Australian Human Rights Commission, 2024b, p. 37). Additionally, LGBTQ+ students face exclusion from schools in NSW through an exemption to anti-discrimination law that allows LGBTQ+ students and teachers to be expelled or fired from private educational facilities due to their identities. In addition to First Nations and LGBTQ+ students, a range of other minoritised and disadvantaged students who are overrepresented in the prison system, like children with disabilities, face barriers to having their needs met through mainstream schooling.

The 'school to prison nexus' is a phenomenon that refers to the way exclusion and expulsion from school can lead to criminalised behaviour (Thomas & Hand, 2025, p. 9). Data on children and young people in prison highlights the link between school exclusion and imprisonment- as researcher Archie Thomas and Worimi/Biripi scholar Samara Hand note, 'data on NSW youth prisoners shows over half had been expelled from school, while data on the Australian adult prison population shows two-thirds had an education level of Year 10 or below' (Thomas & Hand, 2025, p. 6). This is concerning, given school suspensions in NSW are rising, and research shows a lack of evidence that school exclusion addresses the behavioural issues of students (Thomas & Hand, 2025, p. 5). Notably, an impact of relying on incarceration to manage the behaviour of young people is that the inequities of the school to prison nexus go unaddressed.

Clancy's story

A young person who Pathways Home supported, Clancy, experienced difficulties throughout his schooling. He struggled at school, was often suspended, and disengaged from mainstream schooling in year 6. During periods of suspension, he was rarely provided with suspension support which led to early contact with police. His family faced disadvantage on varying levels and school reports noted that he would often come to school unkempt and unfed.

Clancy's school disengagement was also contextualised by disability. Clancy was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) and treated with medication. However, he was diagnosed with further conditions whilst in youth custody. This occurred after advocacy for assessment came from a Pathways Home worker. Such assessments led to a diagnosis of Fetal Alcohol Spectrum Disorder (FASD), severe language impairment and cognitive disability for Clancy. The delayed identification of these disabilities meant that, for many years, Clancy's disability-related behaviours were responded to through criminal legal system pathways, rather than therapeutic and disability-informed supports. Clancy's story clearly highlights the path and effects of the school to prison nexus on a young person.



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Recommendation 3: Developing a discipline policy in NSW that makes children staying in school a priority, and which ceases, 'zero tolerance-style policies that assume exclusion changes behaviour' (Thomas & Hand, 2025, p. 20).

Recommendation: ensuring curriculum and environment in NSW schools is culturally appropriate and engaging for First Nations children, and continuing to undertake targeted work to increase the First Nations teaching workforce.

Recommendation 4: Legislative reform to the *Anti-Discrimination Act NSW (1977)* to narrow exemptions that currently allow religious and private schools to discriminate against LGBTQ+ teachers and students, which precipitates educational exclusion in NSW for these cohorts.

(ii) out-of-home care, homelessness and housing instability

The intersections of child welfare and criminal legal 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 address this 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 legal system have also had an interaction with the child protection system (AIHW, 2022, p. 2). 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 (AIHW, 2022, p. vi). 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 CRC's internal Advocacy Registry. This Registry 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 of barriers to bringing their children back into their care, in addition to the grief and loss of losing children, which can further inhibit their capacity to get children back. While the Registry entry captures the experiences of both First Nations and non-First Nations parents and carers, the staff member considered barriers to parents/carers reuniting with children a particular concern for First Nations communities, given disproportionate rates of child removal and out of home care.

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). Jacyнта 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). CRC supports ongoing government support and funding First Nations-led efforts to keep children out of child protection systems.

The below recommendations are informed by workers' knowledge of the child protection system via service provision, in addition to research and advocacy.

Recommendation 5: That DCJ caseworkers are better trained in providing culturally appropriate support to First Nations parents, and in employing an anti-oppressive, person-centred approaches.

Recommendation 6: That DCJ staff ensure all parents and carers know their rights and responsibilities.



Recommendation 7: DCJ developing clear, realistic planning for parents to get their children back, and supporting parents to understand this plan.

Recommendation 8: The training of DCJ workers to ensure blame and shame on mothers does not occur when violence is perpetrated by partners.

Recommendation 9: Wrap around community services 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.

Recommendation 10: Ongoing government support and funding First Nations-led efforts to keep children out of child protection systems.

Homelessness

Another driver of incarceration that is connected to poverty is homelessness. Research shows incarcerated communities are overrepresented with respect to homelessness, and that homelessness and incarceration are mutually reinforcing (Pearce et al., n.d., p. 36). One young person highlighted the link between homelessness and incarceration to the Australian Human Rights Commission thus:

For me and people I know, offending is often for money, not for fun. We come from the street and there is not enough money for food, clothes and basic things you need to live (Australian Human Rights Commission, 2024b, p. 33).

A young person who accessed Pathways Home also shed light on the link between homelessness and incarceration: 'Guaranteed if I didn't have a home to go to I would have reoffended just to survive'. This connection between homelessness and incarceration is concerning, as international research suggests mortality rates are 8 to 11 times higher for homeless young people compared to those who are not homeless (Kulik et al., 2011, p. e45). Such outcomes can be poorer for young people impacted by racism and homophobia, amongst other factors. Not only does the prison system not address poverty and homelessness, it reinforces disadvantage.

Recommendation 11: that government prioritises access to stable housing that is affordable, accessible and safe for children and families, particularly those with criminal legal system involvement (Australian Human Rights Commission, 2024c, p. 12).

Recommendation 12: that the NSW government support the Homelessness NSW campaign to increase funding to the specialist homelessness sector by 50% in NSW, to enable services to meet community need and provide preventative interventions (Homelessness NSW, n.d.).



(iii) disability, mental health, and alcohol and other drug (AOD) issues

Unsupported disabilities, including cognitive disabilities like FASD, unmet mental health needs and AOD dependence are all drivers of incarceration (McCausland & Baldry, 2023), and are common amongst the children CRC supports. Notably, prisons typically do not address these drivers, and can worsen them. For instance, a continent-wide 2024 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, p. 10,29). Prisons are typically not therapeutic environments, and the inability of prisons to adequately address drivers of incarceration like disability and AOD use make them ineffective at addressing the root causes of criminalised behaviour.

Recommendation 13: increasing funding and support for organisations that address the social drivers of incarceration, and divert young people from involvement with the criminal legal system at the earliest possible opportunity (Community Restorative Centre, 2025e, p. 11). This includes services providing long-term, individualised, outreach, holistic support, and that bolster the social and emotional wellbeing of young people, as well as their families.

(iv) family dysfunction, poverty, and intergenerational trauma

Poverty

Poverty is a social driver of incarceration (McCausland & Baldry, 2023, p. 45), which can be worsened through prison system involvement. Prison sentences typically exacerbate poverty through children acquiring criminal records, which inhibit their capacity to find paid work, volunteer opportunities and study due to irrelevant criminal record discrimination.

A lack of access to adequate income support to move people out of poverty is a pressing concern, but there are numerous ways this could be addressed. When the Australian Human Rights Commission interviewed children and young people for research on keeping children out of prison, they identified that barriers to income for young people included children needing to be 16 years or older to access Centrelink payments, and the requirement that they have an address (Australian Human Rights Commission, 2024c, p. 34). Centrelink could be made more accessible to this cohort.

Additionally, campaigns exist in Australia to raise awareness and support for alternatives to the welfare system, to ensure children and families stay out of poverty. We say this recognising the welfare system is contextualised by policies like robodebt, inaccessible mutual obligations, and the racist cashless welfare card (Cummins, 2024), which can lead to distrust in, and harm from, the welfare system. One alternative to the system is the universal basic income, which social work and law scholars, amongst others in Australia,



have encouraged consideration of (Boyd, n.d.; Ewenson, 2024, p. 58; Lehmann & Sanders, 2018). There are varying models for the universal basic income (Lehmann & Sanders, 2018, p. 222). One example, suggested by the Greens, is a regular, non-means tested payment for everyone, which is not associated with specific obligations (Boyd, n.d.). The amount would cover essentials like housing, food and electricity. This would mean people are not deprived of the essentials, which can occur under the current welfare system, and people do not feel forced into unworkable mutual obligation arrangements. Notably, the universal basic income has been trialed successfully in many contexts, like Canada (Cox, 2020; Lehmann & Sanders, 2018, p. 222). A well-known trial from the 1970s in Mincome, Canada, found the universal basic income helped keep young people in school, which led to them qualifying for jobs later in life that they would otherwise not be eligible for (Lehmann & Sanders, 2018, p. 222). Improving the accessibility of welfare for young people, and considering a universal basic income, are two options to address poverty as a driver of prison system involvement.

Recommendation 14: The government investigates a universal basic income in Australia to address poverty.

Intergenerational trauma

The intergenerational trauma caused by colonisation and government policies is perpetuated through the prison system (SNAICC, 2025). This includes because of disconnection from families, communities and kin through incarceration. B O'Neill, a First Nations Trauma Recovery and Practice worker, describes methods to address intergenerational trauma that precipitates prison system involvement in the Judicial Commission of NSW Handbook for Judicial Officers (O'Neill, 2021). For him, one way he suggests intergenerational trauma can be addressed is through truth telling, including through tools like the Youth Koori Court in NSW, a diversionary option for First Nations children and young people, where an acknowledgement of intergenerational trauma can occur. For O'Neill, truth telling is also facilitated by a Makarrata Commission, to facilitate the creation of a treaty between First Nations people and government (O'Neill, 2021).

Recommendation 15: government support for a Makarrata Commission, to facilitate the creation of a treaty between First Nations people and government.

v) Other drivers of incarceration not already listed

Queerphobia and transphobia

In addition to the drivers already explored, queerphobia and transphobia are social drivers of incarceration that the prison system perpetuates rather than addresses (Critical Resistance, 2011, p. 346; Van Hout & Crowley, 2021). The prison system perpetuates transphobia and queerphobia through its structure and practice being based around heterosexual, cisgender and binary gender norms (Morgan et al., 2025). Notably, youth prisons are split into boys and girls facilities, erasing the identities of non-binary youth (that is, young people who are not exclusively either male or female). It is also well known that prison systems regularly disregard the gender identity of trans and gender diverse (TGD) people, and place people in facilities based on their sex assigned at birth (Beyond Bricks and Bars, 2025; Simpson et al., 2024, p. 388; Winter, 2024). This can put people at heightened



risk of sexualised and other violence (Stokes et al., 2026). Additionally, TGD people have a heightened risk of solitary confinement, allegedly to protect their safety (Brömdal et al., 2019, p. 343). LGBTQ+ communities are also hyper-policed (Dwyer et al., 2015, p. 232), making them more likely to come into contact with the criminal legal system. The prison system often perpetuates drivers of incarceration like queerphobia and transphobia, rather than addressing them.

(b) the availability, effectiveness, and evaluation of evidence-based and community-led responses that prevent offending and reoffending, including:

(i) diversionary programs and early intervention strategies

Pathways Home

Pathways Home is one example of a diversionary program that supports people with prison system involvement and AOD issues, and has positive outcomes. The program works to address drivers of incarceration- like unmet mental health needs, AOD use and homelessness through counselling and practical casework support. In the program, integrated service provision holistically meets the needs of children. This occurs through caseworkers and counsellors working collaboratively to support children and young people. Supplementing this work is CRC's outreach model, independence from government, individualised approach and long-term support.

Data from January-June 2025 showed positive outcomes of the service, including:

- 44% of children and young people reported a reduction in their AOD use
- 71% reported a reduction in psychological distress
- 71% achieved all/most of their case management goals, which includes goals like finding housing
- 100% said they found the service to be culturally safe and inclusive.

Additionally, survey data from young people's experiences of the program also showed its impact on supporting young people to build identities outside the prison system. One young person shared: '[Worker's name] is amazing. Without [worker's name], I would still be in jail and probably dead'. Another shared: 'With the support, I have managed to maintain my parole and stay out of trouble'.

Initiatives by Yung Prodigy

Yung prodigy is a youth-led, not-for-profit organisation in NSW that supports young people impacted by familial incarceration, and in so doing, aims to disrupt cycles of incarceration (Yung Prodigy, n.d.). Its work includes mentoring young people, research, and advocacy, including advocating for improved familial connection via free phone calls in NSW prisons. The organisation also runs yearly community retreats, which empower and support young people by providing a space for them to unpack their experiences of parental and kinship incarceration, discuss what freedom looks like, and brainstorm collective futures (Yung Prodigy, 2025, p. 6). Yung Prodigy also supports diversion and early intervention work by supporting young people impacted by familial incarceration to tell their stories, ensuring their voices can inform policy and reform work around the prison system.



Circle Sentencing

Another diversionary initiative that aims to break cycles of incarceration is Circle Sentencing, designed for First Nations communities. As researchers Steve Yeong and Elizabeth Moore put it, circle sentencing involves, ‘the local Aboriginal community in the sentencing process. In practice, this typically involves the presiding magistrate working with a group of Aboriginal elders, victims, respected members of the community and the offender’s family to determine the appropriate sentence’ (Yeong & Moore, 2020). Notably, research by the Bureau of Crime Statistics and Research (BOCSAR) found that Circle Sentencing precipitates lower rates of imprisonment and recidivism for First Nations people, in comparison to First Nations communities sentenced through traditional means (Yeong & Moore, 2020). This demonstrates some of the benefits of this diversionary option.

(ii) alternatives to remand and custodial sentencing

Improving access to accommodation

Improved access to accommodation is needed for young people to help keep them out of prison. Some staff have reported that many children on remand do not have a safe place to return to, and many are excluded from crisis accommodation due to their charges, criminal history, or a lack of bed availability. CRC workers have also at times experienced children being unable to access the Bail and Accommodation Support Service (BASS), which offers supported crisis accommodation, due to their charges and often a lack of availability. To improve the ability to stay out of prison, more inclusive and accessible accommodation, including crisis accommodation, for children with criminal legal system involvement is needed.

Justice Reinvestment programs- for instance, Maranguka Justice Reinvestment Project

The Maranguka Justice Reinvestment Project was a First Nations-led initiative that was place-based, located in Burke and had excellent outcomes. Justice reinvestment involves the genuine, long term diversion of funds away from the prison system to community-based initiatives that aim to prevent legal system involvement (KPMG, 2018, p. 32). The project was a collaborative endeavour between Just Reinvest NSW, Bourke Tribal Council and the Bourke community (Just Reinvest NSW, 2018). The project had a ‘life-course’ approach, which involved addressing areas that could expose people to criminal legal system involvement from their early years into adulthood. Mandandanji woman Dr Lorelle Holland and others explain, ‘the project was inclusive of healing and on-Country programs, access to health provision, housing, education, vocational and employment opportunities’ (Holland et al., 2024, p. 13).

The project had notably positive outcomes, which included:

- A reduction in the days adults spent in custody by 42% (KPMG, 2018, p. 6)
- Year 12 retention increasing by 31% (KPMG, 2018, p. 6)
- reductions in family violence (KPMG, 2018, p. 6).
- The project was scored highly on cultural responsiveness for First Nations communities (Holland et al., 2024, p. 13)

For further examples of diversionary initiatives, particularly those that are considered culturally responsive for First Nations communities, refer to the article ‘Resisting the



incarceration of Aboriginal and Torres Strait Islander children: A scoping review to determine the cultural responsiveness of diversion programs’ by Mandandanji woman Dr Lorelle Holland and others (Holland et al., 2024).

(iii) support services targeted at at-risk children and families, particularly in regional and remote areas

(iv) vocational, training, employment, and mentoring initiatives

(c) the specific and disproportionate impact of the youth justice system on Aboriginal children, and the adequacy of current strategies to Close the Gap on Aboriginal youth incarceration

Potentially fatal consequences

Child incarceration can have fatal consequences for First Nations people. Notably, 2025 marked the highest rate of First Nations deaths in custody since recording this information commenced (Brennan, 2025). There is also regularly a lack of accountability from the ‘justice’ system when First Nations people are killed in custody. Deaths in custody speak to the hyper-policing, racism, harm, neglect and denial of healthcare experienced by First Nations people who come into contact with the criminal legal system.

Trauma and disconnection caused by incarceration

First Nations overrepresentation in the criminal legal system contributes to intergenerational trauma and grief, in addition to disconnection from Culture, family and community (Deadly Connections, 2020). It is severely concerning that Aboriginal children and young people make up 60% of all children in NSW youth prisons, even though they constitute only 8% of the Australian population (BOCSAR, 2025). We recognise the social determinants of incarceration that perpetuate this status quo, including the ongoing impacts of colonisation, racism and the disproportionate involvement of First Nations children and young people in the out of home care system (Boffa & Mackay, 2025; McCausland & Baldry, 2023, pp. 45–46). We recognise that carceral systems are not part of First Nations cultures, are an import of colonisation, and that First Nations people have had, and continue to have, alternative modes of accountability outside of the prison system (Community Restorative Centre, 2025d, p. 2). We support and stand in solidarity with First Nations community members who have advocated for the following recommendations to keep First Nations children and young people safe from the prison system:

Recommendation 16: The need for community led, culturally safe First Nations support (at every point in the criminal legal system) (Community Restorative Centre, 2020).

Recommendation 17: Implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) in Australia (Thorpe, n.d.), to cement rights and promote self-determination for First Nations children and young people.

Closing the Gap targets

The reliance on carceral responses is one significant factor thwarting Australia’s capacity to meet Targets 10 and 11 of The Agreement (to reduce child and adult incarceration), which it has been recognised Australia is not on track to meet. Governmental and political



approaches that stand in direct contradiction to the aims of targets 10 and 11- to reduce the incarceration of First Nations people- are plentiful and include:

- the Northern Territory government lowering the age of criminal responsibility from 12 to 10 in 2024, after a hard-fought campaign to raise it.
- Despite broad-scale calls to alter it, the criminal age of responsibility in NSW remains 10 years old. CRC is a member of the Raise the Age Campaign NSW, which aims to raise the age of criminal responsibility to at least 14.
- The Queensland Government introducing policy to try young people as adults for specific crimes (Maxwell, 2024).

While The Closing the Gap Agreement states the aim of lowering the representation of First Nations people in prison, if governmental and political approaches are not in alignment, and perpetuate tough-on-crime and pro-carceral approaches, they will continue to thwart Australia's ability to meet Targets 10 and 11 of The Agreement.

(d) alternative youth justice models and frameworks, including:

(i) examples from other Australian jurisdictions, such as Tasmania

(ii) international best-practice models, including those in Scotland, England and Wales, and Scandinavian countries

We recognise that there is not consensus internationally on what consists of 'best practice' for child prisons (Matheson, 2022, p. 9), and that considering local contexts and needs is required. We explore some international approaches that have been considered 'best practice' below. Whilst doing so, we restate our position that children do not belong in prison.

Scotland

Scotland's 'whole system approach', which commenced in 2011, has had positive outcomes for children (Australian Human Rights Commission, 2025, p. 11). The approach consists of improving the coordination between different service systems for children and their families, with an aim being to reduce and prevent contact with the legal system early (Australian Human Rights Commission, 2025, p. 14). Additional legislative and policy change to support the whole system approach includes:

- Introducing explicit legislation that embeds the rights in the United Nations Convention on the Rights of the Child in domestic law.
- Raising the age of criminal responsibility to 12.
- Introducing a policy to tackle child poverty, including through increasing payments to parents and decreasing the cost of living (Australian Human Rights Commission, 2025, pp. 13–14).

Some of the positive outcomes associated with Scotland's approach include:

- The number of children prosecuted through the courts reduced by 92% between 2008-2022 (Australian Human Rights Commission, 2025, p. 17; Scottish Government, 2024).
- During 2008-2022, the number of children aged 16-17 who were sentenced to prison fell by 97%.



- The rate of 16-17 year olds in prison reduced by almost 20 times (Australian Human Rights Commission, 2025, p. 17; Scottish Government, 2024)

Norway

Norway has notably low child incarceration rates, which is contextualised by its ‘welfare’ model and associated policy and legal landscape (Holland et al., 2024, p. 20). Norway’s focus is on addressing the welfare requirements of children and families, which are administered by the Ministry of Children and Family, as opposed to the legal system (Holland et al., 2024, p. 20; Winterdyk et al., 2016, p. 111). The Country’s approach is focused on crime prevention over control for young people, and thus interventions are intended to be supportive (Winterdyk et al., 2016, p. 107). Additionally, the country’s age of criminal responsibility is 15, and those under 18 are seldom arrested or imprisoned (Holland et al., 2024, p. 20). The higher age of criminal responsibility, and focus on support over punishment, can offer lessons for Australia.

Smaller-scale, therapeutic and community-embedded facilities

Contexts like the Netherlands have experimented with smaller scale youth prison facilities and that more closely mimic home-like environments (Australian Human Rights Commission, 2025, p. 33). The focus is on children establishing productive and collaborative relationships with staff, in addition to ensuring the facilities are close to the child’s supports (for instance, school and counselling) to ensure community embeddedness. Such a model differs to other youth justice approaches focused on maximum security facilities, dislocation from community and larger scale detention units. Smaller scale facilities have notably been linked to reduced re-offending (Australian Human Rights Commission, 2025, p. 32).

While further research may provide more detail on the effectiveness of this approach, this model can still be read as imbricating young people in systems of surveillance and spatial control as a punitive response to crime. As mentioned, CRC does not believe children belong in prison, and we have some concern that promoting the reform of larger-scale facilities to smaller, more ‘home’ like ones may simply be a way of making child incarceration more palatable.

In considering models from Western contexts like Norway and Scotland, their appropriateness for Australian contexts should be critically appraised by First Nations communities in particular. The Law Council of Australia rightfully noted in the Senate Legal and Constitutional Affairs References Committee that: ‘any pilots or responses adopted must have the backing of First Nations leaders and build on their existing expertise in responding to the needs of the children and young people in their communities’ (Law Council of Australia, 2024). First Nations scholars like Dr Lorelle Holland, a Mandandanji woman, have alongside others, indicated the approach in Norway shows some promise for Australia (Holland et al., 2024, p. 20). Ultimately, the feasibility and appropriateness of international reforms to youth ‘justice’ settings should be considered by those most impacted by the prison system, particularly First Nations people.

Recommendation 18: that NSW decision makers consider beneficial elements of policy and legislation in contexts like Scotland and Norway to inform changes to the way



children at risk of criminal legal system involvement are supported to exit the prison system. This work should be conducted in consultation with communities most impacted by the prison system, particularly First Nations communities.

Recommendation 19: As with contexts like Scotland, Australia should introduce legislation to sediment the Convention on the Rights of a Child in domestic law through a specific act (Australian Human Rights Commission, 2024c, p. 12). Federal and NSW human rights acts are also needed to support the implementation of this convention.

(e) the collection, use, and transparency of data, including:

(i) youth justice recidivism rates in New South Wales compared with other jurisdictions

(ii) the cost of incarceration and the broader fiscal impact of the youth justice system

(iii) the remand population, including data on sentenced versus unsentenced children

(iv) historical trends in funding for community-based diversion and rehabilitation

v) Data gaps

Currently, there are gaps in NSW government data regarding children in prison, which can result in incorrect government reporting on the prison population, and an inability to understand and advocate for minoritised children's needs.

Race and ethnicity data

Outside of Aboriginality, there is no race or ethnicity identity data reported by BOCSAR for incarcerated children in NSW. This is despite research indicating that racially minoritised young people face overrepresentation in the prison system (Victorian Government, 2024, n.d.). The effect of not reporting on this data is that it inhibits the capacity to make informed policy decisions, and better understand the needs of all racially minoritised children who are incarcerated.

Data on parental incarceration

The NSW Government does not report data on incarcerated young people over 18 who also have a parent inside prison (Yung Prodigy, 2024). The organisation Yung Prodigy state the impact of this is that this cohort are invisible to decision makers and those in power.

LGBTQI+ children

There is a lack of reported data on LGBTQI+ children by the NSW government, despite research indicating LGBTQ+ communities are a hyperincarcerated cohort (Walters et al., 2024). There is also no reported data on children with variations in sex characteristics, also known as children who are intersex. The effect of this lack of data is that it cannot inform policy decisions regarding the needs of these cohorts. Demographic gender options that are reported on in BOCSAR data include male, female and unknown. Given these options, there is no capacity to report on non-binary children, or children who are not male or female but use another culturally specific gendered term. This is despite trans and gender diverse children accounting for approximately 2.3% of the Australian population (Higgins et al., 2025), and trans and gender diverse people broadly being a hyperincarcerated cohort (Simpson et al., 2024). Data about trans and gender diverse children has also been historically absent from the Australian census, and the 2026 census will not collect this data for children under 16 (ABS, 2024), which means they are doubly erased in government



datasets. Having incorrect and insufficient data is materially significant to incarcerated people as it means policy decisions about how to better support LGBTQI+ children in custody- for instance, through trans and gender diverse support groups, or programs for children who are comfortable being out as being part of LGBTQ+ communities- are hampered.

While there are numerous reasons why LGBTQI+ children might not want to disclose their identities in a prison environment- including because such environments are regularly reported to be hostile to this cohort (Morgan et al., 2025; Richards & Dwyer, 2014, p. 74), giving children who do want to disclose the option to do so could ensure policy and research better tracks the experiences of these cohorts.

**(f) the experience of children with disability in youth detention, including:
(i) assessment practices and identification of disability**

CRC workers 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.

Recommendation 20: better screening of children for comorbidity, cognitive disabilities and adverse childhood experiences (ACEs) in prison, and government funding to support this.

(ii) access to the National Disability Insurance Scheme (NDIS)

Workers who support children and young people have indicated a need for more access to NDIS assessments for children in custody, recognising there can be many undiagnosed children in prison.

Recommendation 21: a need for more access to NDIS assessments for children in prison.

(iii) availability of coordinated, wraparound 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 children to non-government services in preparation for their release from detention.

(g) governance and oversight mechanisms, including:

(i) the role and effectiveness of NSW Government agencies in coordinating a whole-of-government approach

(ii) the adequacy of youth justice community offices, staffing, service models and public accountability

(iii) reports by oversight bodies including the Inspector of Custodial Services and relevant Royal Commissions

While the Inspector of Custodial Services reports have made important recommendations about improving conditions in NSW child prisons, we are concerned that often recommendations are not substantively acted upon by decision makers after being tabled in NSW parliament. The reports have made numerous recommendations that have material significance to the everyday lives of incarcerated children, including addressing bullying and racism in youth prisons, ensuring the provision of supplies like warm bedding and fresh underwear, and ensuring Youth Justice staff have access to body scanners to facilitate visits (Inspector of Custodial Services, 2024, pp. 13–14). A common concern is that recommendations of the reports are not sufficiently addressed.

With regards to Royal Commissions, we note that governments have not fully implemented recommendations from the 1991 Royal Commission into Aboriginal Deaths in Custody, which should be implemented (Thorpe, 2025).

Recommendation 22: For decision makers to more genuinely consider implementing recommendations from the Inspector of Custodial Services.

Recommendation 23: Governments implement outstanding recommendations from 1991 Royal Commission into Aboriginal Deaths in Custody.

(h) the long-term social and intergenerational impacts of youth justice involvement, including:

(i) pathways between youth detention and adult incarceration

(ii) impacts on families and communities

Given the number of children incarcerated in youth prisons in NSW has been increasing (BOCSAR, 2025), the number of family and community members impacted by their loved one's incarceration is also rising. Incarceration often leads to a range of negative effects on emotional and psychological wellbeing for families and kin (Community Restorative Centre, 2025c, pp. 3–4). The imprisonment of a loved one can provoke feelings of grief, anxiety, anger, and resentment among family members on the outside. These emotional responses may strain relationships between the imprisoned person and their family, as both parties may struggle to cope with separation. Like those who have been imprisoned, family members also face the stigma associated with criminalisation and imprisonment (Kotova, 2020). Stigma can isolate them from broader social networks, including friends, colleagues,



neighbours, and even amongst members of their own families (Community Restorative Centre, 2025c, p. 4).

Imprisonment can also have significant financial and material impacts on families, often exacerbating their existing socio-economic precarity (Community Restorative Centre, 2025c, p. 4). Families may face increased expenses associated with their child's imprisonment, including legal fees, travel costs to and from prisons, and expenses for maintaining contact through phone calls and mail.

The impacts of children being incarcerated also perpetuates racial and gendered inequities. First Nations families and communities are disproportionately impacted by children in prison, given the hyperincarceration of First Nations people. Additionally, during periods of imprisonment, women usually take on increased caregiving responsibilities for children and other dependents, which can contribute to financial and emotional strain (Comfort, 2008; Jardine, 2021). This is compounded by societal stigma, as women – especially mothers – are often implicitly blamed for their relatives' imprisonment, and may face social isolation and a lack of community support as a result (Condry, 2007).

CRC employs a family worker to support family members impacted by the incarceration of their loved ones across NSW, though it is a rare service in the state that could be expanded and better resourced.

Recommendation 24: Expanding and better resourcing services that support family members and kin of incarcerated communities in NSW.

(iii) labour market and workforce considerations, including transitional and redeployment opportunities for affected staff in the event of service model reforms

In our submission to the Australian Law Reform Commission in 2025, we recommended updating the *Anti-Discrimination Act 1977 (NSW)* to include 'irrelevant criminal record' as a protected attribute (Community Restorative Centre, 2025a). We do so here also. We know through our service provision that people who have been incarcerated generally suffer from the perpetual punishment of irrelevant criminal record exclusion from volunteer work, paid work and educational opportunities.

(j) any other related matters.

(2) That, in undertaking its inquiry, the committee will:

(a) engage with Aboriginal communities, children and young people with lived experience, service providers, law enforcement, the judiciary, and other stakeholders

Staff working with children at CRC encouraged flexibility and a tailored approach in engaging this cohort for consultation for this inquiry. Flexibility included asking how children and young people might want to contribute- for instance, through a caseworker that supports them or another third party, if not themselves.

Staff also commented that consent to engage may need to be provided by children's carers,



or consultation with local communities- for instance, to support participation of an Aboriginal young person in custody.

Workers also encouraged accessible communication about the inquiry with children and young people, including through explaining what the inquiry is, why questions are being asked, and ensuring the findings of the inquiry are accessible and useful to the children and young people engaged.

In addition to First Nations youth, we particularly encourage consultation with other children and young people from hyperincarcerated communities, including young people who are homeless, have a disability and who are part of LGBTQI+ communities.

(b) identify legislative, policy and practice reforms required to reduce the number of children in contact with the youth justice system and to build safer, more resilient communities.

Policy and legal reforms

Genuine justice reinvestment

We support genuine justice reinvestment at state and federal levels to better support the needs and wellbeing of children. While the federal Attorney General’s Department and the NSW Department of Communities and Justice (DCJ) pledge commitments to justice reinvestment on their websites (Attorney General’s Department, n.d.; DCJ, 2024), which is positive, we stress that justice reinvestment in the true sense would involve the substantive, large-scale reinvestment of funds spent on the criminal legal system to services like diversionary programs. This would involve a much larger pool of funds than what is currently being mobilised by governments. We have provided examples of diversion and preventative programs that government could invest in, or grow its investment in, in this submission.

Recommendation 25: Government and decision makers supporting genuine justice reinvestment.

Leadership in combating tough on crime approaches and stigmatising narratives about children

We call on leadership from politicians, decision makers and those in the media to ensure ‘tough on crime’ narratives, and storytelling that demonises and stigmatises children in conflict with the law, is ceased. The Australian Human Rights Commission *Help Way Earlier* report highlighted that a primary barrier to reform for child justice and wellbeing in Australia is a ubiquitous ‘tough on crime’ rhetoric (Australian Human Rights Commission, 2024, p. 108). In the NSW context, tough on crime approaches are manifest in the tightening of bail laws for children (*Open Letter to NSW Premier Minns and the Labor Government*, 2024), and in the NSW Premier’s announcement that to deal with hate in the NSW community, his government would introduce a new, permanent police riot squad of 250 officers with long armed rifles. The latter response does not improve community safety, but will likely worsen it, particularly recognising how racism, disability discrimination,



queerphobia and more informs the hyper-policing of minoritised and disadvantaged communities, particularly First Nations people.

Unnecessarily stigmatising children in conflict with the law should also be ceased by political decision makers and the media. Terms ‘young offender’, ‘juvenile’ and ‘delinquent’ regularly function to decontextualise and demonise the lives of children in conflict with the law (Community Restorative Centre, n.d.; Goldson et al., 2021). These terms perpetuate widespread myths that lawbreaking is rooted in some form of deficit or problem within the individual (Goldson et al., 2021; Kaba, 2021). Locating lawbreaking as a problem that lies within an individual serves a core function: it averts attention from the inequalities, discrimination and social structures that drive minoritised individuals and communities into the criminal legal system (Goldson et al., 2021; Kaba, 2021). At the same time, the widespread use of these terms averts attention from how law-breaking is often a form of survival and resistance to an unjust and discriminatory social order (Community Restorative Centre, n.d.). The media and political decision makers are encouraged to refer to CRC’s free *Language Guide*, where we suggest movement away from terms like ‘offender’ to ‘person charged with a crime’, or switching out language from ‘inmate’ to ‘person who is incarcerated’, to highlight that someone’s interaction with the criminal legal system is not the sole thing that defines them (Community Restorative Centre, 2025b). We say this recognising that some with lived experience of the prison system may use some of these terms in a reclamatory way, but that politicians and service providers are encouraged to consider more person-first language. CRC also runs training to support the community to shift the narrative around incarcerated communities, and better understand their experiences. Overall, we call for leadership from politicians, decision makers and the media to challenge, rather than perpetuate, tough on crime approaches and stigmatising language regarding children in conflict with the law.

Recommendation 26: Leadership by politicians and the media in challenging ‘tough on crime’ approaches, and stigmatising language around children with criminal legal system involvement.

Alternative first responders to the police

Police as first responders can have negative effects for disadvantaged, targeted and minoritised (National Justice Project, 2025), including First Nations communities, young people, those experiencing mental health crises, people who are homeless and LGBTQ+ communities. Staff supporting young people relayed how police would sometimes treat children as adults in their interactions with them, which was not age appropriate. In Victoria, people who have accessed mental health support services are six times as likely to be fatally shot by police (Kesic et al., 2010). First Nations communities are regularly racially targeted by police, and there is a lack of accountability when First Nations people are killed in police custody. Additionally, a survey by the National Justice Project of stakeholders, including youth, legal services and mental health organisations, showed ‘100% agreed that alternatives to police as first responders are urgently needed for situations where a health or social response is required’ (National Justice Project, 2025, p. 4).

Numerous models of alternative first responders to the police exist, which could be examined for efficacy in NSW. One alternative to police as first responders is the PACER



(Police, Ambulance, and Clinical Early Response) model- where a mental health worker is embedded with police and ambulance services to provide early intervention. This can reduce unnecessary police engagement. PACER, as opposed to police alone as first responders, reduces hospitalisations, police use of force, and incarceration (Huppert & Griffiths, 2015). Another model is alternatives to the police (such as peer workers for those experiencing a mental health crisis) being included on the triple zero number, to avoid a police callout where an alternative response would be more appropriate (National Justice Project, 2025).

Recommendation 27: Government considering alternative first responders to the police.

Improved representation for children and young people

There is a need for the better representation of children and young people's needs and rights at state and federal levels. For this reason, we support the call by organisations like the Aboriginal Legal Service NSW/ACT for government to take steps to support the creation of a Commissioner for Aboriginal Children and Young People in NSW (Aboriginal Legal Service NSW/ACT, 2024). We also support calls by organisations like the Australian Human Rights Commission for the creation of a National Minister for Children to promote accountability around children's rights and needs federally (Australian Human Rights Commission, 2024b, p. 115).

Recommendation 28: establishing an Aboriginal Commissioner for Children and Young People in NSW.

Recommendation 29: The creation of a federal Minister for Children role.

Raise the age of criminal responsibility from 10 to at least 14

The minimum age of criminal responsibility is the primary legal barrier to entry into the criminal legal 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). Raising the age of criminal responsibility would better recognise that children are in a state of intense physiological development from 10-14, which impacts their capacity to make decisions and understand the consequences of their actions (Sawyer & Vijayakumar, 2024). Notably, children in early adolescence are more likely to engage in impulsive behaviour given the effects of puberty hormones on the brain (Sawyer & Vijayakumar, 2024). Additionally, young people aged 10-14 have a compromised ability to understand the consequences of their actions, as they are still physiologically developing. Recognising these factors, we believe the age of criminal responsibility should be raised.

Recommendation 30: Raise the age of criminal responsibility to at least 14 in NSW.

Reform to address bail law tightening in NSW

Similarly to organisations like the Aboriginal Legal Service NSW/ACT, we hold concern about the tightening of bail laws in NSW, and the subsequent rise in children being in prison on remand (Aboriginal Legal Service NSW/ACT, 2024). This is a harmful driver of the mass imprisonment of First Nations people. 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 was concern by CRC, legal practitioners, academics and other community workers that the legislative amendment- which has passed, but is subject to a sunset clause and an evaluation (Attorney General, 2024)- would increase the number of children in youth detention facilities (*Open Letter to NSW Premier Minns and the Labor Government, 2024*). There was also public concern that the law would 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 target is Target 11- to reduce the rate of Aboriginal and Torres Strait Islander children (10-17 years) in detention by at least 30 percent (Productivity Commission, n.d.). The first driver listed for high rates of detention in the text of this target is, notably, ‘unsentenced detention rates’ (Productivity Commission, n.d.). At the time the bail law tightening was announced, 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 tightening of bail law in NSW 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 High Commissioner for Human Rights, 1989).

Recommendation 31: Aforementioned bail law tightening in NSW should be rolled back to keep more children out of detention.

Practice reforms

Ending strip searches on children in prison

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) (McKay, 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 & Raj, n.d., 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 & 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 territory governments consider implementing alternative strategies for detecting contraband, such as risk assessments or body scanners (Commonwealth of Australia, n.d., p. 46). As the Human Rights Law Centre and Flat Out, a Victorian advocacy service for communities who have been criminalised also 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). CRC supports the call for legislative change to completely prohibit strip searches on children and instead use alternative means like scanners.

Recommendation 32: that NSW pass law to expressly prohibit strip searches on children in prison.

Breaches in children’s confidentiality

Some CRC workers have expressed concern about detention staff sharing young people’s personal information without their consent. For instance, some workers reported incidents where information about the suburb young people live and their offences are circulated amongst other young people in detention centres without being disclosed by the young person themselves. This has made some CRC workers 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, 2024). Where personal information about young people has circulated in centres without the young person disclosing it, there have been negative impacts on the physical and psychological safety of young people CRC supports.

CONCLUSION

Thank you for considering our submission. In it, we have explored social drivers of incarceration for children in NSW, and how it is appropriate prevention and diversionary programs, rather than prison, that are best suited to addressing these drivers. Examples of prevention and diversion initiatives we explored include Pathways Home, Yung Prodigy, the Maranguka Justice Reinvestment Project and Circle Sentencing. We also explored approaches to youth incarceration in international contexts, including Scotland and Norway, which may offer some useful guidance for improving the Australian context. Ultimately, we support a range of policy and legislative change to better support the rights of children involved with the criminal legal system, including raising the minimum age of criminal responsibility to at least 14, alternative first responders to the police, and more. We welcome further correspondence with the Committee if it is useful.



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