



Inquiry into the adequacy of youth diversionary programs in NSW

January 2018



Jesuit
Social Services
Building a Just Society

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Jesuit Social Services: Who we are

Jesuit Social Services has been working for more than 40 years delivering practical support and advocating for improved policies to achieve strong, cohesive and vibrant communities where every individual can play their role and flourish.

We work with some of the most marginalised individuals and communities, often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference.

Our services span Victoria, New South Wales and the Northern Territory where we support more than 57,000 individuals and families.

Our service delivery and advocacy focus on the following key 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.

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.

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 people's 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 working with participants and communities across our programs.

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of the land and all life.

Introduction

Jesuit Social Services welcomes the opportunity to respond to the NSW Parliament's Legislative Assembly Committee on Law and Safety's inquiry into the adequacy of youth diversionary programs in NSW.

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.

Effective youth justice responses recognise the underlying factors that contribute to offending, and seek to address them and prevent entrenchment in the justice system. These approaches must recognise that:

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

In this context, the key principles of a youth justice system must emphasise:

- incarceration as a last resort
- relationship-based models
- focus on early intervention and diversion
- listening to the voices of young people and their families
- developmentally appropriate approaches to children and young people
- recognising the importance of culture and country for Aboriginal and Torres Strait Islander peoples
- connection to families, communities and culture
- thorough assessment and planning
- addressing offending behaviour
- addressing mental health, substance abuse and other health and wellbeing needs
- strong framework of support and accountability
- restorative justice approaches
- education focus that builds practical and social skills for re-socialisation.

If young people are incarcerated we must:

- Offer small community-based settings (prioritising normality, and ongoing engagement with family and community)
- Adopt a relationship-based model across every aspect of operations
- Facilitate connection with family, community and culture
- Prioritise education and skills for life

- Address offending behaviour
- Address mental health, substance abuse and other health and wellbeing needs
- Focus on re-socialisation, transition and re-integration to the community
- Keep remandees separate from sentenced offenders
- Engage and support staff who have appropriate personal attributes, qualifications and experience to build relationships of trust and deliver re-socialisation.

The NSW youth detention population is on an overall downward trend. As at June 2017, the population of young people in custody was 291, significantly lower than the June 2011 peak of 405 young people.¹ Diversion programs in NSW, such as youth justice group conferencing, have been shown to effectively divert young people from custody.² This can be further enhanced by strengthening the diversion of young people away from the youth justice system.

This submission provides positive and effective examples of youth justice diversion, drawn from Australian and international contexts. The examples included in this submission are grounded in Jesuit Social Services' extensive work with vulnerable young people in Victoria, Northern Territory and NSW. This submission will also provide international examples of effective youth justice diversion, based on findings from Jesuit Social Services' recent [#JusticeSolutions study tour](#) to the United States and Europe, searching outside our borders to inform discussions around youth justice practice and policies in Australia.

Addressing entrenched disadvantage

Characteristics of young people who offend

*"...the corollaries between child poverty, social and economic inequality, youth crime and processes of criminalisation are undeniable"*³

Research shows that the causes of offending in younger children are strongly connected to their environment and its impact on their development. Jesuit Social Services' extensive research⁴ such as [Thinking Outside: Alternatives to remand for children](#), has identified a strong correlation between child and youth offending and entrenched disadvantage.

Many children and young people who display challenging behaviour have histories of trauma, neglect and contact with child protection. It is well recognised that early experiences of child abuse and neglect have a detrimental impact on a child's brain development. Research undertaken by a number of academics has identified how hardship early in life can inhibit the development of oral language,⁵ result in intense and cumulative harm,⁶ and have long term impacts on health and social outcomes.⁷ In these settings, 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.

These risk factors have a further effect on the health and well-being of children and young people. A NSW study looking into the health of young people in custody identified that 83.3 per cent of young people were found to have at least one psychological disorder, and 63 per cent had two or more psychological disorders.⁸ In this same study it was reported that in the past 12 months, 10.1 per cent of young people engaged in suicidal acts with intent, and 7.4 per cent of young people engaged in suicidal acts with medical lethality.⁹ These are telling when compared with young people across Australia, a 2015 study indicating: 14 per cent of children and young people have mental disorders and around 3 per cent have ever attempted suicide.¹⁰

There is also a strong connection between school performance, truancy and criminal involvement. A number of studies, including Jesuit Social Services' research, have found that between 60-70 per cent of students skipping school were involved in criminal activity.¹¹

It is also worth noting that Aboriginal Australians are significantly over-represented in the justice system. Compared to the non-Indigenous population, Aboriginal children in NSW are 16 times more likely to be under community-based supervision and 23 times more likely to be in detention.¹²

Dropping Off The Edge

Prevention of crime by addressing entrenched disadvantage is the best way to avoid having young people coming into contact with the justice system. In 2015, Jesuit Social Services – along with Catholic Social Services Australia – released the findings of its fourth *Dropping off the Edge 2015 Report*¹³, 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 NSW.

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 NSW are:

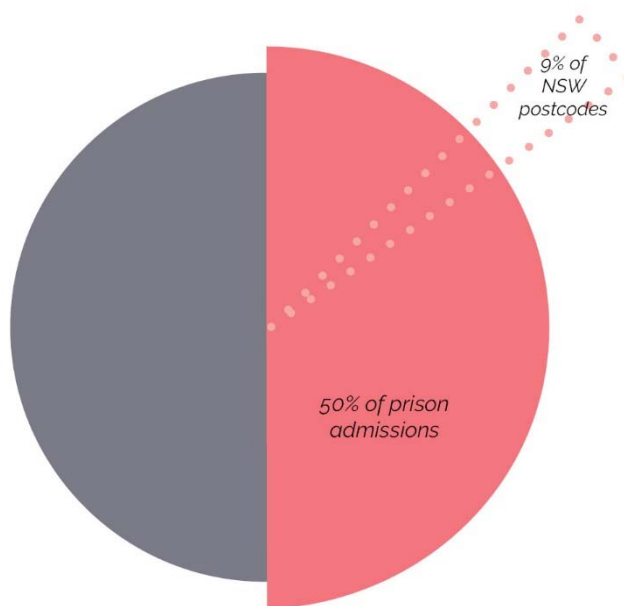
- 3.6 times as likely to have spent time in prison
- more than 3 times as likely to be experiencing long term unemployment
- nearly 3 times more likely to have a low level of education and/or have experienced family violence
- twice as likely to have a disability or significant mental health problem.

The persistent nature of locational disadvantage becomes obvious when we compare findings of this 2015 study with previous studies undertaken in 2007, 2004 and 1999. No fewer than 24 of the state's 40 most disadvantaged postcodes in *Dropping Off The Edge 2015* were also found to be in the 5 per cent 'most disadvantaged' in the 2007 study, and many have been in a depressed state since the early studies were undertaken in 1999 and 2004.

Dropping off the Edge 2015 found that 9.3 per cent of all NSW postcodes accounted for almost half (49.6 per cent) of all prison admissions in NSW.¹⁴ This highlights the often localised nature of crime, as well as the role of disadvantage as an underlying cause of offending.

Jesuit Social Services has consistently argued that public policy must pay greater attention to structural factors and social inequality as key determinants of health and wellbeing, and called for ongoing funding commitments to address these issues.

In addition to addressing structural determinants, governments must 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 targeting education, health and family services, as well as access to safe and affordable housing. We need 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.

A sustained, whole of community approach

A sustained long-term commitment across the Government, community and business sectors is urgently required to resolve this complex problem.

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.

Strengthening diversion and support in the community

Jesuit Social Services acknowledges and welcomes positive diversion initiatives that have already been undertaken in NSW, such as:

- the introduction of the *Young Offenders Act 1997* which created a hierarchy of sanctions designed to divert young offenders, including youth justice conferences, and was found to be successful¹⁵, and
- the Maranguka Justice Reinvestment Project in Bourke, developed to decrease the rate of contact of Aboriginal children and young people with courts and custodial detention in Bourke¹⁶.

Jesuit Social Services has 40 years' experience building relationships and working with marginalised people, including those involved with the criminal justice system. Our practice framework (**Appendix A**) underpins all our 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.

Positive examples of diversion and restorative justice approaches

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 and young people, 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.

Youth Justice Group Conferencing

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.¹⁷ 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.¹⁸

Restorative practices are more effective in reducing re-offending and making our communities safer. Jesuit Social Services works with young people in the justice system in Victoria and the Northern Territory, using a problem-solving approach to offending that is based on principles of restorative justice.

In Victoria, Jesuit Social Services has delivered the Youth Justice Group Conferencing program since 2003, enabling 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,¹⁹ 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, and
- divert the young person from a more intensive sentence.²⁰

Since March 2017, Jesuit Social Services has also delivered a youth justice group conferencing program in the Northern Territory operating under a similar model. This pre-sentence program has already seen almost 30 young people referred. All young people referred have been Aboriginal and Torres Strait Islander, and cultural safety and ensuring a culturally strengthening process (e.g. by engaging Aboriginal elders in group conferences) has been a paramount consideration in convening group conferences.

Restorative justice group conferencing is effective: a 2010 KPMG independent evaluation of young people who completed a group conference between 2007 and 2009 found that more than 80 per cent of participants had not reoffended two years later – this compared to 57 per cent for the comparison group (i.e. young people who had been placed on Probation or on a Youth Supervision Order).²¹ A number of evaluations have also shown that group conferencing achieves very high rates of victim satisfaction.²²

Comparing group conferencing across jurisdictions, evaluations seem to indicate that conferencing in NSW has not delivered outcomes as favourable as those in Victoria.²³ The reason for this is not definitively known, however, according to the Report on Government Services 2018, each year five times as many group conferences are conducted in NSW compared with Victoria, and Victoria spends almost \$10,000 more per conference²⁴ i.e. Victoria conducts less conferences with more resources dedicated per conference.

Jesuit Social Services understands that the majority of referrals for group conferences in NSW come from police (as opposed to the Children's Court in Victoria) which would suggest that the seriousness of offending is lower. We believe that the more serious the offence, the greater the opportunity for restoration through group conferencing because the impact of the offence on all parties involved has generally been greater, and there is more harm to repair. We would also suggest that given the discrepancy in funding between Victoria and NSW, group conferences in Victoria are almost always convened by people with substantial experience and qualifications, additional supports are able to be provided to victims and offenders, and more than a single conference can be run if required.

Jesuit Social Services believes that restorative approaches such as group conferencing should be expanded throughout criminal justice systems across Australia, based off the successful Victorian model.

Restorative justice is also 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.²⁵ On every level, it makes more sense to divert young people away from the justice system.

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.²⁶

Barreng Moorop

Recognising the need to divert vulnerable children away from the youth justice system through our [*Thinking Outside: Alternatives to remand for children*](#) research, Jesuit Social Services delivered the Barreng Moorop program in partnership with the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Child Care Agency (VACCA). The program is funded by the Commonwealth Government, and in 2017 was transitioned from Jesuit Social Services to VACCA to administer and run the program as lead agency, with VALS and Jesuit Social Services remaining engaged as partners.

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 an intensive case management model, along with 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 intergenerational trauma plays out in the daily life of many of the Aboriginal children and families we work with.

Outcomesⁱ from Barreng Moorop participants in 2016/17 were impressive:

- 82 per cent of participants had an improved view of self
- 76 per cent of participants had improved health and wellbeing
- 76 per cent of participants had improved connection with family
- 76 per cent of participants had an improved capacity to set goals
- 65 per cent of participants had improved participation in education or employment.

ⁱ Data sourced from internal participant database measuring improvements against Jesuit Social Services' Our Way of Working outcomes in 2016-17

Case Study: Barreng Moorop

Rachel* is 13 years old and is on a Permanent Care Order in the care of her extended family member. The family has been involved with Barreng Moorop since September 2015. Barreng Moorop's work with the family has included:

- Supporting Rachel's extended family member to access and move into a transitional housing property and relocating Rachel to live with her extended family member
- Completing and submitting a public housing application
- Linking Rachel's extended family member in with a doctor to address his health needs
- Working in collaboration with Rachel's school to improve her self-esteem and sense of self
- Providing support to transition Rachel from primary to secondary school and assisting with accessing financial aid to purchase school supplies
- Providing transport so that Rachel can continue to access counselling
- Working with the school, counsellor and Rachel's extended family member, to develop behaviour management strategies to support Rachel to manage her behaviour and interaction with others.
- Providing education about bullying and cyber safety
- Organising care team meetings with all services involved with the family

As a result of Barreng Moorop's work with the family, key outcomes include:

- Rachel has not had further involvement with the police
- The school noted that Rachel's involvement in incidents at school decreased from a couple a day to a couple a week when she moved in with her extended family member
- Rachel has smoothly transitioned to secondary school and is engaged in schooling
- Rachel and her extended family member are currently residing together in transitional housing together and her extended family member has been offered a public housing property
- Rachel's health management has improved, including sexual health awareness, and has continued engagement with counselling
- Rachel is engaged in pro-social activities which has improved her physical health as well as her self esteem
- Rachel has attended holiday camps and met other children her age outside of school
- Contact with extended family is improving
- Rachel's extended family member is receiving Centrelink benefits and Family payments, and has improved health management

*Not her real name

Youth Diversion Pilot Program

Between June 2015 and December 2016, Jesuit Social Services delivered services to young people participating in the Youth Diversion Pilot Program (YDPP) operating out of the Children's Court of Victoria. A young person appearing in the Children's Court for the first or second time for a low level offence could be referred to the diversion program by the Magistrate. If the young person successfully met the requirements of the Diversion Plan then a criminal conviction was not recorded. This had many positive benefits, including enhanced prospects for engaging in future employment.

Under the YDPP, once a youth offender was referred to the program, they were usually given an initial assessment. At that point, an immediate preliminary Diversion Plan was agreed upon to assist the young person to start making a change to their life. A 'diversion worker' had carriage of the youth offender's engagement in the program. The diversion worker would continue to meet with the young person to develop a fully formed Diversion Plan. The Diversion Plan would be directed towards preventing future offending and, depending on the nature of the previous offending, could be brief and targeted or more complex and holistic.

Each Diversion Plan was tailored to the needs of the particular youth offender. It could take up to 8 weeks of engagement before a Diversion Plan was finalised with a particular young person. Each Diversion Plan focused on any number of the following categories of support/intervention: offending; home and community; education, training and employment; and health and wellbeing. Specific actions, support services or programs were identified under each of these categories and formed part of the Diversion Plan. The diversion worker would often meet with family or support people when formulating the Diversion Plan. The duration of the Diversion Plan was also decided upon. The Diversion Plan was intended to be primarily participant driven, rather than driven by the 'diversion worker'. The diversion worker monitored the participant to determine what parts of the Diversion Plan have been actioned and then drafted a report for the Court.

Data collected by Jesuit Social Services indicates that the diversion program was successful in supporting young people to understand the impacts of their offending behaviour and to engage in activities to prevent future offending. **Over 90 per cent of all finalised diversions resulted in a dismissal of the charges.**

Participants were supported to improve family relationships, engage with education, training and employment, and address mental health and substance use issues. The program's 15 month report (1 June 2015 – 31 August 2016) indicated that:

- Of the 357 Diversions finalised:
 - 330 people (92.43 per cent) completed Diversion successfully and had their matters dismissed
 - In 27 cases the Diversion was considered unsuccessful and the original charges were re-listed (these mostly related to the young person not engaging with the program, moving to a different location, or further alleged offending during the Diversion period)

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) included:

- 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.

Key outcomes

Over 90 per cent of participants 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 received consistently positive feedback from Victoria Legal Aid, police prosecutors and the broader court network.

International examples of diversion

In June 2017, senior leaders from Jesuit Social Services undertook an international #JusticeSolutions study tour, visiting Norway, Germany, Spain, the United States and the United Kingdom, searching for effective, humane and evidence-based policies. On our #JusticeSolutions tour organisation leaders met with policy think tanks, advocacy groups, government agencies and not-for-profit organisations to exchange findings and insights. Learnings from the tour are summarised in our paper [#JusticeSolutions: Expanding the conversation](#).

This confirmed our belief that good youth justice systems focus on early intervention and diversion, preventing young people from further contact with the justice system, using child-specific approaches and engaging families and communities. They have thorough assessment and planning processes that are supported by strong social infrastructure and well-resourced community alternatives to locking up young people. The views espoused by people we met overseas confirm our position that detention must be used only as a last resort. To do otherwise risks unnecessarily entrenching criminogenic behavior, ignores the age of the young person and the fact the brain continues to develop and mature well into the 20's and will ultimately result in unnecessary cost burdens to the community.

In Germany, Norway and Spain the general philosophy underlying the youth justice system is to divert young offenders from the justice system wherever possible. Even in the US, known for its high imprisonment rates, youth imprisonment rates have been decreasing. In 2010, the youth incarceration rate reached a new 35-year low, with almost every state confining a smaller share of its youth population than a decade earlier.²⁷ This decline has not led to a surge in juvenile crime. On the contrary, crime has fallen sharply even as juvenile justice systems have locked up fewer young people. While it appears the US is gradually accepting the benefits of reducing imprisonment of young people, European jurisdictions are leading the way. Norway has an age of criminal responsibility of 15 and no youth justice system, with just a handful of offenders aged under 18 years in prison.ⁱⁱ Norway has a total incarceration rate of just 74 per 100,000,²⁸ significantly lower than Australia's adult rate of 215 per 100,000.²⁹

ⁱⁱ Currently there are five people under the age of 18 who are in prison in Norway

In Norway, there is a clear recognition that any period of incarceration is harmful and must be the option of last resort. Most young people are dealt with in the community – through Youth Punishment (a youth conference), Probation or Youth Follow Up. More than 70 municipalities have been trialling family group conferencing (based on the Australian/New Zealand practice), with positive results for both victims and perpetrators. The Youth Follow Up intervention allows a young person to avoid custody or other consequences by signing a contract agreeing with their parents on the one hand and the police and/or municipality on the other, to carry out specific activities such as compensation for the harm done in addition to continuing education, work and, as appropriate, drug abuse treatment.

In Germany, too, authorities are seeking to find ‘off ramps’ from the road to incarcerationⁱⁱⁱ. In 2013, 71 per cent of cases were dropped or dismissed by the prosecutor/judge because of the pettiness of the offence or because educational measures had been taken by others (parents, school) or because reparation or mediation had been agreed³⁰. Where a case proceeds to sentencing, Germany has an extensive range of options used to avoid incarceration, with only two per cent given unconditional youth prison sentences³¹. Non-custodial sentences range from warnings and reprimands, periods of community service, educational directives and social training courses up to probation (termed ‘suspended youth prison sentences’, which are combined with the supervision of the probation service).³²

German community orders include community service orders (most common) and, less frequently, special educational care orders and social training courses.³³ Special educational orders involve a social worker acting as a mentor to a juvenile offender for six to twelve months. As the social worker has no more than 10 to 15 cases, the care order provides more intensive oversight than supervision by a probation officer, who may have 70 cases or more. The social training course involves regular group meetings a couple of times a week (often in combination with intensive week-end arrangements) and aims to improve social competence and skills that are required in personal, social and work life. The meetings, which usually run over a period up to six months, address both day-to-day living skills and positive recreational pursuits, for example encouraging involvement in sporting or other positive leisure activities.

In the UK, which has faced many of the same challenges as Australia in relation to ageing facilities, overcrowding and subsequent unrest in its youth detention centres, we learned of an innovative scheme aimed at avoiding incarceration of young people. Under a compact between the Department of Education, the Ministry of Justice and the Youth Justice Board, it is proposed to establish a school for young people involved in the justice system. The initiative would give Magistrates an alternative to custodial sentences, with stronger rehabilitative prospects. The proposed *Campus Educational Trust* is scheduled to open the first campus in 2020. This initiative has grown out of a recognised gap, with the Youth Court judiciary wanting to have a sentencing option that keeps young people out of prison, yet ensures education integrated with wrap-around support. The school would also have sufficient monitoring and safety measures to ensure sanctions are complied with. As Magistrate David Chesterton (and Vice Chairman of the Trust) put it:

Having a safe, structured, community based solution would give me options. It isn't going to be right for some young offenders. But, for those who are only being sent to prison because of the

ⁱⁱⁱ Where offending occurs, they prioritise keeping young people close to home and engaged with education and treatment. See Dünkel F., & Heinz, W. (2017). Germany. In S.H. Decker & N Marteache (Eds.), *International Handbook of Juvenile Justice*, 2nd edition. A later section in this report (see Resocialisation) describes some of the German initiatives in this field.

lack of alternatives, it could make the difference between a life of crime, and a life well lived. These kids have been let down all their lives. We need to give them a chance.³⁴



Image - credit: Jugendanstalt Neustrelitz

Age of criminal responsibility

A small number of vulnerable children enter the criminal justice system at a very young age. According to the Australian Institute of Health and Welfare, 331 children under 15 years of age were held in youth detention in NSW in 2015/16³⁵. We know this group is among the most vulnerable in the community and that children first detained between the ages of 10 and 14 are more likely, compared to those first supervised at older ages, to have sustained and frequent contact with the criminal justice system throughout their life³⁶. These findings have been further confirmed by our [Thinking Outside: Alternatives to remand for children](#) research.

Child offending experts, psychologists and criminologists agree that younger children have rarely developed the social, emotional and intellectual maturity necessary for criminal responsibility before the age of 14 years and also lack the capacity to properly engage in the justice system. Consequently, procedural fairness cannot be assured and criminal justice proceedings fail to guarantee a just response to children’s behaviour. The most effective approach to divert these children’s trajectories into the justice system is to address the issues driving their vulnerability such as family dysfunction, trauma, abuse and neglect.

In line with international standards embodied in the United Nations Convention on the Rights of the Child and enacted in many overseas jurisdictions³⁷, we recommend raising the age of criminal responsibility to the age of 14 in NSW. According to an international study of 90 countries, 68 per cent had a minimum criminal age of 12 or higher, with the most common age being 14 years.³⁸

Age of criminal responsibility: international comparison

AUS	NZ	CAN	ENG	USA	FRA	GER	SWE	NED	CHN	JPN
10	10-14	12	10	6-12	13	14	15	12	14	14

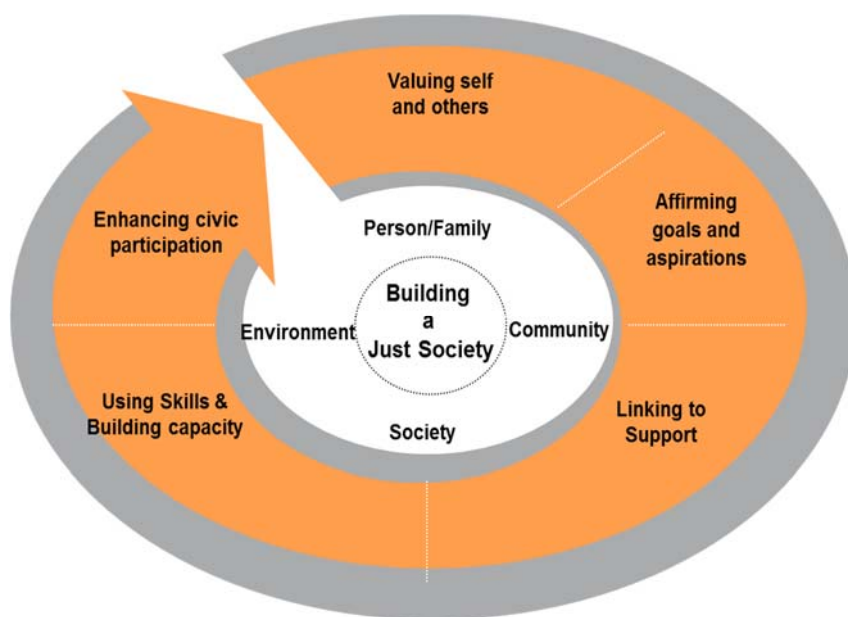
Source: Hazel 2008, Cross-national comparison of youth justice, Youth Justice Board for England and Wales

We recommend putting in place evidence-based approaches to supporting vulnerable children who are below this age. This should include less punitive methods of holding them to account, such as restorative justice and family centred approaches, as well as preventative measures which target the social and economic factors which lead to anti-social behaviour.

Appendix A: 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 dignity of each individual and their capacity to envisage and achieve a more positive and engaged future, no matter their current circumstances. It articulates the dynamic interplay of five components, which work together to help people reach their full potential and become active participants in their communities:

- **Valuing self and others** by fostering respect so that our participants can further develop the capacity to establish and maintain meaningful and respectful relationships.
- **Affirming goals and aspirations** through engendering hope and the establishment of supportive and mutually participatory relationships.
- **Linking individuals and communities with support** to realise their potential by working with them to remove the barriers they face in achieving social and economic inclusion.
- **Using skills and building capacity** through the delivery of education, training and therapeutic programs for individuals, and strengthening initiatives at a community level that promote skill development and assist in accessing employment and other pathways.
- **Enhancing civic participation** where individuals and communities build 'communities of justice' and exercise their right and responsibility to create a just, inclusive and sustainable world.



At each step in the process we use evidence-based approaches combined with our forty years of practice wisdom. The participant and/or community is always at the centre of our process and relationship-building is central to our work.

We understand that the process for individuals and communities is not linear and our involvement with them may be 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.

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, carry personal narratives of failure, and often have a distrust of workers. Without a trusting connection and foundation of self-worth further steps are fruitless.

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.

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