



Submission to the Commission for Children and
Young People's *Inquiry into the use of isolation,
separation and lockdowns in youth justice centres*

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Jesuit
Social Services
Building a Just Society

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Who we are

Jesuit Social Services works to build a just society by advocating for social change and promoting the health and wellbeing of disadvantaged people, families, and communities. We value all persons and seek to engage with them in a respectful way that acknowledges their experiences and skills and gives them the opportunity to harness their full potential.

We strengthen and build respectful, constructive relationships with a focus on:

- **Effective services** – by partnering with people most in need and those who support them to address disadvantage
- **Education** – by providing access to life-long learning and development
- **Capacity building** – by refining and evaluating our practice and sharing and partnering for greater impact
- **Advocacy** – by building awareness of injustice and advocating for social change based on grounded experience and research
- **Leadership development** – by partnering across sectors to build expertise and commitment for justice.

The promotion of **education, lifelong learning and capacity building** is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community. Our service delivery and advocacy focuses on the following areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs and those affected by suicide, trauma and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment.

For nearly 40 years, we have accompanied people involved, or at risk of becoming involved, in the criminal justice system. In Victoria we work with people to prevent and divert involvement in the justice system and support people exiting prison and youth justice facilities. This includes the Corrections Victoria Reintegration Program in North and West Metropolitan Melbourne (Reconnect), the African Visitation and Mentoring Program (AVAMP), Next Steps and Perry House residential programs, the Youth Justice Community Support Service, Youth Diversion Pilot Program, Group Conferencing and Barreng Moorop (delivered in partnership with the Victorian Aboriginal Childcare Agency and the Victorian Aboriginal Legal Service).

Our programs also include:

- **Jesuit Community College:** increasing opportunities for people constrained by social and economic disadvantage to participate in education, work and community life and reach their full potential.
- **Community and Settlement Programs:** working with newly arrived migrants across metropolitan Melbourne and in NSW, including the African Australian and Vietnamese communities.

- **Connexions:** delivering intensive support and counselling for young people with co-occurring mental health, substance and alcohol misuse problems.
- **Artful Dodgers Studios:** providing pathways to education, training and employment for young people with multiple and complex needs associated with mental health, substance abuse and homelessness.
- **The Outdoor Experience:** offering an alternative treatment service through a range of outdoor intervention programs for young people aged 15 – 25 years, who have or have had issues with alcohol and/or other drugs.

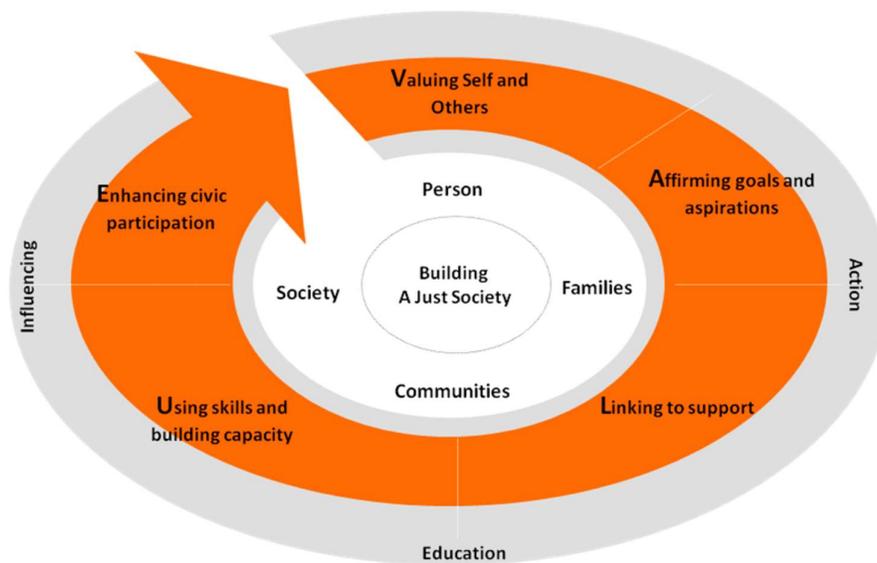
Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence participants' lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community sector to build coalitions and alliances around key issues, and building strong relationships with key decision-makers and the community.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to intervening with participants across our programs.

Jesuit Social Services Practice Framework: Our Way of Working

Our practice framework, **Our Way of Working**, underpins all Jesuit Social Services work with individuals and communities. The framework speaks to the inherent human dignity of each individual and their capacity to envisage and achieve a more positive and engaged future, no matter their current circumstances. Our way of working articulates the dynamic interplay of five components which work together to help people reach their potential and express their full citizenship:

1. Teaching the importance of **valuing self and others** so that our participants can develop the capacity to establish and maintain meaningful and respectful relationships in their personal lives.
2. Engendering hope and **affirming goals and aspirations** through the establishment of supportive and mutually participatory relationships.
3. Delivering programs that **link to and provide support** for participants to realise their potential by working with them to remove the barriers they face in achieving social and economic inclusion.
4. Supporting participants to **use skills and build capacity** through the delivery of education and training programs that promote skill development and assist in accessing vocational and employment pathways.
5. **Enhancing civic participation** through sustained long-term engagement, and partnering with others to increase access to opportunities.



At each step in the process we use evidence-based approaches. The participant is always at the centre of our process and relationship-building central to our work.

Working with young people involved with the justice system

We know that many in this cohort come with complex histories, including early trauma and disrupted schooling, often leading to developmental issues and problematic substance use. Many have had numerous experiences with support services as well as multiple placements and, for some, periods of homelessness. They are disengaged and carry personal narratives of failure and a distrust of workers. Without a trusting connection and foundation of self-worth, further steps are fruitless.

We understand that the process for individuals is not linear and our involvement with them is time-limited. Our Way of Working provides the anchor points to our practice. We work with what is possible in the moment; however, the framework enables us to take a longer-term focus, maintain a positive approach and enhance our capacity to positively influence during setbacks.

It ensures we focus on, and work in ways that support, the young person’s needs at the time whilst being cognisant of their life journey and enabling them to see and believe in their own capacity for a better, more productive future.

Young people respond positively to our approach, which is relationship-based. All participants who agreed to a post exit survey in 2015/2016 stated that they were always treated with respect, while 97 per cent stated that they were satisfied with the service they received and agreed with the statement that staff were always friendly. Their feedback reflects outcomes aligned with the components of our framework and includes:

Participants

Got another chance to prove myself

They made things easier for me to get back on track

I have a better lifestyle now, not doing crazy stuff

I'm now going to school; don't hang out with the people I used to, have a clearer head

Parent

No one judged her or us, this made a big difference. Staff were very respectful

It is pertinent to note that in the last ten years we have not experienced a critical incident where there has been an assault on a staff member. Our Way of Working has a proven correlation with high levels of engagement and uptake on our programs – all of which are voluntary.

Critical to our success is:

- Our practice framework that anchors our work in the present whilst retaining a focus on longer term goals
- Belief in the potential of every individual and building respectful relationships
- Using evidence based approaches combined with practice wisdom built from our 40 years of operation
- Induction, in-service training and supervision processes that reinforce our practice framework
- A case-management tool and database that has outcomes aligned to our framework.

Our recommendations

We call on the Victorian Government to:

- Ensure there are appropriate mechanisms in place for children and young people to voice their concerns
- Carefully consider the impact of design of youth justice detention facilities on children and young people's behaviour and treatment
- Ensure that youth detention officers and other staff in youth detention centres are trained in a trauma-informed youth specific therapeutic practice framework by experienced and qualified instructors.
- Strengthen processes by using third parties (such as community service organisations) to give young people a voice once they have been released from detention
- Increase resources to the Independent Visitor Program to strengthen capacity to effectively capture the voice and views of children and young people and their experience of custody.
- Act immediately to put in place appropriate structures, plans and resources targeted to the State's most vulnerable communities to effectively break the web of disadvantage.
- Ensure access to early childhood services for all young children in Victoria by improving the quality of programs and staff as well as locational access to early years services.
- Expand restorative justice conferencing to out-of-home care placement.
- Establish effective systems and support for young people reintegrating into school and training pathways.
- Provide adequate resources for recreation, after-hours activities and support for young people.
- Expand proven restorative justice programs across the state.
- Invest in measures to strengthen diversion and support, including:
 - expanding the Central After Hours Assessment and Bail Placement Service
 - additional support for young people sentenced to youth justice orders (and their families)
 - targeted but time-limited intensive case management support for young people following participation in a youth justice group conference
 - intensive case management with the small group of young people committing a high number of offences, including family work and supporting education, training and employment pathways, offered after hours and on weekends.
 - a renewed commitment to strengthening the response to Aboriginal children and their families who intersect the criminal justice system (based on the Barrang Moorop model)
 - raising the age of criminal responsibility to 12 years and adopting a restorative and welfare approach to anti-social behaviour in children under the age of 12 years.
- Continue to support vulnerable children with trauma-informed, therapeutic practices. These must be evidence-based, culturally safe and inclusive, and incorporate a strengths-based framework and specialist care.
- Continue to support clear and well-resourced partnerships with community organisations to effectively implement through-care models for young people exiting the justice system.

We call on the Australian Government to:

- Ratify the Optional Protocol to the Convention against Torture and implement an independent and effective National Preventative Mechanism as a matter of priority.

Introduction

Jesuit Social Services welcomes the opportunity to respond to the Commission for Children and Young People's *Inquiry into the use of isolation, separation and lockdowns in youth justice centres*.

Every child and young person should have access to the opportunities in life that will enable them to flourish – to complete their education, to get a job, to access safe and affordable housing, to raise their children in safe communities and to see the next generation thrive.

Current approaches to children who display antisocial behaviour frequently fail to engage with them in ways that are developmentally appropriate. Too often, responses are a missed opportunity to address often serious issues contributing to their problematic behaviour and to avoid their entrenched involvement in the child protection and justice systems. Accordingly, certain background factors common to young offenders must be taken into account in seeking to formulate any response to issues concerned with the use of isolation, separation and lockdowns in youth justice centres.

A renewed approach to meeting the needs of these children and the most effective way to manage their antisocial behaviour is now needed. This approach must recognise that:

- children involved in the child protection and criminal justice systems often come from disadvantaged backgrounds and have complex needs
- children lack developmental maturity in the skills and capacities necessary for criminal responsibility, and this developmental immaturity is often exacerbated in children who have experienced abuse or neglect
- involvement in the criminal justice system at a young age often causes further harm and furthers involvement in the criminal justice system¹
- engaging in developmentally appropriate restorative justice processes can help children to understand the effects of their behaviour on others and reduce recidivism.

In this context, we believe there is a need for service systems in Victoria to more effectively contribute to the positive development of young people. Key principles must emphasise:

- the developmental and welfare needs of young offenders
- the need to engage children in a way that prevents further harm and that enables them to actively participate in responses to their problematic behaviour
- the importance of restorative justice principles, processes and practice
- a therapeutic approach that responds to the needs of vulnerable children, particularly those in the child protection and out-of-home care system who come into contact with the justice system
- an understanding of the particular needs of Aboriginal children and young people who are overrepresented in the youth justice system, a fact that is linked to extreme disadvantage experienced in the critical areas of health, education, employment and housing
- the critical role of education as a protective factor, and the need to ensure vulnerable children's continued engagement in early years services and school.

Realising these principles requires changes to legislation, programs, and processes. Moreover, it requires a focus on the values of the system and how they are realised in day-to-day practice, and a deeply collaborative approach that engages with the expertise and experience of the community sector. These themes are explored throughout our submission.

It is our view that isolation should only be used in a situation where a young person can be reasonably expected to cause serious physical harm to themselves or others or to property, and where other de-escalation interventions have not been effective. In de-escalating situations where physical harm to self or others is not a concern, staff should not rely on isolation as a solution and instead employ restorative interventions. Fundamentally, Jesuit Social Services considers there are more appropriate responses than isolation and lockdown to behaviour of young people that presents an immediate threat to his or her safety or the safety of any other person or to property (as per section 488(2) of the *Children, Youth and Families Act*).

As outlined in this submission, we believe there are a range of initiatives that should be adopted in Victoria to prevent vulnerable children and young people from being detained in the first place, and to safeguard against inappropriate treatment in detention facilities. We consider that adopting such measures would help to ensure that harm to children and young people is minimised and their rights are protected when isolation, separation and lockdowns are used in youth justice centres.

We start by outlining issues specific to youth justice centres (including the use of isolation in adult facilities for vulnerable young adults), before offering a range of recommendations to strengthen Victoria's response to the actions of children and young adults within the criminal justice system.

Setting the scene: The background of children in contact with the justice system

Children and young people in contact with the justice system are among the most vulnerable and disadvantaged in the community. They also generally go on to commit higher rates of offending throughout their lives. The causes of offending in younger children are strongly connected to their environment and its impact on their development.

Jesuit Social Services' research has identified a strong correlation between child and youth offending and entrenched disadvantage. For example, in Victoria we found that:

- In 2010, 78 per cent of children aged 10 to 12 years with youth justice orders, or who had experienced remand at this age, were known to child protection. Of these, 60 per cent were known before their seventh birthday.²
- 25 per cent of children on youth justice orders in 2010 came from 2.6 per cent of Victorian postcodes.³
- Children aged 14 years and under at their first encounter with the justice system are more likely to come from areas with higher rates of developmentally vulnerable children on the Australian Early Development Index.⁴

Children and young people who offend are also more likely to have experienced environmental and developmental risk factors such as disability, mental illness, drug and alcohol abuse, exposure to crime and violence, homelessness, child abuse and neglect.⁵

Early experiences of abuse and neglect have detrimental impacts on a child's development. Research has identified that hardship early in life can inhibit the development of oral language,⁶ result in intense and cumulative harm,⁷ and have long term impacts on health and social outcomes.⁸ In this context, a child's ability to develop important emotional, social and cognitive skills is diminished, leading the child to be behind his or her peers in a broad range of competencies, including those necessary for criminal responsibility.

These environmental and developmental factors further impact upon the health and well-being of children and young people. A study investigating the health of young people in custody identified that 87

per cent had at least one psychological disorder, and nearly three-quarters had two or more psychological disorders.⁹

There is also a strong correlation between school performance, truancy and criminal involvement; studies have found that between 60-70 per cent of students skipping school are involved in criminal activity.^{10 11} Engagement in school is important for children's development as well as for value transmission and social awareness. For children in contact with the justice system, the developmental, social and economic vulnerabilities which contribute to youth offending are compounded by disengagement from the education and support systems that facilitate positive development.

The extreme vulnerability and complex needs of children and young people in contact with the justice system indicate a need for more effective welfare responses to childhood disadvantage and appropriate justice responses that recognise the unique needs of vulnerable young people.

Impacts of solitary confinement: International research and our experience

In light of the health and community safety risks associated with solitary confinement as confirmed by both international research and local experience, Jesuit Social Services considers that the use of isolation, separation and lockdowns in youth justice centres should be kept to an absolute minimum. Practices must ensure that harm to children and young people is minimised and that their rights are protected.

We recognise and support the following findings of the World Health Organisation:¹²

- A rich body of literature speaks to the detrimental effects of solitary confinement on health, including anxiety, depression, anger, cognitive disturbances, perceptual distortions, paranoia and psychosis.
- Levels of self-harm and suicide, which are already much higher among prisoners than in the general population, rise even further in segregation units.
- Prisoners with pre-existing mental illness are particularly vulnerable to the effects of solitary confinement.
- Children and young adults are still developing physically, mentally and socially, which makes them particularly vulnerable to the negative effects of solitary confinement.
- Solitary confinement can affect rehabilitation efforts and former prisoners' chances of successful reintegration into society following their release.
- International human rights law requires that the use of solitary confinement be kept to a minimum and reserved for the few cases where it is absolutely necessary, and that it be used for as short a time as possible.

Solitary confinement remains a real and live prison health issue across Australia's criminal justice system. These regimes see people locked in their cells for up to 23 hours a day and limit an individual's access to prison-based programs/education. Solitary confinement also significantly restricts an individual's social interaction within the prison community and prevents any level of social connectedness. In Victoria, solitary confinement is referred to as a long term management placement.

Solitary confinement negatively affects an individual's overall level of physical and mental health in custody. Many people describe experiencing physical health impacts such as deterioration in eyesight (e.g. seeing black dots), poor appetite and joint pain. Mental health impacts are more profound and include increased difficulty in regulating emotions (e.g. anger/rage), constant hypervigilance and

paranoia, distortions in time, increased suicide/self-harm risk, increased symptoms of anxiety/depression, and describe feeling that they are going 'crazy'.

Solitary confinement also creates significant barriers to achieving successful rehabilitation and reintegration. People are often released straight back into the community from these regimes after spending up to 23 hours in their cell a day. This significantly compromises community safety and puts the individual leaving this regime at significant risk in the community.

Jesuit Social Services considers that isolation under the definition contained in section 488(1) of the *Children, Youth and Families Act 2005 (Vic)* – being 'the placing of the person in a locked room separate from others and from the normal routine of the centre' – would share the same negative consequences as solitary confinement for children and young people at youth justice centres.

Young people in the adult criminal justice system (aged 18-25) are identified as being particularly vulnerable to the ill effects of solitary confinement due to their developmental age. Solitary confinement not only risks exacerbating or bringing on short and long term mental health issues, but can also prove physically harmful to the health and well-being of adolescents by restricting their ability to engage in physical exercise.¹³ Solitary confinement also increases the risk that those detained will self-harm, for example by banging their heads against walls.¹⁴

In Victoria, many young men aged under 23 who have experienced trauma remain in long term management placements, sometimes for long periods of time (e.g. 2 years). Some of these young men identify as Aboriginal and have had limited culturally appropriate supports whilst under this regime. Many young men are placed within these regimes following their involvement in incidents. What we know is that young men who have experienced significant trauma experience impacted brain development and as a result are more likely to react with a fight/flight response when feeling under threat.

Given this, young men will generally react in a way that they know keeps them alive when they feel under threat from prison staff or other prisoners – namely, with violence. We are concerned that long term management placements have become the Victorian prison system's default response to 'managing' young men who have experienced trauma.

Jesuit Social Services has worked to support some of these young men to transition into the community, which has been a challenging journey for them. Many report feeling 'institutionalised' at a young age upon release, struggle to manage day-to-day living tasks such as being out in public, experience constant feelings of hypervigilance and, at times, have created spaces to sleep in that are the same size as a prison cell.

Some of these young people would describe feeling as though they have 'lost' themselves under this regime and have limited hope for their future in the community. Many are traumatised from what they have experienced in custody during prison incidents and from spending such prolonged periods of time in isolation.

Many of these young people do not remain in the community for long periods of time, often returning to prison. This is particularly concerning not only for the wellbeing of these young people and for economic reasons, but also as it risks undermining the safety of the community. Importantly, their offending tends to significantly increase in severity from their previous offences.

Incarcerating young people under 25 in this regime is particularly concerning as we know the adult brain does not fully develop until the age of 25. For a 20 year old who has experienced significant trauma and

is put in a long term management placement for an extended period, the lasting impacts on their brain development can be significant.

People in solitary confinement often have limited (if any) access to Offending Behaviour Programs and education programs which further disadvantages them upon release. Young people with whom we have worked have asked to be moved to another unit to mix with others or have a 'run out' with another prisoner prior to release, but this request is often declined by Corrections Victoria.

Solitary confinement and isolation are not conducive to rehabilitation, reintegration or community safety, and increase risk to the community.

Case Study examples

It is worth noting that many of the young men featured below have been difficult for Youth Justice to manage in custody and have often been transferred to adult prisons from Malmsbury Youth Justice Centre. Many are then vulnerable in the adult system and are put in management placements after they are involved in incidents, including being exploited by more experienced prisoners to become 'lackeys' so that the more experienced prisoner does not get caught.

These young men then find themselves at risk of becoming radicalised in management placements, given they are exposed to more experienced prisoners who are at times gang-affiliated or who engage in a higher risk behaviours. The names of young people have been changed in the following examples.

Matthew was referred to the Youth Justice Community Support Service (YJCSS) program in 2014. He was 20 years old at the time of referral. At the point of referral Matthew was in Malmsbury Youth Justice Centre.*

Previous psychological reports informed that Matthew had Major Depressive disorder, depressed mood and feelings of worthlessness and guilt. He had sleep disturbance and thought of death. Matthew was also diagnosed with ADHD, ODD, Conduct disorder, Autism Spectrum disorder, intellectual impairment, and speech and language delay.

Matthew had previously attempted suicide twice in adult custody. Matthew had also attempted suicide in the community by way of hanging. He had reported that the triggers to these suicide attempts were feelings of loneliness and isolation.

From May to July 2014 Matthew was in the Ulabura Unit however to our knowledge he was in and out of the isolation unit due to his behaviour being difficult. He would assault workers and clients, and make threats towards others and himself.

From around July to October (when he received parole) it is our understanding that Matthew spent the majority of this time in the isolation unit. Initially there was an incentive put in place to encourage Matthew to behave better. He enjoys cooking so he was allowed to participate in cooking if he behaved himself.

YJCSS would attend visits in the isolation unit. After Matthew was paroled he was breached for non-compliance within a week and returned to custody.

Darcy is currently 23 years of age and in a long term management placement in Barwon Prison's Melaleuca Unit. Darcy was transferred to an adult prison at the age of 18 from Malmsbury Youth Justice Centre after his behaviour become too challenging to manage at this facility. He quickly became involved in serious incidents in that adult prison and has now largely*

been in solitary confinement since the age of 18, having been in the community for approximately eight months in total over three separate releases during this time. Darcy has been handcuffed, shackled and tear gassed under these regimes. He has also experienced assaults from prison staff and has often been placed in observation cells, where his clothes are removed by staff (at times with a metal hook) and he is placed in a canvas gown.

In the community, Darcy has had significant difficulty in managing his transition and was released into homelessness initially on all of these occasions. He often secludes himself to a bedroom as he felt his one bedroom unit was too big. He could not walk with his back to traffic and when visiting public areas, needed to sit with his back against a wall so he could see everything around him. Darcy experienced significant mental health issues following his releases from management placements including significant anxiety (having issues leaving the house) and depression, which has often caused him to engage in drug use in order to feel 'normal'.

Darcy attempted suicide twice in the community following his first release from a long term management placement at the age of 20. These placements have caused Darcy to become significantly institutionalised and have impacted on his ability to function in the community. His family describe him as being a different boy following his releases from these placements. Darcy recently received a 12-year sentence for attempted murder following his last release from a long term management placement, a significant escalation in his level of offending. For the last 18 months, he has been in a long term management placement., He describes finding face-to-face interactions with people – including with his mum – difficult to manage, given that he is isolated for 22 hours a day.

Jack is a 24-year-old male who identifies as Maori/Serbian who was recently released straight from a management placement at Barwon Prison. Jack is living with his girlfriend; however, he has been experiencing difficulty in adjusting to the community from a management placement, often spending most of his time cleaning the house as this is something he would do with his cell during his placement in management. Jack describes often 'walking laps' of the backyard and in the hallway, as this is something he would often do in his cell, and finds this comforting. This has also been observed during outreach appointments with Jack in the community. In public places, he often paces and experiences significant anxiety around members of the public.*

James is a 21-year-old Aboriginal boy who was transferred to an adult prison from Parkville Youth Justice Centre at the age of 16. James was placed in a long term management placement following this transfer and was housed in his cell for 22 hours a day. He was released from an intermediate regime placement (22 hours in cell, 2 hours out of cell with a small group of prisoners) at the age of 19 following this transfer, and significantly struggled to manage his transition to the community. Whilst James secured a transitional property, he found this too challenging to manage and made his bathroom into a cell, sleeping in his bath and preparing his food in this area. James brought items such as a radio, kettle and toaster into his bathroom to replicate the cell he had in prison. James returned to custody shortly following his release and his struggles in the community were of much concern to his family, who were never notified of his transfer to an adult prison at the age of 16.*

Harry is a 24-year-old male who is currently in a long term management placement at Barwon Prison and has been under this placement for approximately 3 years, since the age of 21. His last*

release occurred when he was 20 and exiting a long term management placement, which he struggled with, ultimately returning to custody shortly after. Harry has experienced the use of significant physical restraints in these placements, including the use of body belts, which are placed on prisoners when they are naked to restrict their movement, and are said to 'manage risk' for those at risk of suicide. However, they also appear to frequently be used as a behaviour management mechanism in maximum security prisons.

We are also aware of the lockdown of a youth justice unit due to a shortage of staff, resulting in a situation in which all of the young people not attending the Parkville College were locked down in their cells. Another young person was on remand in Port Philip Prison for seven months and spent most of this time in 23 hour lockdown prior to being sentenced and transferred to Malmesbury where he was re-referred to our Youth Justice Community Support Service (YJCSS) program.

Changes to policy and practice

The remainder of this submission will focus on measures that would help ensure that the rights of children and young people are protected when isolation, separation and lockdowns are used in youth justice centres, as well as changes to policy or practice that will help to halt the trajectory of vulnerable children and young adults into the criminal justice system.

Mitigating the need for isolation as a response

Several factors contribute to escalating situations in youth detention centres. The particular needs of young people, staff management practices and the physical environment of youth detention centres all contribute to creating situations where young people become violent and threaten the safety of others, themselves or property. By addressing these factors pre-emptively, escalating situations can be diverted.

Meeting young people's needs

Young people in detention require a very different approach to adults in the justice system due to their developmental vulnerability. Additionally, they may experience behavioural issues and present with multiple and complex needs. Meeting the needs of young people must be a priority within youth detention. This approach requires:

- staff who are suitably qualified and receive thorough ongoing training to support the unique needs of young people
- improved case management and access to mental health services while in detention
- improving specialist training so that staff adopt a restorative approach to young people rather than a punitive approach
- ensuring consistency in managing adolescents with trauma and mental health issues

Escalating situations can be pre-emptively diverted by adopting a therapeutic approach to the needs of young people in youth detention.

Listening to young people's voices

Management practices in youth detention also present opportunities for improvement and pre-emptive de-escalation. Young people must be treated with respect and dignity by staff in order to develop trusting relationships with young people. Article 12 of the *United Nations Convention on the Rights of the Child* states that children's views must be considered and taken into account in all matters concerning them and should be accorded weight dependent on the age and maturity of the individual child.

Accordingly, it is important that staff acknowledge young people's voices and discuss and address their concerns and frustrations. Where young people are not able to express their concerns about matters which affect them while in youth detention, the situation can escalate and result in unconstructive expressions of frustration on the part of the young person. Management practices must ensure that staff provide a safe and constructive environment where young people can express their concerns and where these concerns are then respectfully addressed.

Ensure there are appropriate mechanisms in place for children and young people to voice their concerns.

Physical environment

In the context of recent events at the Parkville and Malmsbury facilities, we call on the Government to carefully consider the impact of design on children and young people's behaviour and treatment.

The design of correctional facilities should embody principles of restorative justice. As stated above, the loss of freedom and experience of isolation in detention can directly contribute to manifestations of violence, aggression, anxiety, distress and suicide. In other social care settings, such as hospitals, a therapeutic approach to design is widely accepted and aims to increase people's sense of freedom and community. This therapeutic approach is becoming more widely accepted in a corrections context, and these principles are all the more important for young people as their ability to cope with intense deprivation is far lower than adults.

The following are design features which have been identified as contributing to a more therapeutic environment for young people in social care settings:¹⁵

- Facilities should be secure and comfortable, with maintenance of an ambient temperature and access to daylight and fresh air.
- Privacy should be available wherever possible, and young people's dignity should be preserved.
- Activities should be made available wherever possible to constructively engage young people.
- Noise and overcrowding should be minimised.

The Government and DHHS must carefully consider the impact of design of youth justice detention facilities on children and young people's behaviour and treatment.

De-escalating

Isolation represents a major cause of distress for children and young people. Accordingly, situations where a young person may cause serious physical harm to themselves or others, and therefore require isolation, must be avoided wherever possible.

Early identification of an escalating situation and immediate restorative intervention is key to reducing the need for isolation. Staff must be trained in a restorative approach, handling escalating situations as well as identifying indicators of distress and frustration which may build up into a violent outbreak.

Isolation should only be used in a situation where a young person can be reasonably expected to cause serious physical harm to themselves or others or to property, and where other de-escalation interventions have not been effective. In de-escalating situations where physical harm to self or others is not a concern, staff should not rely on isolation as a solution and instead employ restorative interventions.

Staff training

Legislative and regulatory frameworks must be underpinned and complemented by an ongoing and enhanced focus on strengthening a culture that supports a therapeutic approach. In this regard, it is critical that Youth Justice custodial centres are sufficiently resourced to deal with the level of complexity/low-level cognitive functioning of young people.

Part of the challenge is that staff are often low-paid and operating in a culture of monitoring and compliance. While Youth Justice is currently implementing a therapeutic model for young people in custody, which involves employing principal practitioners to work with staff to provide a more holistic, restorative approach in detention centres, we must continue to focus on and adequately resource the shift to a therapeutic environment so that young people feel they have a voice to comment on the running of Youth Justice custodial centres and the treatment they receive.

Youth detention officers and staff within youth detention centres set the tone for young people's experience of detention. The influence that these officers' behaviour has on the young people in their care is significant.

The needs of young people in detention vary greatly from those of adults. Consequently, the practice framework in youth detention centres should reflect this, and it is critical that staff in youth detention centres are trained in youth specific practice frameworks and frequently update their skills. This training must be comprehensive and delivered by instructors who have adequate experience and qualifications in therapeutic approaches to youth justice. Principles of a youth specific framework could include training around understanding trauma, child brain development, impulsive adolescent behaviours, alcohol and other drug issues, and the impact of family violence on young people. Additionally, training in cultural competency may further assist staff in engaging with young people from Aboriginal and Torres Strait Islander or culturally and linguistically diverse backgrounds.

A therapeutic and trauma-informed approach to youth detention will significantly reduce the acute stress which young people experience while detained, and has the potential to greatly improve outcomes for young people leaving detention.

We call on the Government to ensure that youth detention officers and other staff in youth detention centres are trained in a trauma-informed youth specific therapeutic practice framework by experienced and qualified instructors.

Oversight and accountability

It is critical that Victoria has a diversity of mechanisms and responses to ensure that the rights of children and young people are upheld in custodial settings.

There is a clear opportunity to better monitor quality and complaints and to explore other avenues to support young people to raise and articulate their concerns. Jesuit Social Services' experience working with young people who intersect the criminal justice system – including custodial settings – would indicate that establishing a relationship of trust with a young person is critical to understanding their experience of custody.

The experience of Jesuit Social Services at Perry House, a four-bedroom residential service for young people with an intellectual disability who intersect the criminal justice system, indicates that oversight by Community Visitors delivered by the Office of the Public Advocate helps to ensure accountability for good practice and drive holistic, person-centred practice. Community Visitors arrive unannounced and observe, ask questions, talk to residents and review documents, resulting in a report for DHHS. Given the

significant numbers of children and young people who have lower level cognitive functioning or a diagnosed intellectual disability and are incarcerated, we would support a greater alignment between Youth Justice and Disability complaint mechanisms.

The current Independent Visitor Program (Commissioner for Children and Young People) performs this role to an extent but their presence at the Centres is known in advance which may at times place limitations on its effectiveness. This could be offset by a number of unannounced visits as is the case with Community Visitors. As a further example, Victoria could align complaint mechanisms with what happens in the disability sector, where sign off is required from an independent third party (e.g. Office of the Principal Practitioner) when looking at regimes to manage restrictive interventions and compulsory treatment by service providers. This could include any significant modification of behaviour support plans such as changes to medication regimes or the use of restraints and isolation/solitary confinement.

We would support an increase in resources to the Independent Visitor Program (Commissioner for Children and Young People) to strengthen their capacity to effectively capture the voice and views of children and young people and their experience of custody.

In addition to using volunteers, we could also strengthen processes by using third parties (such as community service organisations) to give young people a voice once they have been released from detention. Currently the last opportunity to offer feedback is at exit; however, providing additional formal channels to feed into existing mechanisms (e.g. Commissioner for Children and Young People) once young people are in the community would enhance accountability. This could include the development of web-based applications where young people can provide feedback.

Increase resources to the Independent Visitor Program to strengthen capacity to effectively capture the voice and views of children and young people and their experience of custody.

Strengthen processes by using third parties (such as community service organisations) to give young people a voice once they have been released from detention

Establishing an independent National Preventative Mechanism under the Optional Protocol to the Convention against Torture

It is crucial to ensure that using isolation, separation and lockdowns to manage children and young people in youth justice centres does not undermine their rights, particularly their right to freedom from cruel, inhuman and degrading treatment. Jesuit Social Services considers it necessary for the Victorian Government to install an independent oversight mechanism to ensure that these rights are preserved.

Australia ratified the *United Nations Convention Against Torture (UNCAT)* on August 8th 1989 and has since been commended by the UN Committee against Torture for its legislative and implementation practices during periodic reporting to the Committee.¹⁶ Under Article 16(1) of *UNCAT*, the Australian Government undertakes to prevent not just torture but any acts of cruel, inhuman or degrading treatment or punishment when such acts are committed by or at the instigation of or with the consent of a public official or other person acting in an official capacity.¹⁷

Although Australia signed the *Optional Protocol to the Convention against Torture (OPCAT)* on 19 May 2009, we have not yet ratified this agreement. Ratification of *OPCAT* would operationalise *UNCAT*. Whilst Australia already prohibits all forms of torture, ratification of *OPCAT* presents a valuable opportunity to strengthen the oversight measures already in place, and recognise Australia's commitment to these protections. These protections under *OPCAT* and *UNCAT* would be applied more

broadly, in particular to the independent monitoring of the treatment of children and young people in detention in Australia.

In order to provide accountability and effective protection in all Australian states and territories, an independent National Preventative Mechanism (NPM) should be established under Part IV of *OPCAT*. Article 19 of *OPCAT* specifies that at minimum NPMs must be empowered to:

- regularly examine the treatment of those detained
- make recommendations to authorities with the aim of improving the treatment and conditions of those detained and to prevent torture and other cruel, inhuman or degrading treatment
- submit proposals and observations concerning existing or draft legislation.

Given the lack of oversight, transparency and accountability in youth detention operations, we strongly recommend that Australia ratify *OPCAT* as a matter of priority.

There are a range of contexts in which young people and children are detained. This includes children and young people placed within youth justice centres and adult prisons, but also other areas in which young people's movements may be restricted, such as residential care services, schools, psychiatric facilities, police cells, and immigration detention. The ratification of *OPCAT* provides a valuable opportunity to improve oversight mechanisms and ensure that practices in youth detention facilities meet UN standards of treatment and are thoroughly investigated. This would include assessing the use of isolation and solitary confinement. The ratification of *OPCAT* would mean that these types of practices would be subject to investigation by an independent monitoring body, which would strengthen accountability and improve outcomes for detainees.

There is extensive support from a diverse body of stakeholders for the ratification of *OPCAT*. The Australian Human Rights Council (AHRC), the Law Council of Australia and the Law Institute of Victoria have each recommended that *OPCAT* be ratified, and in 2014, in a letter to Attorney-General George Brandis, 64 bodies argued for *OPCAT*'s ratification. Jesuit Social Services also supports the ratification of this agreement, as it presents a clear opportunity to drive more holistic and therapeutic practices within youth justice. It would also provide young people within these environments – many who are often disadvantaged in multiple and complex ways – with a voice.

If Australia does ratify *OPCAT*, it must establish a NPM. The NPM must be independent, and have the powers to regularly examine the treatment and conditions of detainees, freely gain access to all places of detention, detainees, and information on their treatment.

This Inquiry presents a clear opportunity for the Governments of both Victoria and Australia to strengthen and safeguard the rights of children and young people in youth justice centres, and for the youth detention system to strengthen its accountability to vulnerable children and young people in their care by implementing an effective oversight mechanism.

We call on the Australian Government to ratify the Optional Protocol to the Convention against Torture and implement an independent and effective National Preventative Mechanism as a matter of priority.

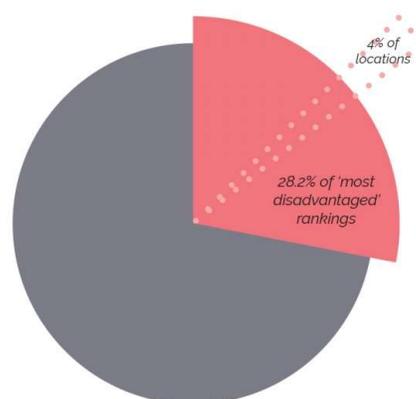
Addressing entrenched disadvantage

Prevention of crime by addressing entrenched disadvantage is the best way to avoid having young people in detention in the first place and, in turn, to mitigate the need to use isolation, separation and lockdowns in these settings.

In 2015, Jesuit Social Services – along with Catholic Social Services Australia – released the findings of its fourth *Dropping off the Edge 2015 Report (DOTE 2015)*¹⁸, which found that complex and entrenched disadvantage continues to be experienced by a small but persistent number of locations in each state and territory across Australia, including in Victoria. Just 27 postcodes (4% of total) account for 28.2% of the highest rank positions across 22 indicators of disadvantage (see diagram below).

Of particular concern for Jesuit Social Services is the concentration and web-like structure of disadvantage within a small number of communities across the state. Our research found that those living in the 3 per cent most disadvantaged postcodes in Victoria are:

- twice as likely to have criminal convictions
- 3 times more likely to be experiencing long term unemployment
- 2.6 times more likely to have experienced domestic violence
- 2.4 times more likely to be on disability support.



The persistent nature of locational disadvantage becomes obvious when we compare the findings of our 2015 study with previous studies undertaken in 2007, 2004 and 1999. For example, 25 of the state's 40 most disadvantaged postcodes in DOTE 2015 were also found to be 'most disadvantaged' in the 2007 study¹⁹ (the other 15 postcodes did not show significant increases or decreases) and the postcodes in the most extreme categories have been quite consistent over the past 15 years (in 1999, 8 of the 12 names in the top two bands were the same for 2015).

Jesuit Social Services has consistently argued that public policy must pay greater attention to the role of structural factors and social inequality as key determinants of health and wellbeing.

In addition to addressing structural determinants, the Government can also tackle disadvantage through the provision of services. Here, investment must be forward-looking and preventative. From our experience, we know the best way to reduce crime and the burden on our criminal justice system is to tackle its root causes. In order to do this, we need effective universal services in education, health and family services, as well as access to safe and affordable housing. We need to be able to respond to people in our community who fall through the cracks, and provide holistic interventions during times of crisis. And, fundamentally, we need to commit to long-term, local, community-led solutions in areas of deepest disadvantage.

The community sector, businesses and private philanthropy all have a vital role to play as key partners with the Government. Jesuit Social Services is proud to be an active member of Victoria's vibrant community sector and to partner with the Government in delivering services.

Stronger communities

The social fabric of communities can play an influential role in buffering the worst effects of disadvantage,²⁰ with community factors being shown to influence mental health levels in children,²¹ education and levels of safety and crime.²²

The impacts of trauma (including neglect and exposure to violence) on children are severe and have lasting consequences, with altered brain growth and psychological functioning shown to be linked to

trauma.²³ There are long-term social costs associated with this, including mental health issues and other chronic health problems, criminality, homelessness, substance misuse and abuse, and intergenerational transmission of abuse. It is estimated that child abuse and neglect in Australia costs almost \$5 billion per year, including interventions and the associated long-term human and social costs.²⁴

A sustained, whole of community approach

A number of communities in Victoria experience persistent and entrenched disadvantage. A new approach is needed so we do not continue to fail the communities that bear the greatest burden of disadvantage. A sustained long-term commitment across the Government, community and business sectors is urgently required to resolve this complex problem.

Jesuit Social Services has called on the Victorian Government, in true partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to our most vulnerable communities to effectively break the web of disadvantage.

We need a multi-layered, cooperative and coordinated strategy that is owned and driven by the community. It must involve all layers of government and the business and community sectors, reflecting shared responsibility and joint commitment to resolve this entrenched problem. This strategy must take account of the unique characteristics and circumstances of local communities and be sustained over the long term. It must be:

- **Targeted** – The response must be targeted or concentrated to specific areas that meet the most severe criteria for disadvantage.
- **Tailored** – The policies, programs and approach to dealing with disadvantage in a community must be unique to that community's needs, tailored to their particular circumstances, based on the unique linkages between indicators in that area and supplemented by informed audits of existing programs in that locality.
- **Integrated and cooperative** – The response needs to acknowledge that disadvantage in one dimension of life (e.g. unemployment) reinforces disadvantage in other areas (e.g. household income). Effective responses to reducing disadvantage must address the multiple and interrelated causes and exacerbating factors that underpin the entrenched nature of disadvantage experienced by communities. Effective responses therefore involve cooperation between government and departmental portfolios, integrated community initiatives and coordination between different levels of government.
- **A long term horizon** – *DOPE 2015* demonstrates that not only is entrenched disadvantage persistent across time but that short-term policies do not work in addressing the experience of disadvantage among communities. A long-term, bipartisan commitment is vital to prevent communities from dropping off the edge.
- **Community owned and driven** – Community leaders must be engaged to drive sustained change. A new approach must recognise the strength within communities and work with them to build capacity, generate action, attract external resources and maintain direction and energy. There is a well-documented history of the benefit of 'aid', disconnected from the strengthening of specific community capacities, tapering off and disappearing once external inputs cease.
- **Engaged at the individual, community and national levels** – Research into the outcomes people experience in life demonstrates that individuals are affected by their own capabilities and opportunities, their family circumstances, their community, and the broader social and economic environment. Any effective change in the outcomes for individuals must therefore include action across these three domains of life: individual, community and macro environment.

We call on the Victorian Government, in true partnership with the community, to act immediately to put in place appropriate structures, plans and resources targeted to the State's most vulnerable communities to effectively break the web of disadvantage.

Early childhood, health and education

Access to early childhood services is crucial in giving young Victorians the best start possible in life. Unfortunately, many young children are missing out on early childhood education and health services.

Investment in high quality services for children and parents during the early years can have positive impacts not only on health and wellbeing but also in reducing the likelihood of contact with the criminal justice system.²⁵

Investment in early childhood development and health is the most cost effective strategy for the government to tackle disadvantage. Cost-benefit analysis of early childhood education and care programs shows that they generate more than \$7 in benefits for every dollar that is invested.²⁶ Investment should take place through enhancing maternal and child health services, developing support programs for parents, ensuring that all children attend high quality early learning programs delivered by qualified teachers and keeping trauma-informed therapeutic approaches at the centre of any response.

We call on the Government to ensure access to early childhood services for all young children in Victorian by improving the quality of programs and staff as well as locational access to early years services.

Stronger families

Recognising the role of parents and families in young people's development, greater support is needed to prevent child protection interventions.

Early intervention programs in parenting are key to diverting families at risk of becoming involved in the child protection system. These programs must be flexible and take a strengths-based approach to meeting the unique needs of each family and child.

Jesuit Social Services believes that there is an opportunity to work in a better way with young people who find themselves in challenging situations in out-of-home care settings. Currently these young people have limited access to a therapeutic, diversionary, restorative-based process in which to work through the issues they face. Too often, the criminal justice system ends up being the default response for these young people. We feel that a restorative justice process using the methodology of Group Conferencing would be an effective means of addressing conflict and repairing the harms experienced by children in residential units.

Restorative Justice Group Conferencing is a proven tool that works particularly well when used alongside purposeful, intentional case management targeted at the needs of the young person, their family and, more broadly, the community. Importantly, it is also a process that offers the victims of crime and their family a stronger voice in the justice process and an opportunity to seek closure for what has often been a terrible experience in their life. Group Conferencing should be used as part of a range of interventions to address a young person's offending and a way of starting to get the young person to have the dialogue and begin to consider the impact of their offending.

Additional investment would complement the principles outlined in key Government platforms – such as the *Roadmap for Reform* – by providing an effective therapeutic and restorative intervention at the pre-court/pre-sentence stage to address issues that contribute to young people’s challenging behaviour within residential units and therefore divert them from possible criminal charges.

We recommend that the Victorian Government expand restorative justice conferencing to out-of-home care placement.

Engagement in education

Equally, there must be a focus on reintegrating young people into the education system generally and after they leave detention. This involves not only addressing the systems which are in place for reintegration into education, but also providing support. Enrolment in education and training is only the first step, and for vulnerable young people intensive support is often required to ensure ongoing engagement and success. Too often we see youth justice involvement coincide with severance of relationship with school. To address these issues, school must be recognised as an important community and young people must be given the opportunity to continue their relationship with their school community while in detention and on return to the community.

We call on the Government to establish effective systems and support for young people reintegrating into school and training pathways.

Prevention

It is critical to recognise the important role played by family and community in the development of young people and as protective factors against involvement in criminal justice system. The key to fostering increased family and community connections will be adequate resourcing for initiatives, quality evidence-informed approaches, and coordination between services so that they meet the needs of young people, families, cultural groups and communities.

Building children and young people’s links to community is important to preventing and keeping them out of the criminal justice system.

Preventing children’s involvement in the criminal justice system requires a wider approach for building safe and nurturing communities, and education systems must be part of this. As a practical starting point, we believe that schools and the wider education system should be brought into consultation and governance approaches at all levels of the youth justice system, from local to more formal arrangements.

Safe and nurturing communities where children have the opportunity to develop are less likely to have young people who are involved in the criminal justice system. There are structural factors at play here, which can only be overcome through action to tackle entrenched disadvantage and by providing high quality universal education and health services.

A range of early intervention responses based on the needs and risks of young people are required to divert them from further involvement in the justice system.

We call on the Government to provide adequate resources for recreation, after-hours activities and support for young people.

Restorative justice

Undue reliance on detention in criminal justice policy is both ineffective and costly. There is little evidence that tougher sentencing policy improves community safety through deterrence or incapacitation.²⁷ In fact, several studies have found that imprisonment increases the likelihood of offending behaviour and has the potential to negatively affect prisoners, particularly younger, lower-risk offenders.^{28 29}

Most young offending is episodic, transitory and unlikely to constitute a risk to the safety and welfare of the community. Children need the opportunity to learn from their mistakes and, where appropriate, to make amends for behaviour that has harmed others.

Restorative practices are more effective in reducing re-offending and making our communities safer. Jesuit Social Services' work with young people in the justice system in Victoria uses a problem-solving approach to offending that is based on principles of restorative justice, which balances the needs of offenders, victims and the community and aims to help the young person make amends for the harm done. This approach is effective: 80 per cent of restorative justice program participants had not reoffended after two years³⁰ (compared with over half of the young people who had been in youth detention going on to reoffend).³¹

Restorative justice is more cost-effective than keeping a young person in detention. For every \$1 invested on Youth Justice Group Conferencing, for example, the Victorian Government saves at least \$1.21 in the short term, and this saving is likely to increase in the long term.³² On every level, it makes more sense to divert young people away from the justice system.

Currently, diversion is not widely or consistently offered and does not necessarily meet young people's unique needs. For example, in 2015/16, Aboriginal young people were about a third as likely to receive only a caution or warning as non-Aboriginal youth offenders.³³

A well-implemented system of restorative justice responses is critical to ensuring that young people do not become entrenched in the criminal justice system.

We call on the Government to expand proven restorative justice programs across the state.

Positive examples of diversion and restorative justice approaches

Jesuit Social Services is proud to be a part of Victoria's innovative and effective youth justice system, which outperforms most states and territories in key indicators including youth recidivism and crime rates. This is the result of policies and investment focused on preventing crime, diverting children and young people from the justice system, and supporting restorative justice approaches that foster positive relationships between people who offend, victims and the wider community. Partnerships between the Government, the courts, public sector agencies and the community sector have been critical to this success.

The following programs offer examples of responses that effectively contribute to the positive development of young people. Each emphasises:

- the importance of restorative justice principles, processes and practice
- a therapeutic approach that responds to the needs of vulnerable children, particularly those in the child protection system who come into contact with the justice system
- an understanding of the particular needs of Aboriginal children and young people who are overrepresented in the youth justice system

- the critical role of education as a protective factor, and the need to ensure vulnerable children's continued engagement in school.

Barreng Moorop

Recognising the need to divert vulnerable children away from the youth justice system, Jesuit Social Services delivers the Barreng Moorop program in partnership with the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Child Care Agency (VACCA).

Barreng Moorop works with 10-14 year old children, their siblings and their families residing in the North and West metropolitan regions of Melbourne who intersect the criminal justice system. The program provides culturally responsive trauma-informed services to divert young Aboriginal people away from the criminal justice system. Since its inception in 2015, Barreng Moorop has assisted 35 Aboriginal children and their families.

Barreng Moorop works with the whole family and community (where appropriate) to provide a wrap-around response, understanding the composition of Aboriginal families, in which the extended family plays an active role. The responsibility of child care and rearing is shared amongst a range of family members with, in many cases, a multi-generational core of kin providing primary care.

In response, Barreng Moorop works with, and provides support to, family members with the focus of using family, community and culture as a protective factor to divert young people away from the criminal justice system in a manner which is sustainable and genuine.

Barreng Moorop uses trauma-informed practices which acknowledge the trauma Aboriginal people have experienced throughout history due to colonisation, loss of culture and connection to land, and the removal of children from their families. We note that these factors and the impact of transgenerational trauma plays out in the daily life of many of the Aboriginal children and families we work with.

Case study: Barreng Moorop

LP has just turned 15. He is enrolled at a school in Preston, however his attendance is low.

He is currently in the care of his mother and resides with her and his sister in a private rental.

The relationship between him and his mother is strained, with LP often making judgements about her parenting. He often makes reference to his mother's AOD use and history of involvement in the criminal justice system. It is reported that his mother has bipolar disorder.

LP openly states that he uses cannabis, smokes cigarettes and occasionally drinks alcohol. He is currently sleeping a lot during the day and staying up late at night which is impacting on his routine and diet. LP's father resides in Melbourne; however, their contact is sporadic. LP has stated that he has little knowledge or interest in his cultural background.

LP is facing multiple charges in front of the courts. These include arson, threats to kill and criminal damage. All matters have been adjourned to a later date. As part of LP's bail conditions he must reside with his mother, abide by a 10pm curfew, and not have contact with two particular males.

Barreng Moorop is addressing these issues by:

- Working collaboratively with a Koorie Education Support Officer to improve school attendance.
- Assisting with transport to and from school.
- Assisting with legal and court support, transport and emotional support.
- Liaising and assisting his lawyer where possible.
- Writing court support letters.

- Advocating for LP to access a diversion program.
- Engaging him in pro-social activities.
- Encouraging him to participate in cultural activities such as NAIDOC week celebrations.
- Linking him to the Victorian Aboriginal Health Service (VAHS).
- Providing education about AOD use.
- Supporting him to stop smoking cigarettes
- Assisting LP to develop a routine and improve his physical health, including through gym and Muay Thai classes.
- Improving his diet and general health; he has an appointment booked at VAHS.

Youth Diversion Pilot Program

The Youth Diversion Pilot Program commenced in mid-2015 in the Dandenong, Broadmeadows, Sunshine, Werribee, Ballarat, Ararat and Stawell Children’s courts of Victoria.

A young person appearing in the Children’s Court for the first or second time for a low level offence can be referred to the diversion program by the Magistrate. If the young person successfully meets the requirements of the Diversion Plan then a criminal conviction will not be recorded. This has many positive benefits, including enhanced prospects for engaging in future employment.

Key outcomes

Over 90 per cent of participants have successfully completed the diversion program and had their matter dismissed. Common positive outcomes include:

- young people demonstrating a better understanding of the impact of their offending
- improved family and community relationships
- re-engagement with education
- improved mental health.

The program has received consistently positive feedback from Victoria Legal Aid, police prosecutors and the broader court network.

Selected case studies: Youth Diversion Pilot Program

Male aged 17 (Theft, Trespass and Obtain Property by Deception charges)

The young man has an intellectual disability and severe language delay. His plan was to work more on reading and writing, and have further restorative justice discussions around the offences. He participated well in everything and was assisted in writing a letter of apology. The young man is also now receiving one-on-one support two days a week with his education and the school is researching and trying different programs with him to improve his literacy. He reported that things have been ‘heaps better’ with his school.

Female aged 16 (Possess Cannabis, raffiti Implement, Possess Liquor under Age 18 charges)

This young woman had been disengaged from school for several years and experienced daily cannabis use and anxiety/depression due to grief and loss issues. She was supported to re-engage with education, and linked with drug and alcohol support and ongoing support through the Youth Support Service.

Responses to the question “What has been the most significant change for you since coming to the Youth Diversion Pilot Program”? (taken from exit interviews conducted with participants)

- I have more motivation to do things, get a job and go to the gym. I have goals now.
- Not getting in trouble, keeping clean.
- Getting back into school.
- Studying more, don't have to go to court.
- More positive outlook on life.
- Able to talk about future and mum trusts me.
- Staying off the streets and keeping out of trouble.
- I stopped doing drugs.
- I haven't been in trouble since and have changed who I hang around. I now just do the right thing.

Youth Justice Group Conferencing

The Jesuit Social Services Youth Justice Group Conferencing program enables dialogue between young people who have offended, their victims and the wider community. The program is grounded in principles of restorative justice, which emphasise reparation and restoration,³⁴ and aims to:

- raise the young person’s understanding of the impact of their offending on the victim, their family and/or significant others and the community
- reduce the frequency and seriousness of re-offending by the young person completing the program
- improve the young person’s connection to family/significant others and their integration into the community
- negotiate an outcome plan that sets out what the young person will do to make amends for their offending
- increase victim satisfaction with the criminal justice process
- divert the young person from a more intensive sentence.³⁵

Youth Justice Group Conferencing is a problem-solving approach to offending that emphasises the offender’s personal accountability, encourages an inclusive decision-making process that encourages participation, and aims to right the harm caused by an offence.³⁶

Jesuit Social Services delivers Youth Justice Group Conferencing throughout metropolitan Melbourne.

Key outcomes

A 2010 KPMG independent evaluation of young people who completed a Youth Justice Group Conference between 2007 and 2009 found that more than 80% of participants had not reoffended two years later – this compared to 57% for the comparison group (i.e. young people who had been placed on Probation or on a Youth Supervision Order)³⁷.

Navigator

Recognising the importance of school engagement as a protective factor against involvement in the criminal justice system, Jesuit Social Services is delivering casework and support to disadvantaged young learners as part of the Victorian Government’s Navigator initiative. Navigator works with disengaged learners aged between 12 and 17 to engage with them and their support networks to return them to education or training.

Re-engaging vulnerable young people in educational, learning and employment pathways gives them the foundational skills and opportunities they need to flourish. The Navigator pilot program will operate in a number of areas in Victoria that experience significant disadvantage including higher rates of long-term unemployment and family violence. The program's work will include the development of individualised learning and cultural plans, and restorative practice including therapeutic and practical support.

Bail and remand

The use of remand in Victoria is often unnecessary and far too common to be considered a last resort. Data from the Department of Health and Human Services³⁸ concerning remand numbers since the introduction of the amendments to the Bail Act in December 2013 show that:

- The number of individual young people admitted to remand by quarter increased from 112 in the second quarter of 2013-14 to 200 young people in the third quarter of 2015-16, an increase of 79 per cent.
- Most children and young people who are remanded do not go on to receive a custodial sentence. On average, since 2012-13, approximately only 20 per cent of those remanded were sentenced to a custodial order.

While these amendments have been reversed, the proportion of young people on remand remains high, and we must continue to ensure that children and young people are not unnecessarily detained while unsentenced. This requires a culture of practice and support among decision makers so that children and young people are diverted from custody into the community.

Strengthening diversion and support in the community

Through Jesuit Social Services' experience and research, particularly *Thinking Outside: Alternatives to Remand for Children (2013)*³⁹, we know that opportunities are still being missed to intervene and divert vulnerable children and young people from the criminal justice system. All too often this vulnerable group ends up having ongoing involvement in the criminal justice system.

We have called on the Victorian Government to take steps to further invest in and strengthen the system and ensure that current gaps are addressed, in particular:

- expanding the Central After Hours Assessment and Bail Placement Service
- additional support for young people sentenced to youth justice orders (and their families)
- targeted but time-limited intensive case management support for young people following participation in a youth justice group conference
- intensive case management with the small group of young people committing a high number of offences, including family work and supporting education, training and employment pathways, offered after hours and on weekends.
- a renewed commitment to strengthening the response to Aboriginal children and their families who intersect the criminal justice system (based on the Barreng Moorop model)
- raising the age of criminal responsibility to 12 years and adopting a restorative and welfare approach to anti-social behaviour in children under the age of 12 years.

Further information about these proposals is available in our 2017/18 Budget submission, which can be accessed at <http://jss.org.au/submission-to-the-201718-victorian-state-budget/>.

Trauma informed care

Children and young people in contact with the justice system are among the most vulnerable and disadvantaged in the community and generally go on to have higher rates of offending throughout their lives. The causes of offending in younger children are strongly connected to their environment and its impact on their development.

Young ATSI people in youth detention have the added complexity of the impact of intergenerational trauma, grief, loss and locational disadvantage. Colonisation and discriminatory government policies have seen generations of Aboriginal people experience racism, dispossession, early deaths of family and community members, and the forced removal of children.

Recognising the unique but highly complex vulnerability of young people in youth detention, and the impact that trauma has played in their offending behaviour, it is critical that custodial settings adopt a trauma-informed approach, where possible, to prevent them re-entering the justice system.

There is a strong need for youth justice custodial environments to provide cultural safety, health and mental health services, alcohol and drug services, disability support, and responses to young people's experience of trauma. What is needed is a holistic and therapeutic approach that is integrated into a wider through-care model.

Through a commitment to embracing trauma-informed care and practice, the Victorian Government will not only create opportunities for survivors of trauma to heal, but will also work towards breaking the cycle of disadvantage and intergenerational trauma, and reduce crime and recidivism.

A commitment to staff development and training must incorporate a focus on trauma: its impacts, prevalence and potential for re-traumatisation across multiple services and agencies including health care, education, criminal justice, child welfare and other social service systems.⁴⁰

Given the strong link between trauma and criminal behaviour, the Government must continue to support vulnerable children with trauma-informed, therapeutic practices. These must be evidence-based, culturally safe and inclusive, and incorporate a strengths-based framework and specialist care.

Through-care model

There is a need for greater resourcing of community sector organisations to deliver a through-care model. We believe that ongoing, coordinated and youth-focused practice can produce better outcomes.

The Victorian Youth Justice Community Support Service (YJCSS), delivered by Jesuit Social Services, provides a positive example of this approach. YJCSS provides intensive support for young people aged 10-21 engaged with the youth justice system in Victoria. Through intensive support, YJCSS aims to:

- reduce the rate, severity and frequency of re-offending
- enable young people to make an effective transition to adulthood
- develop young people's capacity to participate fully in society

In this model, government Youth Justice Workers are responsible for supervising young people on community-based orders, while community organisations provide case management support with housing, education, mental health, and alcohol and drug needs. The community consortia are funded by the Government to deliver services under formal partnership arrangements.

YJCSS helps prevent re-offending by focusing on a young person's development, preparing them for adulthood and re-connecting them with community.

Our case work focuses on broad aspects of a young person's life, such as social connection, economic participation, wellbeing and resilience, gender and identity, health, and self-determination. Through our case work, young people in the justice system develop:

- independence, resilience and pro-social connection to family and community
- skills and knowledge to make informed choices about their future
- the means to participate more fully in their community
- connections to family, education, training, employment and community

Key outcomes

A 2013 evaluation of the program found that it delivered an effective form of support and had improved outcomes for young people in the system⁴¹, and a recent internal analysis of Jesuit Social Services YJCSS Closure Reports has shown the following:

- 70% of relevant cases involved the young person completing statutory orders
- 97% of relevant cases resulted in improved engagement with family
- 93% of relevant cases resulted in improved mental health
- 80% of relevant cases resulted in improved participation in education
- 76% of relevant cases resulted in improved engagement with employment
- 66% of relevant cases resulted in improved engagement in training
- 96% of relevant cases resulted in improved stable accommodation
- 88% of relevant cases resulted in reduction in substance use.

**(Figures for 133 closed files for the period 1/7/2013- 30/6/2016 for North West and East and 2014 and 2015 for the South); based on worker report at exit ('not known' and 'not applicable' excluded)*

Case study

Background

Referred to YJCSS when he was 17 and had been in Parkville for several years relating to a charge of defensive homicide. This young person had no prior history with Youth Justice and was extremely anxious leading up to release, thinking media/family of victim would come after him. He had engaged with a psychologist throughout sentence and continued this post release.

Trauma history and previous Child Protection involvement.

Upon release on Parole resided with mother, however due to her mental health issues this placement broke down. Youth Justice referred him to the YJ Transitional Housing Managed (THM) program (part of YJCSS).

Young person already had some independent living skills and was passionate about music. Quite closed and superficial in his engagement with YJCSS worker initially.

Support provided by YJCSS

- financial budgeting/independent living skills
- recreational activities
- counselling
- assistance to get Learners permit and licence
- resume preparation and job seeking
- engagement in education
- family work around relationship with parents

Outcomes

- completed lengthy Parole successfully completed– no further offending
- successful THM tenancy and transfer into Youth Foyer model
- completion of Performing Arts course at TAFE and currently enrolled in Sound Engineering course
- connected with new peers through TAFE and has girlfriend he met at TAFE
- going very well in Foyer and teaching other residents guitar
- employed at a juice bar
- passed drivers licence and has bought himself a car
- plans to drive around Australia when his course is finished
- managing relationships with parents more easily
- managing his anxiety

Stable case management and housing was integral to this young person's progress. Following some instability at the start of his Parole when he was residing with his mother, he went on to have a successful THM tenancy and be accepted into the Foyer (following significant advocacy due to offending history).

The Victorian Government should continue to support clear and well-resourced partnerships with community organisations to effectively implement through-care models for young people exiting the justice system.

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