



All Alone
Young adults in the Victorian justice system

2018



Jesuit
Social Services
Building a Just Society

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Jesuit Social Services: Who we are and what we do

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 are a social change organisation working 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 annually.

Our service delivery and advocacy focuses 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 including mental illness, trauma, homelessness 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
- Gender Justice.

For over 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 for young people caught up in the criminal justice system, the Youth Justice Community Support Service and Youth Justice Group Conferencing across metropolitan Melbourne.

In recent years our operations have expanded to New South Wales and the Northern Territory, and we continue to expand our work in these jurisdictions.

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 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 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 people, community, land and all life.

Recommendations

- The Victorian Government act to reverse recent legislative erosions to the dual track system highlighted in this report.
- The dual track system be expanded to include 21-24 year olds.
- The Victorian Government act to ensure brain development/level of maturity is taken into account when sentencing 18-24 year olds.
- The Victorian Government invest in incorporating specialist youth units in adult prisons that house young adults aged 18-24, to meet their developmental needs, separating them from the mainstream population and providing them specialised support.
- The Victorian Government provide culturally appropriate pre- and post-release support to young Aboriginal and Torres Strait Islander prisoners.
- The Victorian Government fund specialised support programs in prison for young adults who have cognitive impairments.
- The Victorian Government trial a pre-release group conferencing program to assist young adults understand the impact of their offending, consider steps to address the harm and prepare them for release into community.
- That a minimum workforce qualification for all custodial prison staff be introduced that reflects the challenges of the role and the impact appropriate staffing can have on rehabilitation and community safety.
- That the Adult Corrections workforce be trained to identify and support the specific interests, developmental needs and rehabilitation of young prisoners.
- The Victorian Government invest in training correctional staff to use therapeutic and restorative approaches when dealing with young adult prisoners.
- The Victorian Government increase levels of staffing to minimise the need to use punitive practices such as isolation and restraint.
- The Victorian Government legislate for a presumption against the use of isolation, with isolation only permissible in rare cases where immediate safety to persons is a concern, and then only for the briefest possible period. In no case should isolation exceed 14 consecutive days, and a period of such length could only be justified in the most extreme circumstances.
- The Victorian Government legislate to ensure any isolation is subject to daily review by an independent mental health professional. In line with existing guidelines, any person placed in isolation must be told the reason for this, and should also be told the expected duration.

- The Victorian Government require all prison operators to record data on the use of isolation and restraints in Victorian prisons (including reason for use, length of use and non-identifying prisoner characteristics such as age, ATSI status and gender), and that this data is made publicly available.
- The Victorian Government immediately establish an Independent Custodial Inspectorate that is responsible for overseeing prisons in Victoria and reports directly to Parliament.
- The Victorian Government ensure that no young adult be released into the community directly from isolation. This should include a step down approach that reintegrates and socialises people within prison before they are released into the community. This should occur in prison as part of their transition planning.
- The Victorian Government invest in more intensive, therapeutic interventions focused on personal development through personal and vocational skill building, housing support, counselling and reintegration support for young adults post-release, and particularly for those who have experienced periods of isolation during their custody.

Scope of Report

This report focuses on young adults in Victorian prisons, and explores their particular needs, vulnerabilities and criminogenic patterns. While some of the concerns and issues discussed have application to the entire prison population, our conclusions in this paper are limited to the young adult cohort, by which we mean 18 to 24 year olds. They are based on the research presented and our grounded experience working with participants in this age group. The paper focuses particularly on the situation in Victoria, where many of our programs operate, but most of the principles discussed are applicable nationwide.

Introduction

In 2016, a report by Australian Children’s Commissioner Megan Mitchell expressed concern about the large number of young people aged 18 to 25 in prison. She noted that young people in adult prisons were particularly vulnerable, and recommended the Australian Government commission research investigating the pathways, experiences and needs of this cohort in the prison system.¹

Two years later, the number of young adults of this age in the prison systemⁱ continues to rise. To our knowledge, neither the Commonwealth Government nor any State or Territory administration has acted on the recommendation of the Children’s Commissioner. Meanwhile, through our work with young adults in prison and transitioning out of prison, we know there is room for significant improvement in how our prisons operate in order to promote reintegration and reduce recidivism.

We are particularly concerned at the extent to which prisons are using isolation as a way of managing the challenging behaviour of young adults, and highlight in this report the devastating impact this has on individuals and their rehabilitation prospects. Recent Royal Commissions and inquiries, including the Northern Territory Royal Commission into the Protection and Detention of Children and the Victorian Children’s Commissioner’s report *The Same Four Walls: Inquiry into the Use of Isolation, Separation and Lockdowns in the Victorian Youth Justice System* have examined the detrimental impact of these practices in the youth justice context. We argue that the public spotlight must now extend to our adult prisons, and particularly to young adults in these facilities, where there are similarly shocking examples of mistreatment.

Related to this are our concerns around transparency and accountability. We know from our work with young adults transitioning out of prison that isolation continues to be used regularly and punitively in Victoria’s detention facilities. In very limited circumstances separation is required to keep young and vulnerable adults safe, but a lack of transparency prevents us from ascertaining concrete data on the implementation, reasonableness and appropriateness of isolation practices. This lack of transparency, and the follow-on impact on accountability, prevents the community from scrutinising our prisons and ensuring prisoners are treated humanely. We call for an Independent Custodial Inspectorate to be established as a matter of urgency.

The deprivation of liberty through a term of imprisonment is the punishment that society imposes on someone who has offended. Imprisonment itself is punishment enough- prisoners should not be subjected to inhuman treatment while serving their sentence. We recognise that calls for changes to the prison environment are often seen as a “soft on crime” approach, but contend the issue is about being smarter on crime. People must be held accountable for their actions, and in appropriate circumstances this may as a last resort include time in detention. There are also times when use of separation within prison is appropriate as a last resort, for a strictly limited period. However in most cases isolation is counterproductive to rehabilitation and community safety. A safer community

ⁱ Victoria’s dual track system means that some of those aged 18-20 are housed in the juvenile system, which has received significant public and political attention in the last two years in both Victoria and elsewhere around Australia. Apart from a few references, this paper focuses primarily on those who are detained in Victoria’s adult facilities.

requires prison to encourage those in detention to choose a better path on release and to reengage with their community, and this is more likely to occur where people have been treated humanely.

Our prison system's treatment of young adult prisoners can have a particularly far-reaching impact. The people in this group are at a pivotal point in their lives when they are still experiencing brain development, and when appropriate interventions can have a significant impact. And they have a lifetime ahead of them to either benefit from rehabilitation or continue to offend and inflict harm on their community.

Glossary of terms

“Solitary confinement” is generally defined as the social and physical isolation of individuals in a place of confinement for twenty-two to twenty-four hours a day.” (See Mandela Rules)

“Isolation” is generally used interchangeably with solitary confinement although could be interpreted more widely than 22-24 hours per day.

“Long-term management placements” refer to prisoners who are classified into a high security or management unit for longer than 30 days.

Other terms for isolation include: Management Regimes; administrative, protective, or disciplinary segregation; permanent lockdown; maximum security; supermax; security housing; special housing; intensive management; and restrictive housing units

In this report we use **“Separation”** to imply a less strict form of isolation, which may include separation of more than one prisoner together, and in an environment that has therapeutic rather than punitive elements

“Physical Restraints” are external mechanical devices designed to restrict or immobilise the movement of a person's body, in whole or in part. These may include mechanical restraints such as ankle cuffs, anklets, hand- or leg-cuffs, fetters, waist bands, wristlets, plastic cuffs, wraps, belts, shackles, chains, (weighted) leg irons or leg cuffs, gang chains, finger- and thumb cuffs, soft/fabric restraints, straightjackets, restraint chairs, shackle boards and restraint beds.

“Chemical Restraint” involves the use of sedation, tranquiliser or other behaviour-altering drugs on prisoners.

“Straight release” refers to the situation where a person serves their entire sentence in prison and so has no further order or restrictions applying to them on release. This can be contrasted with someone released on parole who is effectively serving the remainder of his/her sentence in the community and is subject to certain obligations, restrictions and monitoring.

Source: Penal Reform International & the Association for the Prevention of Torture. (2015). Instruments of restraint: addressing risk factors to prevent torture and ill-treatment. Retrieved from https://www.apr.ch/content/files_res/factsheet-5_use-of-restraints-en.pdf

Young adults: A vulnerable cohort

The number of prisoners younger than 25 in the adult system is growing². Between 2013 and 2017, the number of young adults (18-24 year olds) in Victoria's adult prisons grew from 679³ to 861⁴, representing a 26.8 per cent increase. In 2016-2017 alone, the number of 18-24 year olds in the state's prisons grew 13 per cent.⁵

It is important to recognise that the prison population as a whole has also been growing over this period, and the proportion of young adults in prisons has stayed largely constant because of this overall growth. Nevertheless, the addition of 100 young adults into Victorian prisons in the 2016-2017⁶ is a cause for great concern.

Research confirms that young adults are a distinct group with needs that are different both from children under 18 and adults older than 25, underpinned by the developmental maturation process taking place in this life stage.⁷ Understanding young adults' particular needs and challenges, the reality of their continuing brain development, and their typical offending patterns is important in ensuring that prison is able to act as an appropriate punishment and deterrent, without unnecessarily compromising health and rehabilitation prospects.

As the Victorian Ombudsman noted in *An Investigation into the Rehabilitation and Reintegration of Prisoners in Victoria*, "young adults under 25 years of age make up a relatively small percentage of the prison population, [but] their rate of recidivism is higher, and the impact of that cycle can be significant for community safety"⁸. Working to promote reintegration and reduce recidivism is in the interests of all in our community. There is little doubt that a young person's experiences and treatment in prison can have a significant impact on their ability to embark upon a better path – or the likelihood of taking a worse path - upon release.

It is also important to recognise the particular window of opportunity that presents itself in relation to young adults. Young adults are more amenable to rehabilitation than older adults who commit the same offences.⁹ As prisoners get older, the influence of rehabilitative programs, including education and training, declines. Interventions targeted towards young offenders provide a significant opportunity to break the cycle of reoffending before it becomes entrenched.¹⁰ Conversely, handling young people in a way that compromises their ability to later reintegrate with the community amounts to a missed opportunity.¹¹ The 2016 UK Parliamentary Inquiry into Young Adults in the Criminal Justice System noted:

"Dealing effectively with young adults while the brain is still developing is crucial for them in making successful transitions to a crime-free adulthood. They typically commit a high volume of crimes and have high rates of re-offending and breach, yet they are the most likely age group to stop offending as they 'grow out of crime'. Flawed interventions that do not recognise young adults' maturity can slow desistance and extend the period of involvement in the system."¹²

A background of complex disadvantage

Young adults incarcerated in the adult system often have a background of complex disadvantage, which might include homelessness, family violence, a lack of family support, mental illness, intellectual disability, substance abuse, lack of education, unemployment, a history of contact with the child protection system and low socioeconomic status.¹³ A Queensland study classified young prisoners aged 18-24 as “extremely vulnerable” after finding most of them had compromised health across multiple domains, as well as high levels of socioeconomic disadvantage and engagement in risky substance use.¹⁴

The Victorian Ombudsman has highlighted other challenges for this group, including family dislocation through parents’ or peers’ involvement in the justice system, exposure to trauma or neglect, untreated psychiatric illnesses, malnutrition and limited developmental and cognitive maturity.¹⁵

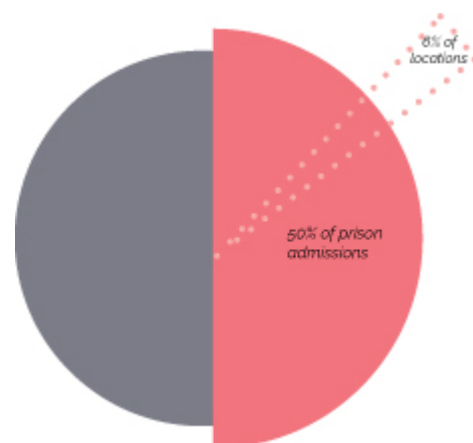
International studies have also indicated the developmental characteristics and sociocultural experiences of young adults differ greatly from older prisoners, and that this younger cohort has specific health-related needs.¹⁶ One US report noted:

“Young adults have particularly acute mental health treatment needs, as many disorders emerge for the first time during young adulthood. In addition, many young adults have experienced significant trauma as a result of their early involvement in the justice system, which can often go undiagnosed and untreated. Finally, young adults under justice system supervision are particularly likely to have a substance use disorder, which has been shown to significantly impair judgment and contribute to long-term offending among all individuals.”¹⁷

We know from our work that these comments apply equally in the Australian context. Jesuit Social Services’ research series *Dropping Off The Edge*¹⁸ demonstrated how multiple forms of disadvantage create a “web” of disadvantage affecting numerous facets of everyday life.

We found that 6 per cent of postcodes in Victoria accounted for half of all prison admissions. This highlights the often localised nature of crime, as well as the role of disadvantage as an underlying cause of offending.

It is no surprise that many of Victoria’s youngest prisoners have challenging backgrounds – the question is whether this knowledge is adequately taken into account in how our prisons operate.



Brain development and maturity

There is significant research surrounding brain development that shows brain function and cognitive capacities continue to develop until the age of at least 25.¹⁹ The parts of the brain that are still developing include those that control impulsivity, judgement, planning for the future, foresight of consequences and other characteristics that form moral culpability.²⁰

This research is important in formulating a justice policy that deals appropriately with young adults in prison²¹, and which works to ensure that, where possible, impulse crime does not develop into a lifetime pattern.

The Law Institute of Victoria, in a submission to the Australian Human Rights Commission's Inquiry into The Optional Protocol to the Convention against

Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in the context of Youth Detention commented: "Brain development science suggests that most people do not reach full maturity until the age 25. The prison system needs to take into account the effect that developmental maturity can have on their behaviour and recognise the vulnerability of young offenders in terms of environment, social, individual, and health related issues."²²

In recognition of the brain development and maturation process of young adults, Victoria until recently had a unique and strong 'dual track' system for sentencing of young offenders that allowed mainstream adult courts to sentence those under 21 to a youth justice centre rather than an adult prison. The court had to be convinced that the young person has reasonable prospects of rehabilitation, or that he or she was particularly impressionable, immature, or likely to be subjected to undesirable influences in an adult prison. This innovative approach prevented vulnerable young people from entering the adult system at an early age²³.

While the dual track system continues, the passing of the Victorian Government's *Children and Justice Legislation (Youth Justice Reform) Act 2017* contains functions that significantly erode it. The legislation provides for the presumption that young people between 18 and 20 convicted of particular offences will be sentenced to adult prison unless exceptional circumstances apply. This is despite the evidence that young people who spend time in adult prison are more likely to re-offend on their return to the community than young people exiting youth detention.²⁴ Further erosions are contained in recent legislation relating to assaults on emergency services personnel²⁵, whereby the special reasons exception which applies to all statutory minimum prison sentences will be substantially narrowed so

Young adults: distinct from youth	Young adults: distinct from adults
More cognitively developed	More impulsive
More vulnerable to peer pressure	Less able to control emotions
More likely to engage in risky behaviours	Less likely to consider future consequences
Seeking autonomy from families/caregivers	

Source: Council of State Governments Justice Center. (2015).

that impairment due to alcohol or drugs can no longer be used as an excuse, psychosocial immaturity will be removed as a special reason, and the court must give significantly less weight to the life circumstances of the offender. We believe these erosions are counter-productive and will have negative long-term effects on community safety. They should be reversed as soon as possible. Further, we believe consideration should be given to extending dual track up to the age of 24, given the research highlighted in this paper about brain development and specific needs of young adults.

One idea put forward by South Australian researchers is that immaturity could be recognised as a mitigating factor when sentencing young adults, and that measures could be incorporated into the justice system that determine psychological maturity.²⁶ They also suggested that those who had not yet reached full psychological maturity and adult functioning might be placed in the same category as those who are deemed mentally ill or intellectually incapable of committing a crime.²⁷ The UK Parliamentary Inquiry also discussed this possibility, noting the benefit of “legislative provision to recognise the developmental status of young adults...prioritising a better and more consistent approach to the treatment of young adults who offend.”²⁸

Jesuit Social Services believes young adult offenders are a specific cohort who require a specialised approach tailored to their unique needs.

We recommend the Victorian Government act to reverse recent legislative erosions to the dual track system highlighted in this report.

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We recommend the Victorian Government act to ensure brain development/level of maturity is taken into account when sentencing 18-24 year olds.

Offending behavior

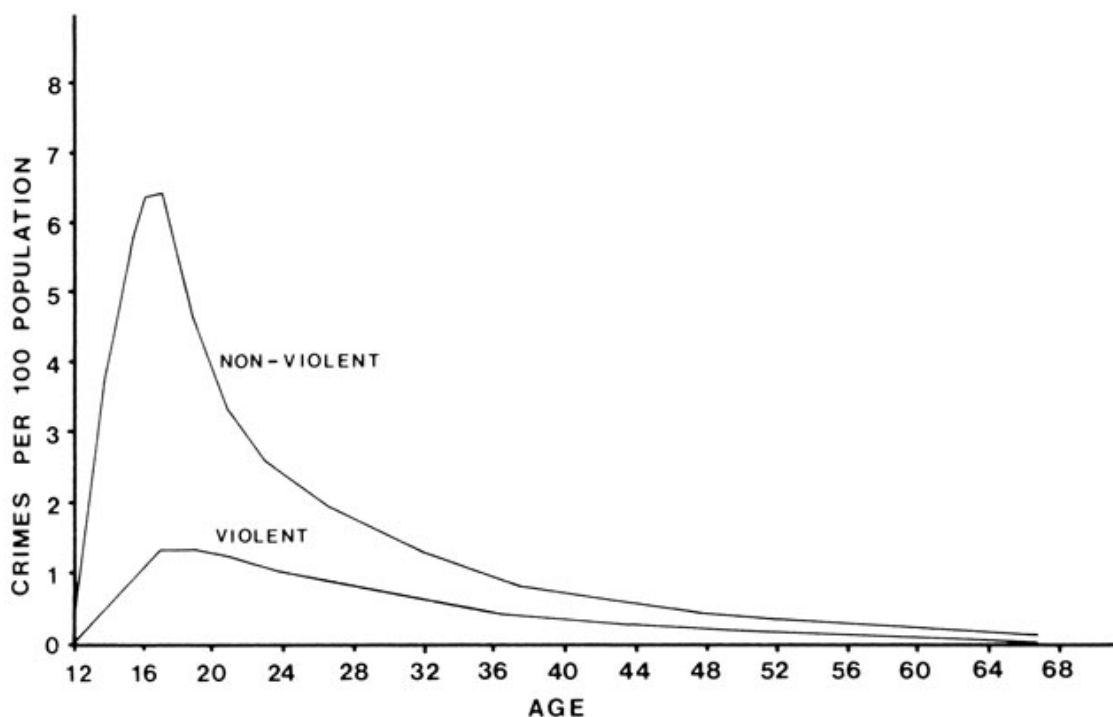
While there is limited literature on the offending behaviour of 18-24 year olds specifically, we know that people within this age bracket tend to commit less serious offences in comparison to older age groups. Serious offences tend to largely emerge after a period of lower-level offending, which occurs during late adolescence and early adulthood.²⁹

Australian Bureau of Statistics findings show that number of offenders aged 20-24 in Victoria in 2017 had decreased by 6.67 per cent since 2015-16.³⁰ Crime Statistics Agency findings also show that the number of alleged offender incidents in this cohort in 2018 has also decreased by 11 per cent since 2013.³¹ The breakdown of alleged offences in this cohort aligns with research into the seriousness of their offending. A Crime Statistics Agency study in 2016 of the past ten years of youth offending found that of the 48,401 offender incidents within the 20-24 year old cohort, murder accounted for 0.14 per cent, assault accounted for 22 per cent, and sexual offences accounted for 3.4 per cent. Public order offences accounted for nearly 30 per cent, and drug offences for 26 per cent.³²

This is consistent with an Irish report³³ on young adults in prison which found that the majority, around seven in ten, had committed less seriousⁱⁱ offences.

Studies have also highlighted the tendency of those in the young adult age group to offend or 'do something stupid' for a number of reasons, including the excitement of the moment, social pressures from friends, and if they find themselves desperately in need of money.³⁴ Not only do young adults often commit less serious crimes, their offending is impulsive and situational. This is reflective of their age and level of maturity.

Criminologists generally accept a strong link between age and offending. The so-called "age-crime curve" (investigated by Farrington (1986) and cited extensively ever since³⁵) typically shows a peak in offending around the age of 18 or 19, then falling sharply and beginning to plateau from the late 20s.



Source: Farrington (1986); Richards (2011)

Recidivism rates for young adults (ie those aged 18 to 24) released from prison are significantly higher than for other age groups. As detailed above, a significant number of young adults in the justice system face complex disadvantage - without assistance, they will be more likely to reoffend. Recent Victorian research³⁶ found that the recidivism rate for prisoners in Victoria under 25 years of age is 52.7 per cent, more than eight per cent higher than the rate for the general population.

Young adults have distinct needs that can make them more likely to reoffend than children and older adults.³⁷ At the same time, few research-based interventions are targeted specifically for young adults at moderate and high risk of reoffending, or have been tested for this population.

ⁱⁱ Definitions of serious and non-serious crime are often subjective and can vary among different jurisdictions. However, in this particular report, offences that are regarded as serious are homicide, sexual offences, attempts and threats to murder, assaults and related offences. This means that all other offences that are punishable by imprisonment but below these offences in relation to severity of penalty could be considered less-serious offences.

The high rates of reoffending on release from prison indicate that the current corrections system is failing too many young adults. The current situation represents both a problem and an opportunity and we urge the Victorian Government to reassess current approaches to young adults in prison in the light of this data.

Vulnerability in adult prison

The vulnerability of young adults has a particular impact in the context of imprisonment. They are at high risk of developing post-traumatic stress disorder, and are also at risk of being raped or assaulted by older prisoners.³⁸ The Victorian Ombudsman has raised concerns around these dangers, citing reports from youth development officers that showed young adults were vulnerable to acts of bullying, 'grooming'ⁱⁱⁱ and other negative influences from older prisoners. The Ombudsman has canvassed examples of young adults in such scenarios struggling to deal with these influences, with older prisoners then seeking to further chip away at the young person's self-esteem and confidence.³⁹

Research suggests that imprisonment within adult facilities has a particularly detrimental effect on young adults. The Jesuit Centre for Faith and Justice argued in *Developing Inside: Transforming Prison for Young Adults*, for example, that mixing young adults into the adult prison system places them in 'an environment which strips them of their responsibilities, stunts opportunities for development, makes them feel unsafe, and restricts their opportunities for integration into adult society'.⁴⁰ The report argued that sending people aged 18-24 to adult prison caused long-term physical and emotional harm, and hindered their rehabilitative prospects⁴¹:

"Young adulthood, the period between the ages of 18 and 25 years, is a time when appropriate interventions can have lasting positive effects⁴². However, failure to recognise the unique characteristics of young adults and their offending behaviour causes them harm and does not reduce the likelihood of their reoffending."

Several jurisdictions have recognised these concerns and adapted their justice systems in response. In Switzerland, for example, young adults aged 18-24 can be sent to specialised young adult institutions that focus on social reintegration, education and training.⁴³ Indeed, in much of Europe it is now recognised that young adults in prison are a distinct group differing from the adult prison population in particular physical, psychological, emotional, and social ways, and that young adults have unique needs that should be considered in any approach to their management.⁴⁴

Victoria has only one dedicated youth unit, at Port Phillip Prison, which the Victorian Ombudsman has noted has achieved good results in reducing recidivism. However it has capacity for just 35 young adults at any one time and is only available to first time, male prisoners. There is no equivalent unit for young female prisoners.⁴⁵

ⁱⁱⁱ 'Grooming' is a term that usually refers to a situation where a potential offender will set up opportunities to sexually abuse a child by gaining the trust of the child in order to prepare them for the abuse either directly, or indirectly. Whilst this term is often used mainly in relation to child sex offenders who 'groom' children online, it can still occur in adult prisons between older offenders and young adult offenders. See Mcalinden, A. (2006). "Setting 'Em Up": personal, familial and institutional grooming in the sexual abuse of children. *Social and Legal Studies*. Retrieved from <http://pure.qub.ac.uk/portal/files/9458439/339.pdf>, p. 340.

We recommend the Victorian Government invest in incorporating specialist youth units in adult prisons that house young adults aged 18-24, to meet their developmental needs, separating them from the mainstream population and providing them specialised support.

Aboriginal and Torres Strait Islander peoples

Like all states and territories in Australia, Aboriginal and Torres Strait Islander peoples are extremely overrepresented in Victorian prisons, with the imprisonment rate for this group consistently higher than the rate of the total population.⁴⁶ Aboriginal and Torres Strait Islander people experience a number of difficulties within prison. Elevated levels of mental illness and psychological distress have been found amongst Aboriginal and Torres Strait Islander populations across Australian correctional facilities.⁴⁷ Research has also shown that Aboriginal and Torres Strait Islander prisoners commonly face multiple disadvantages, including childhood abuse and neglect, separation from parents, inadequate health care, lack of housing, mental health problems, substance abuse and a history of sexual assault victimisation.⁴⁸ This is coupled with less quantifiable challenges that may amplify disadvantages, such as colonisation, dispossession, loss of culture and grief and anger associated with these experiences.⁴⁹ Aboriginal and Torres Strait Islander young people experience particular vulnerability while in prison.

Aboriginal and Torres Strait Islander young adults face many challenges when released from prison, such as gaining accommodation, dealing with finances, meeting social needs, tackling drug dependence and facing a lack of employment opportunities through both the stigma of imprisonment and racism.⁵⁰

In our work with young people who have spent time in isolation, we meet Aboriginal and Torres Strait Islander people who have had limited culturally appropriate supports whilst under this regime. We note that the Aboriginal Wellbeing Officer and Aboriginal Liaison Officer roles in prisons are often unfilled due to the challenges recruiting to these positions and – given that the Victorian Aboriginal Legal Service’s ReConnect program has finished – there is now no ATSI-specific post-release support. A lack of culturally responsive services can hinder the prospects of rehabilitation for Indigenous offenders⁵¹, and, when combined with periods of isolation, is likely to amplify and worsen the multiple disadvantages and vulnerabilities that Indigenous people already face both within prison and post-release.

In order to address the multiple and complex disadvantages that young Aboriginal and Torres Strait Islander prisoners face, we believe that culturally appropriate support should be available to Aboriginal and Torres Strait Islander peoples in all adult prisons.

We recommend that the Victorian Government provide culturally appropriate pre- and post-release support to young Aboriginal and Torres Strait Islander prisoners.

The justice system has traditionally been structured for male prisoners and has failed to recognise and respond appropriately to the unique needs of women. While this paper focuses primarily on young adult men, because they account for the vast majority of prisoners⁵², we must also acknowledge that a gendered approach is required to meet the needs of the young female cohort in prison. As a 2013 federal parliamentary inquiry⁵³ noted:

Factors contributing to female incarceration include poverty, poor education outcomes, unstable housing, domestic violence and/or sexual abuse and trauma. Women who have been incarcerated have a higher chance of substance abuse, mental health problems, debts and poor credit rating and socioeconomic disadvantage.

Between 2006 and 2016 the female prisoner population grew more rapidly (up 75%) than the number of male prisoners (up 66%).⁵⁴ Reversing the trajectory of women's incarceration rates requires consideration of the impacts beyond the lives of women themselves to, most critically, their children. For example, 81 per cent of women exiting prison in Jesuit Social Services' Victorian programs in 2016 were mothers, and having a parent incarcerated is an established risk factor for both child protection and criminal justice involvement. Consideration must also be given to the following vulnerable cohorts:

- Women who have been victims of family violence or sexual or physical violence that can play a part in the onset of offending behaviour (noting also that offending may occur in the context of coercive relationships)
- Indigenous women – who are less likely to access mainstream rehabilitation and post-release programs, and are more likely to breach community-based orders and return to prison more frequently.

Women have unique pathways into offending and tailored responses are required at each point of the justice system.

People with cognitive impairments

Jesuit Social Services, together with RMIT University's Centre for Innovative Justice, published a report last year entitled *Recognition, Respect and Support: Enabling Justice for People with an Acquired Brain Injury*, focused on the obstacles that Australians with disability face in accessing justice.⁵⁵

The term 'ABI' refers to a 'disability arising from any damage to the brain acquired after birth, regardless of cause.' Individuals with ABI may also suffer 'cognitive problems, including poor memory and concentration, reduced ability to plan and problem solve and inflexible thinking, and psychosocial/emotional problems, such as depression, emotional instability, irritability, and impulsive or inappropriate behaviour'.⁵⁶ People with ABI form a particularly vulnerable group in our community, often caught up in a complex interplay of social disadvantage and disability. Commonly, people with ABI experience multiple and complex needs, such as alcohol or drug addiction, mental illness, homelessness and family violence. The symptoms of ABI can severely impact on a person's experience of the justice system. Having ABI can compound an already intimidating experience of the legal system, limit the ability to comply with sentencing orders and even exacerbate offending behaviour.

The justice system can be daunting and difficult to navigate for those without a disability; however, for those with ABI who may struggle to engage in everyday tasks, this can be near impossible. For young adults in adult prisons, cognitive impairments further compound their vulnerability.

We recommend the Victorian Government fund specialised support programs in prison for young adults who have cognitive impairments.

The Victorian criminal justice system: A system under strain

We now turn our attention to the Victorian context and, drawing on our research and direct experience delivering programs to young adults transitioning out of custody, highlight particular issues facing young adults in prison in today's justice context. A rising number of young adults in maximum security prisons, a punitive and at times vicious prison culture, and the regular use of isolation or "management regimes" create an environment that impacts negatively on the rehabilitative success of this vulnerable cohort.

Prison population, remand and bail

The number of prisoners in Victoria has increased every year since 2007.⁵⁷ In just over ten years, fuelled by changes to bail and parole laws, the number of incarcerated adults jumped by 3006 individuals, or 71 per cent, to 7189.⁵⁸ The most recent figures show further growth in the adult prison population, which in June 2018 had reached 7573.⁵⁹ This growth, in turn, has put pressure on both prison infrastructure, facilities and on a prison workforce often ill-equipped to deal with highly challenging and complex individuals.

One of the major contributors to this constant rise is the growing number of adults on remand, with around 35.5 per cent of the prison population yet to be sentenced.⁶⁰ The remand population has increased by 154 per cent since 2006⁶¹. The focus of bail has shifted more towards community safety, with actuarial risk assessment tools used in deciding whether to grant a person bail. Changes to bail laws, in part driven by intense media focus and resulting public fears around high-profile crimes, have expanded the list of offences for which presumption in favor of bail is reversed⁶² and new bail-related offences (offences committed on bail, and breaching conditions of bail) have been introduced.⁶³ There has also been a substantial decrease in the use of police discretion to grant bail, putting people on remand as they wait for bail applications to be heard by the courts.⁶⁴

These changes, implemented in response to growing community concern with people who have offended on bail⁶⁵, have significantly boosted the remand population. At June 2017, nearly 40 per cent of the female prison population and 30.5 per cent of the male prison population in Victoria was unsentenced.⁶⁶ This represents a missed opportunity to purposefully engage with these young adults to address criminogenic factors along with personal and structural barriers to re-integration. As part of an approach we would recommend that the Victorian Government trial a pre-release group conferencing program to assist young adults understand the impact of their offending, consider steps to address the harm and prepare them for release into community.

The impact has been particularly felt by young adults, with those on remand accounting for 38 per cent of the total population of young adults in prison.⁶⁷ (This is higher than the proportion of people on remand in the general prison population). This is a matter of significant concern.⁶⁸

We know that incarceration has a detrimental effect on health and rehabilitation prospects⁶⁹; the detrimental impact of housing people in prison before guilt has even been established must be even greater. In recent years we have seen the Victorian Government respond to overcrowding by commissioning the construction of more prisons, a short-sighted solution that does little to address

offending or rehabilitate people in prison. It is time for the policy focus to shift back to the basics of prevention, diversion and rehabilitation.

We recommend the Victorian Government trial a pre-release group conferencing program to assist young adults understand the impact of their offending, consider steps to address the harm and prepare them for release into community.

Prison culture and staffing

Jesuit Social Services has previously expressed concerns surrounding staff culture and practices in Parkville and Malmsbury youth justice centres.^{iv} We share the same concerns in relation to adult prisons, especially regarding the young adult cohort. Training for staff needs to encompass psychosocial awareness so that officers have a full understanding of the cohort (including insights into the impact of trauma, alcohol and drug use, disadvantage and poverty), and of how the environment can impact on mental/psychological health and behaviour. Having this understanding and working in this way will reduce a punitive approach and is likely to decrease the number of violent incidents.

Australian prison environments are very different to some of the successful models we have observed internationally, where a greater focus is placed on building productive relationships with prisoners and preparing them for successful transition back into the community^v. This therapeutic approach can be contrasted with the culture portrayed in some recent Australian studies:

- A South Australian study assessed the views of corrections officers on implementing harm reduction strategies in relation to prisoner health issues (e.g. clean syringe programs). Overwhelmingly, it was found that officers perceived the introduction of any harm reduction strategies as a threat to officer-prisoner power relations, as it would provide conditions that privilege inmates.⁷⁰
- Another study⁷¹ was conducted on Australian prisoners in maximum security facilities, and explored the willingness of prisoners to approach officers for support. The study found that:
 - Prisoners would rarely seek support from correctional staff, and even if they did seek support, it was often only for practical assistance.
 - Prisoners would almost never approach staff with concerns surrounding conflict with other prisoners, conflict with staff, family problems, and personal problems (e.g. mental health concerns, emotional difficulties).
 - Officers also reported feeling less competent in responding to these kinds of problems, unless it was regarding conflict with other prisoners.

Because young adults in prison have particular needs and require tailored responses, it is essential that staff have relevant training, including around dealing with those affected by trauma, dealing with challenging behaviour, using motivational interviewing and dealing with people with cognitive and

^{iv} See our submission to the Inquiry into Youth Justice Centres in Victoria. The section on staffing is reproduced as Appendix D.

^v The Norwegian model was examined in Jesuit Social Services "Justice Solutions" study trip in 2017. See Jesuit Social Services. (2017). *Justice Solutions: Expanding the Conversation*.

mental health issues. Current recruitment material for Victorian prison officers emphasises that no prior qualifications are required and that “life experience” is the key criterion for joining the prison staff.⁷² Successful applicants then receive some in-house training. The Corrections Victoria site notes: “There’s a lot of information to learn once you become a prison officer, so we give all of our newly recruited squad members a minimum of 42 days fully paid pre-service training. It’s full-time, Monday to Friday, and combines both theoretical and practical learning (including two weeks on the job).” This equates to approximately eight weeks of training.

It is worth comparing this to other jurisdictions with successful rehabilitation outcomes: in Norway, all prison staff complete a two-year qualification^{vi} on full pay at a dedicated Staff Academy, and are taught various subjects including psychology, criminology, law, human rights and ethics.⁷³ Similarly, prison officers in Finland complete a 16 month course with units on basic officer duties (security; counselling; care and support), psychology and ethics, minority cultures, law and human rights, among others. The Finnish corrections service is also considering introducing a joint tertiary qualification for prison and probation staff.⁷⁴

Elsewhere, Ireland replaced its nine-week induction training in 2007 with an accredited two-year Higher Certificate in Custodial Care. The course includes modules on communication and interpersonal skills, human rights, pro-social modelling, health and safety, prison-craft, the sociology of Irish society, equality and diversity, healthcare, prison law, education, mentoring, and ethics.⁷⁵

It appears that training of Victorian officers is at the lower end of arrangements in like jurisdictions. England and Wales increased basic training from six weeks to 12 weeks in 2016, with ten weeks at a learning centre and two weeks in a prison.⁷⁶ Canada’s initial course comprises three stages, including eight weeks online learning followed by 10-11 weeks classroom training.⁷⁷ In Hong Kong, recruits attend a 26-week residential training course.⁷⁸

We recommend that a minimum workforce qualification for all custodial prison staff be introduced that reflects the challenges of the role and the impact appropriate staffing can have on rehabilitation and community safety.

We recommend that the Adult Corrections workforce be trained to identify and support the specific interests, developmental needs and rehabilitation of young prisoners.

We recommend the Victorian Government invest in training correctional staff to use therapeutic and restorative approaches when dealing with young adult prisoners.

^{vi} As outlined in our Justice Solutions paper, this is soon to be extended to become a Bachelor’s Degree

Overcrowding

Overcrowding has an inevitable impact on culture and management practices in prison. A policy focus on punishment rather than diversion has placed many people with challenging and impulsive behaviours in facilities ill-equipped to deal with such numbers, while also increasing pressures on staff. The Independent Investigation into the Metropolitan Remand Centre Riot in 2015 found that overcrowding was a contributing factor to the riot, noting its impact on recreation spaces and access to programs and the resulting increased anxiety and frustration within the prison population.⁷⁹

When staff are stretched to the limit of their capabilities it is very difficult to employ effective responses to prisoner issues. This is particularly true where staff lack adequate training in dealing with challenging or impulsive behaviour.

Inadequate staffing levels have a significant impact both on prisoner treatment and rehabilitation, and on staff safety. The European Committee for the Prevention of Torture noted that low staff-to-prisoner numbers presented ‘a potentially dangerous situation for vulnerable prisoners’, as well as ‘dangers for staff, whose position can be compromised by their inability to exert proper control over – and develop a constructive dialogue with – prisoners’.⁸⁰ Overstretched staff risk stress-related health conditions and burnout, while mistreatment of prisoners also becomes more likely.

One response to dealing with safety and stress issues arising from overcrowding has been the use of isolation. Conversations with our participants exiting prisons suggests this practice is also implemented as a way of punishing offenders or handling difficult prisoners with violent tendencies. The next section of this paper investigates this issue in more detail.

We recommend the Victorian Government increase levels of staffing to minimise the need to use punitive practices such as isolation and restraint.

Many of our concerns about the young adult cohort in our prisons centre on common practices adopted by prison management in the name of safety or maintaining control. Practices such as solitary confinement, management regimes and the use of restraints have received significant criticism in the last year in relation to youth detention, and Jesuit Social Services has previously called for punitive isolation to be banned in the youth justice system⁸¹. It appears these practices are also used excessively in the adult system, with devastating consequences.

There is ample evidence around the harmful impacts of solitary confinement on physical and mental health, and a body of international human rights commentary condemning the practice. We recognise that the adult environment carries with it additional complexity and risks that require careful management. However we know from working with the young adult cohort that isolation and restraint are overused.

This report has already discussed the many similarities between the nation’s youngest adult offenders and their juvenile counterparts in terms of vulnerability and cognitive development. Recent youth justice investigations and inquiries have highlighted the devastating impacts following the use of isolation for children, but many of the concerns around such practices causing “lasting psychological damage”⁸² and physical problems apply equally to those in the adult system.

In this context we argue that the public spotlight must now widen to consider the use of isolation and restraint, and their counterproductive consequences, in relation to young adults in our nation's prisons. Through our work with this cohort (see description of programs in Appendix A) we have witnessed the impact that extended isolation has on a young adult's physical and mental health, and on their prospects of rehabilitation. This report highlights several examples of the devastating consequences of solitary confinement, and seeks to demonstrate why no short-term need can justify the long-term costs of imposing excessive isolation.

Isolation: a practice of great concern

A number of practices used in Australian prisons amount to what is commonly termed "solitary confinement" involving more than 22^{vii} hours a day spent alone in a cell, without access to meaningful human contact. Terms such as isolation, segregation, separation, seclusion or involvement in a management regime can all be used to describe this practice, but the result is the same: the denial of human contact and a severe and oppressive environment, often with limited ventilation and light⁸³. This has significant impact on physical and mental health and future outcomes for prisoners and the community.

Isolation is used for various reasons, including as punishment, containment of violent prisoners, as a result of staff shortages or for a person's own protection. In this paper, the term "isolation" is used to encompass all of these situations, and the various terms and euphemisms referred to above. However we use the term "separation" to denote a particular context for isolation, where a prisoner is separated for reasons of immediate danger to his own (or others') safety.

There is very little transparency in relation to data about how frequently isolation is imposed in our prisons, but from discussions with participants in our justice programs, our staff have gathered that it is an accepted tool of behaviour control, and happens often enough to cause concern and suggest underlying factors leading to its use must be addressed.

The lack of transparency also means that there is no access to data around the types of prisoners who are subjected to isolation regimes. However, we can form an understanding based on information shared by our staff, participants, and observations from other jurisdictions.

US organisation the Vera Institute has invested significant resources in analysing and advocating around isolation practices (or "restrictive housing") across various States. It found that "echoing disparities seen throughout the criminal justice system... people with mental health needs, young men, and people of colour were more likely to be held in restrictive housing than other incarcerated people."

Certainly young adults, who we know to be both a challenging and vulnerable cohort, appear to be disproportionately subject to these practices in Victoria. Internal data collected by Jesuit Social Services reveals that of the 26 ReConnect participants being supported at that time who had experienced use of isolation, half were young adults (i.e. under the age of 25), only three of those participants were supervised post release.

^{vii} Sometimes 23 hours is considered the threshold. We believe there is little difference between 22 and 23 hours in solitary and that both are hugely damaging.

Similarly, participants claim unnecessary use of shackles, restraints and tear gas in correctional facilities. This is disturbing given that the mental and physical harm from these tools, as with the use of isolation, can be significant, especially on the most vulnerable in the prison population.⁸⁴

Concerns have previously been raised around the use of medical and chemical restraints to manage prisoner behavior, and this is also a practice that should be closely monitored. In 2013, the Australian Human Rights Commission found that prison staff respond inappropriately to prisoners with disability, including through the use of medical restraint, often using these tactics when support services are not available.⁸⁵

The Australian Association of Developmental Disability Medicine Position Statement describes the Positive Behaviour Support (PBS) framework, recommended by the Australian Psychological Society, “as evidence-based and best clinical practice in managing behaviours of concern in people with disabilities”. Although the “PBS approach does not specifically preclude the implementation of restrictive practices”, nevertheless “the focus is on maintaining the person’s safety and the safety of others” and “respect for the person and their dignity remains paramount”. The PBS approach mandates that “restrictive practices as a means of discipline, coercion or retaliation are unacceptable and ineffective.”⁸⁶ The PBS is the standard of practice for clinicians working within the disability sector, but has not yet been adopted in the justice system in Victoria.⁸⁷

The use of medical restraint also raises issues around post-release management of medication. Once again, we note the limited transparency and lack of availability of documentation or data on the use of medical and chemical restraints in prisons in Victoria.

As outlined in our submission to the Australian Human Rights Commission’s *OPCAT in Australia Consultation Paper*, it is critical that there is a diversity of mechanisms and responses to ensure that the rights of 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.

For example, Victoria could align mechanisms with what happens in the disability sector, where sign off is required from an independent third party (e.g. Office of Professional Practice) 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.

A report published by the Victorian Ombudsman last year gives rare public insight into the use of isolation and its impacts. In July 2017 the Ombudsman conducted a pilot OPCAT-style inspection at Dame Phyllis Frost Centre, a maximum security women’s prison⁸⁸. The Ombudsman reported she was concerned by separation practices at the prison, noting:

“Conditions in Swan 2, the prison’s management unit, are bleak...Women are locked in their cells for at least 22-23 hours a day and the inspection team found evidence some women do not always receive their daily entitlement to fresh air. There is little privacy for women in observation cells. CCTV monitors in the unit office are visible to staff and visitors. On one occasion the team observed a tradesman sitting behind a desk in front of the monitors, from where he had a full view of a naked woman in an observation cell using the toilet.

There is little meaningful interaction between staff and women...Several women who had been held in Swan 2 described self-harming in the unit because they felt it was the only way to get staff to engage with them...There appear to be limited opportunities to engage women in addressing the circumstances that led to their separation. During the inspection, one woman was released directly from Swan 2 into the community.”

The Ombudsman’s inspection team also noted instances where use of force and restraint appeared unnecessary or excessive, and observed that there were several women who had been held in long term management for more than a year. While recognising the women had highly complex needs and behaviours which were extremely challenging, and that the prison had a duty of care to protect staff and other women at the prison, the Ombudsman concluded that *“long-term separation in an environment like Swan 2 may, however, amount to treatment that is cruel, inhuman or degrading. It is also incompatible with the Nelson Mandela Rules – the main international standards for treatment of prisoners.”*

The same report revealed inadequate data collection regarding the use of isolation:

“The inspection team identified risk areas in record-keeping relating to the treatment of women in separation. Corrections Victoria advised that it does not collect data on the prevalence of longterm separation or the average length of time women spend in separation. When asked about the number of women held in prolonged solitary confinement as defined by the Nelson Mandela Rules (over 15 days), Corrections Victoria advised that its Sentence Management Unit (SMU) keeps records of all prisoners separated under a management regime, but does not collate data on how long the prisoner is separated.”

We recommend that Corrections Victorian introduce an independent third party to oversee and approve regimes to manage restrictive interventions and compulsory treatment, including any significant modification of behaviour support plans such as changes to medication regimes or the use of restraints and isolation/solitary confinement.

The Impact on Health

There is overwhelming evidence around the detrimental health impacts of isolation and restraint practices.⁸⁹

Psychological symptoms from being placed in solitary confinement can range from acute to chronic in a number of areas, including anxiety (irritability, panic attacks), depression (hopelessness, social withdrawal, apathy, major depression), anger (hostility, outbursts of violence, rage), cognitive disturbances (poor concentration, confused thought process, disorientation), perceptual distortions (hypersensitivity, distortions in time and space, detachment from reality, hallucinations), paranoia and psychosis, psychotic episodes or states (psychotic depression, schizophrenia) and self-harm and suicide.⁹⁰

Physiological conditions caused by isolation include gastro-intestinal and genito-urinary problems, diaphoresis, insomnia, deterioration of eyesight, lethargy, weakness, profound fatigue, feeling cold,

heart palpitations, migraine headaches, back and other joint pains, poor appetite, weight loss, diarrhoea, tremulousness, and aggravation of pre-existing medical problems.⁹¹

The European Court of Human Rights has condemned the debilitating effects of solitary confinement, recognising that this practice ‘can destroy personality and constitute a form of inhuman treatment which cannot be justified by the requirements of security or any other reason’.⁹²

The use of physical restraints has been associated with positional asphyxia, dehydration, and restriction of circulation that could lead to pulmonary embolism,⁹³ severe bruises or lesions, fractured and broken bones (as a result of the struggle to place the inmate in the device) and the development of blood clots.⁹⁴ There are also a number of mental harms that either originate from, or are exacerbated by, the use of restraints, including panic, depression, delusion, demoralisation, insomnia, and uncontrollable anger.⁹⁵

In the most extreme cases, use of restraints can result in death.⁹⁶ More than 20 prisoners have died in Texas alone after being placed in a restraint chair, which is considered one of the most dangerous physical controls used in prison.⁹⁷

The use of isolation and management regimes on young adults in prison is an issue of great concern for Jesuit Social Services and for many others who work with young adults in the justice system.

The Law Institute of Victoria, in a submission to the 2016 Children’s Rights Report undertaken by the Australian Human Rights Commission, objected to the use of management regimes for young adults in Victoria, noting that:

In management, few young people are able to access youth-specific support services. LIV members with clients in this situation have advised that being held in management entails being in lockdown for up to 23 hours a day, with little access to programs or activities.⁹⁸

Researchers have demonstrated the link between isolation of children and lasting psychological damage.⁹⁹ As noted, young adults are particularly vulnerable due to the fact that they are still developing mentally and physically.¹⁰⁰ An explanation as to why isolation can have a detrimental impact on a developing brain is summarised in a report undertaken by the Juvenile Law Centre:

CASE STUDY: Harry

Harry* is a 25-year-old male who was ‘straight released’ into the community in December 2017 after five years in isolation (a “long term management placement”) at an adult maximum security prison.

Throughout the placements, Harry says a number of physical restraints were used on him, including body belts, as a behaviour management tool. Harry reported feeling as though his long term management placement had impacted on both his memory and comprehension. Support workers have concerns around the impact that Harry’s isolation may have had on his ability to reintegrate into the community, given he was mostly in isolation since the age of 18. Harry was briefly ‘straight released’ from custody when he was 20, but he struggled in the community and returned to custody within a short time.

* name has been changed

During adolescence, the brain reaches what is referred to as the second period of heightened malleability, characterized by enhanced neuroplasticity.^{viii} An advantage of increased neuroplasticity is that the brain is responsive to environmental changes. However, increased neuroplasticity can also make it difficult to recover from adverse experiences. As a result, during adolescence and emerging adulthood, youth are particularly susceptible to environmental influences, which can impact social, psychological, and neurological growth. Researchers have found that if there is a lack of stimulation or aberrant stimulation for youth during this period, the results can lead to lasting effects on physical and mental health in adulthood. For this reason, researchers suggest that solitary confinement may be particularly problematic for youth and young adults.¹⁰¹

Isolation 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.¹⁰² Isolation also increases the risk that those detained will self-harm, for example by banging their heads against walls.¹⁰³ The traumatic nature of isolation can have a severe consequence on adolescent brain development, increasing the likelihood of sustained contact with the justice system and suicide.¹⁰⁴

The proven physical and mental health impacts of isolation and restraint practices undoubtedly impact on a person's ability to reintegrate into the community on release. Physical and mental health issues will affect everyday living including motivation, ability to self-care, employment and training engagement. Exacerbating the negative impact on rehabilitation and reintegration is the fact that young adults who have been placed on a management regime will often complete their full sentence and re-enter the community on straight release, spending up to 23 hours in their cell one day and finding themselves completely unmanaged the next. Individuals in this position are likely to themselves be at significant risk in the community upon release, and are also more likely to negatively impact on community safety.¹⁰⁵

One LIV member reported that she represented two clients' who were involved in a riot in Metropolitan Remand Centre in 2012. The two young men were 18 and 19 years old at the time of the riot. They were both transferred to Barwon Prison, a high security facility, and held in 'management' because of their vulnerability and their offences. The 19 year old was put into lockdown for 23 hours a day and remained there for a year and a half after the riot. The 18 year old was placed in a similar form of solitary confinement for 17 months. The member reported that one of them described that he was starting to confuse what was reality and what was not, because his reality was so confined.

^{viii} Neuroplasticity is the brain's ability to reorganise, modify or re-wire its connections throughout life, from infancy to adulthood, and in response to brain injury. See The Conversation. (2016). What is brain plasticity and why is it so important? Retrieved from <https://theconversation.com/what-is-brain-plasticity-and-why-is-it-so-important-55967>

International peers have expressed deep concern about the use of isolation and long term management regimes. The Jesuit Centre for Faith and Justice's '*Developing Inside*' report warned that putting young adults in lockdown for up to 23 hours a day would compound the effects of already existing adverse conditions in Irish prisons, and that the denial of purposeful activity would have detrimental effects on the person.¹⁰⁶ The organisation suggested that prolonged isolation violated European Prison Rules and international human rights law.¹⁰⁷

In a similar vein, a 2016 UK Parliamentary Inquiry into Young Adults in the Criminal Justice System noted:

"We have major concerns about the time young adults are spending in their cells, the volume of disciplinary measures, and reoffending rates. While we understand the challenges of balancing responses to risks and needs, if the latter are not known and resources are not available to address them appropriately, practice weighs significantly on risk which is of little benefit to young adults who wish to give up crime, and indeed may compound their likelihood of remaining involved with the criminal justice system.

...

Current approaches to the treatment of young adults involved in the criminal justice system are not consistently developmentally appropriate. They do not sufficiently recognise the strong evidence on brain development, maturity, and the impact of cognitive impairments on how young adults experience the system. Neither do they seek to lessen the potentially detrimental effects of the system itself on development. The system is therefore not as effective as it could be in reducing offending by young adults, or improving their life chances following their involvement within it, and in some cases their treatment further compounds the problem."^{ix}

Also in the UK, a report by the Barrow Cadbury Trust focused on deaths of young adults and children in prison and highlighted its concern with the use of isolation to punish misbehaviour, to manage health problems, and to manage young adult prisoners struggling in the regular wing due to bullying and intimidation.¹⁰⁸ The report highlighted the harms caused by the use of isolation on young adult prisoners, including distress and increased risk of self-harm¹⁰⁹, and described isolation as an 'extreme disciplinary measure that should only be used in exceptional circumstances'.¹¹⁰

A report by the Office of the Correctional Investigator in Canada found that young adults^x were overrepresented in isolation given they made up 6 per cent of all prisoners who were in isolation, despite comprising only 2.7 per cent of the federal prison population.¹¹¹ The report recommended that

^{ix} The same Committee recently published a follow-up report on the subject of young adults in the justice system, and expressed disappointment at the progress made by the Government and its willingness to act on the Committee's recommendations. It stated: "...our criminal justice system is failing their young adult counterparts. The waste of young adults' talents and energies is one of the great social challenges of our time. The lack of decisive action is also failing society at large as citizens continue to experience crimes which should be preventable and which would gain from these young adults' contributions should they be given the right opportunities." See House of Commons, Justice Committee. (2018). *Young adults in the criminal justice system*. Retrieved from <https://publications.parliament.uk/pa/cm201719/cmselect/cmjust/419/419.pdf>

^x Note that this report only classified 18-21 year olds as young adults

federal corrections should implement a presumptive prohibition on the use of isolation on people under 21, and that this should be incorporated into law.¹¹²

In Australia, too, there has been significant attention recently around the use of isolation, particularly in relation to youth detention. The Victorian Children's Commissioner conducted an inquiry into the use of isolation, separation and lockdown practices in Victorian youth justice facilities¹¹³, and the use of the practice in the Northern Territory was reviewed as part of the inquiry by the Royal Commission into the Protection and Detention of Children following revelations of appalling abuse in the territory's Don Dale facility.

The Royal Commission condemned a system that had long failed to rehabilitate children, protect human rights and comply with relevant laws. The Commission noted that inappropriate and punitive use of isolation in youth justice was causing "lasting psychological damage" and recommended a prohibition on restraint or isolation being used for the purposes of maintaining "good order" or to discipline a detainee in youth detention facilities.

The final report from the NT Royal Commission stated: "Isolation of children and young people was used on some detainees excessively, punitively and in breach of section 153(5) of the Youth Justice Act (NT) ... detainees were placed in physically and mentally unhealthy conditions." The report also found that conditions at the centres in question "caused suffering to many children and young people, and very likely, in some cases, lasting psychological damage to those who not only needed their help but whom the state had committed to help by enacting rehabilitative provisions in the Youth Justice Act (NT)."^{xi}

Similarly, in her report *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system* the Children's Commissioner found that children and young people in Victoria's youth justice centres were subjected to unacceptable levels of isolation and

In investigating the use of isolation in detention, the World Health Organisation concluded that:

- Solitary confinement has a negative impact on the health and well-being of those subjected to it, especially for a prolonged time
- The detrimental effects of solitary confinement on health include 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.

^{xi} The *Youth Justice Amendment Act 2018 (NT)* addresses the immediate recommendations from the Royal Commission into Protection and Detention of Children in the NT that relate to the safety and well-being of children in detention. The Act specifically restricts the use of restraints, isolation, and routine strip searches for young people in detention.

routinely 'locked down' or isolated due to staffing issues. The forward states: "Youth justice practice must recognise the significant neurological and emotional harms that flow from isolation. Isolation has been found to be ineffective to manage difficult behaviour, and can instead exacerbate it. The problematic nature of excessive isolation has been widely acknowledged." While the report is focused on youth justice, given what we know of the continuing brain development until the age of at least 25, this argument logically also applies to the adult cohort.

Jesuit Social Services welcomes the commitment of the Victorian Government to act on the recommendations contained in *The Same Four Walls*, and its acknowledgement of "very poor practice" and "longstanding issues relating to staffing" in the state's youth justice facilities.¹¹⁴

We urge the Government to heed the lessons from inquiries into the youth justice system and consider how those lessons also apply in adult custodial environments.

CASE STUDY: Gregor

Gregor* is 25 years of age and was in a long term management placement in an adult prison in Victoria.

Gregor was transferred to an adult prison at the age of 18 from a youth justice centre after his behaviour became too challenging to manage at the facility. He quickly became involved in serious incidents in the adult prison and has now largely been in isolation since the age of 18.

Gregor alleges he has been handcuffed, shackled and tear gassed under these isolation regimes. He says he has also been assaulted numerous times by prison staff and has often been placed in observation cells, where his clothes have been removed by staff and replaced with a canvas gown.

Gregor recently received a lengthy sentence for a serious violent offence following his last release from isolation (long-term management placement), a significant escalation in his level of offending. He remains in isolation, and has been there for the past 18 months.

He has revealed that he finds face-to-face interactions with people difficult to manage, including with his mum, given he is isolated for 22 hours a day.

* name has been changed

Their own words: Isolation and management experiences as shared by our young adult participants

Jesuit Social Services develops its policy and advocacy positions by examining the research and drawing on first-hand knowledge acquired through our justice programs. The recommendations and contentions contained in this paper are based on our experience with young adults who have spent time in custody and evidence gleaned from our research.

Through our ReConnect program, Jesuit Social Services works with men and women transitioning back into the community. A number have experienced long term management placements in adult prisons, sometimes for periods in excess of two years. A data snapshot as at October 2017 showed that of the 26 ReConnect participants being supported at that time who had experienced use of isolation, half were young adults (i.e. under the age of 25) and eight were Aboriginal and Torres Strait Islander. Only three of those participants were supervised post release.

These participants report feeling 'institutionalised' and as though they have 'lost' themselves, and have limited hope for their future in the community. They struggle to manage day-to-day living tasks, experience constant feelings of hypervigilance and adopt behaviours showing how deeply traumatic isolation has been. For example, one participant created a space to sleep that replicated the same size as a prison cell, reconstructing their isolation experience.

Hearing their experiences, we have no doubt the isolation practices used in prison have had significant, irreversible, impact on their future life prospects as well as on the likelihood of effective rehabilitation and reintegration. Many of these young people do not remain in the community for long periods of time, often returning to prison. Concerningly, their offending tends to significantly increase in severity from previous offences. Even with only a small number of young offenders subject to these regimes the toll on the young adults themselves, in addition to the flow-on impact on community safety, is significant.

Many young adults are placed within these regimes following their involvement in incidents in the prison. We know that significant trauma affects brain development and that, as a result, many of these young adults are more likely to react with a 'fight or

CASE STUDY: James

James* is an Aboriginal man who was transferred to an adult prison in Victoria from a youth justice centre at the age of 16.

James was released from an intermediate regime placement (22 hours in cell, two hours out of cell with a small group of prisoners) at the age of 19.

Following this transfer, he struggled to manage his transition back into the community.

While James secured a transitional property, he found this too challenging to live in, and made his bathroom into a cell. He slept in the bath and prepared his food in the bathroom. James brought a number of items, including a radio, a kettle and a 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 the source of much concern to his family, who were not immediately aware of his transfer to an adult prison at the age of 16.

* name has been changed

flight' response – or use violence - when feeling under threat. We are concerned that long term isolation has become the Victorian prison system's default response to 'managing' young adults who have experienced trauma.

Jesuit Social Services has also had experience working with young adults who youth justice custodial staff have found too difficult to manage and have, as a result of their behaviour, been transferred to adult prisons from Malmsbury Youth Justice Centre. Many of these young adults are then vulnerable in the adult system and are put in isolation after they are involved in incidents. Such incidents can involve exploitation by more experienced prisoners to become 'lackeys' so that the more experienced prisoner does not get caught. Young adult prisoners with are also vulnerable to recruitment to criminal activity from more experienced prisoners.

The transfer of these young men to adult prisons might have been avoided if the youth custodial environment had the capacity to respond to their behaviour in an appropriate manner. Rather than transferring children and young people displaying challenging behaviours to adult prisons, youth justice staff should be adequately trained and resourced to respond appropriately to these behaviours in the youth justice system.

A family perspective: Gregor's grandmother

The biggest change I have noticed in Gregor since being locked down is his anger. He was so angry when he got out last time after being in management, he was there but not there – mentally he was miles away. He is completely out of touch with our reality out here and has created his own sense of reality. He had no access to activities to help him address his anger, even recreation activities like swimming in a pool or boxing would be helpful. And he was so paranoid when he got out, constantly looking over his shoulder and having to sit where he could see everything.

Gregor upped his offending big time after his last release from isolation, even the police said that. When he was in juvie [juvenile detention], his crimes were never like this, it was often related to drugs/cars and lower level stuff. He has become much more violent since being in management.

He didn't stay out of custody long because he was released straight from solitary. He never got to go to mainstream where he could mix with people before he got out. Gregor had been in solitary for so long he had no idea how to communicate with people, even his kids. He never had an opportunity for rehabilitation or to learn skills related to employment. Being in solitary makes it so much harder for these guys to get out and get a job. They have no idea how to live in the community. And who wants to employ someone after they have spent years in management?

Gregor has raised with me before the amount of people that commit suicide in management but this is never published and no one ever hears about it. There is no rehabilitation in adult prisons for people in management. He was released with nothing except for you [ReConnect]. They just release you after being locked down 22 hours a day and say, "there you go – you're in the community now".

There are prisoners in there that do want actual help, Gregor is one of them. He has had no opportunity to change, he has no choice and he has been locked away like an animal. He isn't a bad kid, he has done some serious things and really wants help that he doesn't get. The more time he is locked down, the angrier he becomes. The older he gets in there, the longer he is locked down, the more mentally disturbed he will become. He will never want to leave there because he will be so scared of getting out. What is he going to do out here?

Now he is in his mid-twenties and has pretty much been locked down since he was 18 in between short times in the community. Don't lock them in a cell, just leave them there, teach them nothing and then release them to the community. It is not safe for anyone. What Gregor is in prison for now is very serious and would have had such a big impact on the victim's family. It has had a lot of impact on our family too, particularly his sister and children [Gregor's sister cares for his children]. I worry that he will lose his relationship with his kids because of the impact being alone all the time has on him.

My biggest worry is that when he gets out, he will just go back in again because he has been locked down for so long and that is all he is used to. That is if he is alive and if he lives. I worry most days that he will kill himself in there eventually because of how long he has been isolated for.

The Legal position in Victoria

We believe there is a need for the law in Victoria regarding the use of isolation and restraint within adult justice facilities to be amended to reflect international concern around its use and impact. While we commend some of the limitations on use of separation contained in existing legislation and guidelines, a lack of transparency makes it difficult to gain assurance all regulations are adhered to, while anecdotal information obtained through our work suggests that they are not.

The state-by-state management of prisons means there is no consistent and clear regulation across Australia. Each state jurisdiction confers wide discretion on the senior prison administrator's decision-making powers, and courts are reluctant to intervene in the use of these powers.¹¹⁵ The use of solitary confinement is usually considered legal where safety concerns are present.

In Victoria, legislation and policy guidelines currently allow for the separation of prisoners for the safety of the prisoner or others, or the "security, good order or management" of the prison¹¹⁶. Policy guidelines require that weight be given to maximising wellbeing and rehabilitation of prisoners. Furthermore, these guidelines call for a separation environment that minimises social isolation. Legislation demands that the medical and psychiatric condition of the prisoner is considered in the isolation, and the Justice Secretary must order the separation in writing.¹¹⁷ The Secretary is entrusted to determine when the isolation is "no longer necessary", and only then will solitary confinement cease.^{xii}. There is no prohibition on prolonged solitary confinement, with legislation merely providing that prisoners should have one hour outdoors each day, weather permitting.¹¹⁸

Guidelines and instructions also impose some limitations around the use of separation¹¹⁹. These include that "the prisoner is only separated from other prisoners while the safety of the prisoner or other persons, or the security, good order or management of the prison is at risk," and that a prisoner must be informed in writing of the reasons for separation and when the Separation Order ceases.

While current Victorian legislation includes some safeguards around the use of separation, it does not sufficiently protect those in prison from punitive use of isolation, or include limitations on the period

CASE STUDY: Jack

Jack* is currently living with his girlfriend, however, he has been experiencing difficulty in adjusting to the community after being held in isolation.

He often spends most of his time cleaning the house, as this is something he would do in his cell during his time in isolation. Jack often walks laps of his backyard and his hallway, as this was something he would do in his cell. He finds these activities comforting.

He also often paces in public places and experiences anxiety around other people. Jack recently celebrated his 25th birthday in the community, but locked himself in his friend's bedroom for the day as he found this experience overwhelming.

* name has been changed

^{xii} For other states see Montgomery, K. (2015). Op cit: "In South Australia and Tasmania, the duration of solitary confinement remains un-regulated. Conversely, Queensland has the most regulated segregation practice, with a maximum duration of 7 days and compulsory medical checks before and after the confinement period."

of isolation, despite what we know about the irreparable harm from extended use. And without external oversight it is impossible to say whether the safeguards are adhered to in fact and in spirit.

People in prison, regardless of their crime, are entitled to be treated with dignity, humanity and respect according to international law.¹²⁰ There are arguments that solitary confinement and use of restraints may contravene both the *International Covenant on Civil and Political Rights* and the *Convention against Torture*.¹²¹ Restrictions are contained in the United Nations Standard Minimum Rules for the Treatment of Prisoners¹²² (the so-called ‘*Mandela Rules*’), which require that solitary confinement be used only as a last resort, for the shortest time possible, and with safeguards around authorisation and review. The rules prohibit both prolonged (ie more than 14 days) and indefinite solitary confinement.

UN special rapporteur Juan Mendez in 2011 called for a worldwide ban on isolation except for ‘exceptional circumstances’ where the duration must be ‘as short as possible’¹²³, and argued that isolation should in no circumstances be used for children or people with mental disabilities. He argued that even 15 days in confinement amounted to torture or cruel, inhuman or degrading treatment or punishment, and that 15 days is the limit after which irreversible harmful psychological effects can occur.

Despite Australia being a signatory to international conventions protecting prisoner rights, these are not necessarily reflected in justice legislation. It is state and territory governments that are responsible for running prisons,¹²⁴ and treaties cannot create rights and obligations in domestic or state law, unless enacted in state or territory law. Nevertheless, international law, including treaty law, is a legitimate and important influence on the development of the common law and may be used in the interpretation of statutes.

Section 22 of the Victorian Charter of Human Rights and Responsibilities requires the humane treatment of those in detention¹²⁵, however this charter has rarely been applied in the Victorian courts.¹²⁶ In Victoria, we have seen a significant breach of human rights in the detention of children in an adult prison in 2017. The children detained at the Barwon prison site were held in isolation for up to 23 hours a day in cells designed for adult men, handcuffed during routine activities, and held in an environment that was found by experts to be demoralising and dehumanising. Their detention was found to be unlawful by the Victorian Supreme Court.⁹

Liberty Victoria argues that humane jail conditions must include access to health services, an emphasis on rehabilitation rather than punishment, and that prison conditions should “uphold the human dignity of the prisoner”. In a submission to the Australian Human Rights Commission’s Inquiry into OPCAT in the context of Youth Detention¹²⁷, the Law Institute of Victoria suggested that solitary confinement may amount to cruel or inhumane treatment or punishment. The Law Institute argued that management practices such as solitary confinement should be subject to investigation by an independent monitoring body with powers to enter prisons to inspect them regularly (without requiring permission or cooperation), to obtain documents, conduct interviews with prisoners and make findings and recommendations independent of political or other pressures.

Several Victorian judges have previously expressed concern about the use of isolation and highlighted the impact it has had on people’s rehabilitation prospects and offending behaviour.

The inconsistent and vague legal position on solitary confinement across Australia is undesirable; Victorian legislation does not contain adequate protections, especially in light of the vulnerability of those in prison.

Jesuit Social Services' Position on Isolation and Restraint in relation to Young Adults^{xiii}

Based on our examination of the international research and literature regarding the impact of isolation and first-hand observations, together with what we know about the vulnerability of young adults in prison, Jesuit Social Services believes there must be strict limits on the use of isolation and restraint practices in relation to young adults, including prohibitions on prolonged confinement.

The Sentencing Act specifies that prison is used to deter, denounce, punish, rehabilitate and protect¹²⁸. If it is accepted that the denial of liberty is in itself the punishment, then it is inappropriate and unnecessary to further punish through the use of isolation or restraint. Nor is it acceptable that prisoners should bear the brunt of staffing shortages or inexperience by being confined to cells for extended periods.

Punitive isolation should never be permitted as an option for behaviour management of young adult prisoners.

Jesuit Social Services accepts that there may be limited circumstances where separation may be necessary for the protection of the young adult or others. Such separation should only be used in a situation where a person might reasonably be expected to cause serious physical harm to themselves or others, 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 separation as a solution and instead employ restorative interventions.

In the context of using separation for immediate safety needs of the young adults, the separation environment must be trauma-informed and therapeutic, avoiding as much as possible the negative effects that separation has on mental and physical health.

In these cases, separation should be for the minimum amount of time necessary, and subject to daily review. The person affected should also be informed of the reasons for the separation and the expected period it will be used for. Justice also demands the implementation of an appropriate accountability framework, including independent inspection and oversight. The use of separation should be recorded by prison operators and the relevant data made public to ensure accountability and adherence to guidelines.

Physical restraints should be used only in situations where all de-escalation techniques have been exhausted, and the staff or the detainee are at serious risk of harm if not restrained. Staff must also

^{xiii} The scope of this paper is restricted to considering the position of young adults. However, Jesuit Social Services has concerns around the use of isolation and restraint practices for any prisoner. Although young adults in prison are particularly vulnerable in situations of isolation and restraint, we believe it would be beneficial to extend the principles of harm-minimisation discussed in this section to the entire adult prison population, reflecting the concerns expressed globally around solitary confinement practices.

* Names have been changed

ensure that the restraint is applied appropriately without causing any additional pain or discomfort to the person.

In 2012 various correctional authorities around Australia, including Corrections Victoria, signed off on a “national statement of intent”¹²⁹ listing a number of high level principles around managing prisoners. (See Appendix B where the statement is reproduced). These principles included that prisoners be:

1. Managed and contained in a safe, secure, humane manner.

3. Actively engaged to make positive behaviour change (inclusive of accessing intervention programmes, education, vocational education and work opportunities) with the aims of preparing them for their participation in and return to the community, as well as reducing re-offending behaviour.

.....

6. Held at a level of security which is commensurate with the level of risk posed by that prisoner.

...

8. Supervised fairly and consistently with the aims of encouraging positive behaviours and maintaining security.

The same document (see extract, Appendix C) states that “Prolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading punishments should not be used” and that “Every prisoner who is placed in segregation should be visited daily by a member of the prison management or approved delegate, and as frequently as practicable (preferably daily) by a representative of the medical officer”. Other principles deal with restrictions on long term management.

Our observations and interactions with participants suggest that this “statement of intent” is not being followed, and that prolonged solitary confinement continues to be used as punishment while isolation is used to deal with problematic behaviour or staffing issues with little regard to long term prisoner health.

Ideally, of course, the “need” for isolation is avoided altogether. If separation is to be used as a tool to ensure safety, we must ask whether this in fact represents a failure of our justice system.

Early identification of an escalating situation and immediate intervention are key to reducing the need for separation. Staff must be trained in therapeutic and restorative approaches, handling escalating situations and identifying indicators of distress and frustration which may contribute to challenging behaviour.

Addressing violent and disruptive behaviour of young adults in prison is necessarily resource intensive. Additional costs involved in staffing and training should not deter greater efforts on this front. However, the longer-term picture must also be considered, as was pointed out by the UK Parliamentary Committee inquiring into this subject two years ago:

“Young adults offend the most but have the most potential to stop offending. They are resource intensive as they are challenging to manage. A strong case could be made for recognising that expenditure to make the system more developmentally responsive would pay dividends in reduced costs to the system in reducing incidents of violence and to society in reducing offending and the creation of further victims.... tinkering around the edges misses clear opportunities to seek to prevent the cycle of offending continuing, creating more victims in the process.”¹³⁰

Taking a long term view that aims to rehabilitate young adults presents the best opportunity to make our community safer and stronger.

We recommend the Victorian Government legislate for a presumption against isolation, with isolation only permissible in rare cases where immediate safety to persons is a concern, and then only for the briefest possible period. In no case should isolation exceed 14 consecutive days, and a period of such length could only be justified in the most extreme circumstances.

We recommend the Victorian Government legislate to ensure any isolation is subject to daily review by an independent mental health professional. In line with existing guidelines any person placed in isolation must be told the reason for this, and should also be told the expected duration.

We recommend the Victorian Government require all prison operators to record data on the use of isolation and restraints in Victorian prisons (including reason for use, length of use and non-identifying prisoner characteristics such as age, ATSI status and gender), and that this data is made public.

Parole and Straight Release

Stricter Parole and Changes to Bail Carry Other Risks

In recent years, the Victorian parole system has come under intense public and political scrutiny, due to a number of serious violent offences being committed by offenders on parole.¹³¹ In response, there have been two reviews of the parole system since 2011¹³², with the 2013 review prompting substantial change in the practices of the Parole Board and shifting the likelihood towards parole being denied. As at 30 June 2017, there were 841 parolees in the community, down from 981 at the same time in the preceding year, a reduction of 14 per cent and an overall reduction of 49 per cent since 2012-13.¹³³ Slightly more parole applications were approved rather than denied, with 58 per cent approved and 42 per cent denied. While this figure has fluctuated only slightly in recent years, it represents a dramatic shift from 2012-13, when parole was granted for 83 per cent of cases, and denied for only 17 per cent.^{xiv}

^{xiv} For a fuller picture, it should be noted that other factors are relevant to this cohort. This includes changes to bail (discussed elsewhere in this report), and the introduction of hybrid Community Corrections Orders, where a sentence combines a period of imprisonment with a period served in the community under supervision within a different framework. Those who have

A drop in parole numbers means an increased number of prisoners face straight release without conditions/supervision or post-release support) when their full sentence is served. This has major implications for young adult offenders, particularly those who have experienced extensive management and isolation regimes.

Jesuit Social Services is concerned about vulnerable young adults who are being released back into the community after long periods of incarceration without any supervision or support. Young people leaving adult prisons are a highly vulnerable group¹³⁴, with compromised mental and physical health¹³⁵ and a high post-release mortality rate. A Queensland study found that during the first year after release from prison, young adults had a more than six times greater risk of death compared to people of the same age and sex in the community. Their risk of death was also considerably higher than prisoners from older age groups.¹³⁶

In addition to health-related concerns, young adults also have a higher propensity to reoffend. The recidivism rate for ex-prisoners under 25 is 52.7 per cent in Victoria, an eight per cent lift above the general Victorian prisoner group.¹³⁷

Community engagement (e.g. through education or employment pathways) and appropriate transitional supports around health, housing and day-to-day living can have a powerful impact on a young adult's successful reintegration into society upon release¹³⁸. Yet straight release means it is difficult to ensure young people achieve these supports.

Jesuit Social Services is particularly concerned about the straight release of young adults who have spent periods of time in isolation who on exit face significant barriers to achieving successful rehabilitation and reintegration. It should be no surprise that many of these young adults do not remain in the community for long before returning to prison, often after an escalation in the seriousness of offending.

The Need for Transitional Supports

Post-release and transitional support can help young adults transition more effectively into the community.¹³⁹ A number of programs are already in existence, but Jesuit Social Services believes there are opportunities for further investment in this area, particularly in supporting young adults as they exit custody. There is a need for greater resourcing of a through-care model which offers ongoing, coordinated and youth-focused practice. A number of health needs should be addressed in such programs, including physical health (e.g., through HIV prevention programs), mental health, social disadvantage (e.g. programs that assist young adults to access accommodation, employment and social services), and substance use (e.g., through education and harm reduction programs around risky drug injecting behaviours).¹⁴⁰ For these programs to be most effective, they should commence before release and continue post-release.¹⁴¹

The new statewide Post Release Support Program (PRSP), which will target unsentenced prisoners and prisoners with short sentences of three months or less, will go part of the way in providing reintegration support for those leaving prison in Victoria. While we welcome this initiative, we note

spent significant time on remand before sentencing may also be released without supervision (i.e. have no opportunity for parole) if their sentence has been fully served during that remand period. People sentenced to less than one year in prison are not eligible for parole and must serve their full sentence in prison.

PRSP will offer support for a limited cohort. It is essential that youth-focused intensive support and transition programs are more widely available to address the key difficulties facing young adults including: providing pathways to education, employment, housing and reconnection to family and community; addressing criminogenic behaviour; and helping young adults to recognise the impact of their offending on individuals, family and community. Support should be given both pre- and post-release.¹⁴² Where possible, this support should be provided by the same support worker, ensuring continuity of support and establishment of a relationship of trust. We will be closely monitoring the effectiveness and resourcing of PRSP in terms of addressing the issues identified in this paper.

CASE STUDY: Gregor

Gregor*, now 25, has been released a number of times from management placement, and has had difficulty managing his transition back into the community each time. This is mainly due to the fact that he has been faced with homelessness each time he was released. Even when he was able to secure housing, he often secluded himself to his bedroom as he felt his one bedroom apartment was too big. When out in public, he could not walk with his back to traffic, and often felt he needed to sit with his back against a wall so he could be fully aware of all his surroundings. He has also had a number of mental health problems following these releases, including anxiety and depression. These mental health problems have resulted in Gregor engaging in drug use to help him cope with his circumstances. He attempted suicide twice after his first release from management placement when he was 20 years old. These management placements have left Gregor institutionalised, making it extremely difficult for him to function effectively in the community. His family have described him as being a completely different person since his placement in these regimes.

* name has been changed

We recommend the Victorian Government ensure that no young adult be released into the community directly from prolonged periods in isolation. This should include a step down approach that reintegrates and socialises people before they are released into the community. This should occur in prison as part of their transition planning.

We recommend the Victorian Government invest in more intensive, therapeutic interventions focused on personal development through personal and vocational skill building, housing support, counselling and reintegration support for young adults post-release, and particularly for those who have experienced periods of isolation during their custody.

Accountability and transparency

Jesuit Social Services has previously expressed concern about the lack of accountability and transparency within Victoria's prison system¹⁴³. Unlike other states in Australia (e.g. New South Wales, Western Australia) and countries such as the United Kingdom, Victoria does not have an Independent Prison Inspectorate that is responsible for overseeing Victorian prisons.¹⁴⁴ The Victorian Ombudsman, who responds to specific complaints about government services, is the only independent authority with the ability to investigate.¹⁴⁵ However the Ombudsman's office itself has noted the obvious limitations to its scope given the restricted ability of prisoners to lodge complaints, especially where they concern the behaviour of prison guards, and the burden on limited resources given the Ombudsman's broader remit beyond prisons.

The Justice Assurance and Review Office (JARO), formerly the Office of Correctional Services Review (OCSR), is an arm of Corrections Victoria charged with driving "continuous improvement in Victoria's critical justice systems... making them better for the community, staff and people held within and visiting the justice facilities."¹⁴⁶ However JARO is neither independent nor required to publicise any concerns.

Jesuit Social Services supports the concerns raised in the Victorian Ombudsman's Report on Deaths and Harms in Custody (2014), which highlighted JARO's lack of transparency and independence from Corrections Victoria.¹⁴⁷ The Ombudsman's report found that the OCSR (as it then was) had repeatedly failed to take appropriate action in relation to the Victorian prison system¹⁴⁸, and did not publicly report the outcome of its investigations, which meant the public were not informed as to whether appropriate action had been taken to address concerns raised in investigations.¹⁴⁹ This led the Ombudsman to recommend that an Independent Custodial Inspectorate that reports to Parliament be established, and that it should have monitoring and oversight responsibilities.¹⁵⁰ Jesuit Social Services strongly supports these recommendations.

A good example of such a body is the Prisons and Probations Ombudsman in the United Kingdom, who is responsible for conducting independent investigations into the deaths of prisoners.¹⁵¹ The findings of the investigations are published on the Ombudsman's website, as well as 'learning lessons' bulletins which detail the actions taken by prisons in response to the findings of the investigation.¹⁵²

Another possibility would be to use the Western Australian Inspector of Custodial Services as a possible model. This Inspector focuses on institutional and systemic issues rather than individual complaints, inspects and reviews custodial services and has comprehensive powers to obtain and use relevant information. It has the power to obtain relevant information and undertake reviews on custodial services that are then tabled in Parliament and made publically available, ensuring accountability and transparency. Since the establishment of this role in Western Australia, and a similar role in New South Wales there have been measurable improvements in accountability and transparency in the operation of correctional facilities in these states¹⁵³.

An Independent Custodial Inspectorate can create mechanisms of accountability that would ensure that the use of isolation in Victorian prisons is kept at a minimum, and only used as a last resort. It would also help to monitor the behaviour of custodial staff, and ensure that they are dealing with escalating situations with the correct practice that does not involve the use of restraints and isolation

as behaviour management tools. The transparency of such a body could also ensure that data and information about young adults in management regimes is made available, so that prisons can be held accountable by the public and relevant organisations.

The Australian Government's decision to ratify OPCAT will also provide much-needed oversight of Victorian prisons, but the obligations may take some years to implement. Jesuit Social Services calls for implementation to be attended to urgently, as we believe OPCAT:

- presents a valuable opportunity to strengthen oversight measures already in place, and enhance Australia's commitment to these protections
- will help improve oversight mechanisms and ensure that practices in youth and adult detention facilities meet UN standards of treatment and are thoroughly investigated – this includes assessing the use of isolation and solitary confinement, and subjecting these types of practices to investigation by an independent monitoring body, strengthening accountability and improving outcomes for detainees
- offers a clear opportunity to drive more holistic and therapeutic practices within prisons, and the justice system more broadly
- provides children, young people and adults within these environments – who may experience disadvantaged in multiple and complex ways – with a voice.

Under OPCAT, State parties agree to establish an independent National Preventative Mechanism (NPM) to conduct inspections of all places of detention. State parties also agree to international inspections of places of detention by the United Nations Subcommittee on the Prevention of Torture. OPCAT carries with it important obligations, most of which will fall to the individual states who have responsibility for the various closed environments that are intended to keep our community safe. In Victoria, this means the Victorian Government will need to open places of detention to the UN sub-committee from 2018. The Victorian Government will have three years to 'designate' or appoint one or more local NPMs to conduct regular inspections. We welcome these developments but believe that a process of transparency and accountability is required as a matter of urgency.

We recommend the Victorian Government immediately establish an Independent Custodial Inspectorate that is responsible for overseeing prisons in Victoria and reports directly to Parliament.

Conclusion

Young adults in Victorian prisons are a cohort with particular needs and rehabilitation prospects. They have not yet reached full cognitive maturity and are prone to impulsive actions. They often have a background of significant disadvantage, and are vulnerable to influence and abuse by older prisoners. Their prospect of rehabilitation is stronger than that of older adults, but the likelihood of rehabilitation is easily voided through punitive and harmful practices such as isolation and the use of restraints.

The combination of their psychological immaturity and background of complex disadvantage means that young adults are vulnerable and at risk within adult prisons. Punitive approaches to justice are limited in their ability to address the complex and interconnected social determinants of crime, and most often fail to make communities safer.

Jesuit Social Services supports investment to ensure that the justice system is able to continue to deliver justice, to protect the community, and uphold the basic human rights and dignity of people in the system. This means greater investment in staff training and staff numbers, and the use of more time-intensive, therapeutic and restorative approaches with young adults in the system.

Jesuit Social Services also calls for more accountability and transparency in Victorian prisons, especially in relation to the use of management regimes and restraints.

Most young adults in prison will eventually be released back into the community. Our focus must be on effective rehabilitation, rather than additional punishment, if we truly want a safer community.

Appendices

Appendix A

What is ReConnect?

The ReConnect program is a state-wide post-release support program funded by the Department of Justice and Regulation that assists participants to transition from prison to community. ReConnect focuses on seven key areas:

- Housing
- Alcohol and other drugs
- Mental health
- Employment
- Education and training
- Family and community connectedness
- Independent living skills

The program provides individualised support to assist participants to address issues and achieve their goals

What does ReConnect involve?

ReConnect aims to give eligible participants a supported transition back into the community. ReConnect support workers commence working with a participant prior to release and continue to provide support after release. They provide outreach and link participants into post release services in the community. This creates support that can continue once a participant's involvement with ReConnect has ended.

How does ReConnect work?

ReConnect provides pre-release support and post-release support to people who would like help settling back into the community.

During the pre-release phase workers will meet with participants six weeks prior to their release and assists participants with planning for their release.

The post-release phase commences from the day of release, workers will assist participants with practical needs and to identify goals; as well as make supported referrals and develop links with appropriate support and specialist services.

ReConnect offers flexible and individualised support through two support streams:

- Targeted reintegration – support for up to four weeks
- Extended reintegration – support for six months, with the potential to extend to up to 12 months

Targeted reintegration stream

This stream is for participants who have completed the ReGroup Program and/or the ReLink Group Program and who have immediate post release transitional needs that can be addressed through targeted and brief intervention.

Extended reintegration stream

The extended reintegration stream is for participants who have completed the ReLink Individual Program, or those who have completed the ReGroup program and have been identified as having more complex support needs.

Can Reconnect help with housing?

It is important to note that whilst Reconnect can assist with housing support and referral, it is not a housing program and does not guarantee accommodation upon release.

Where is ReConnect delivered?

Jesuit Social Services delivers ReConnect to participants residing in Melbourne's north and west regions, as part of the Corrections Victoria Reintegration Pathway. Other providers deliver ReConnect in other regions.

How can I join the ReConnect program?

ReConnect is a voluntary support program for people who would like help settling back into the community. If you have participated in the ReLink individual program and have been identified as having unmet transitional needs, a recommendation will be made to the Assessment and Transition Coordinator that you be referred to the ReConnect program.

Appendix B

Guiding principles for the management of prisoners in custody (Joint statement of state corrections authorities adopted by Correction Victoria)

Correctional services in Australia seek to improve and maintain safety of and confidence in the correctional system by managing prisoners consistently and with reference to the guiding principles that prisoners are:

1. Managed and contained in a safe, secure, humane manner.
2. Managed equitably, with recognition of their diverse needs.
3. Actively engaged to make positive behaviour change (inclusive of accessing intervention programmes, education, vocational education and work opportunities) with the aims of preparing them for their participation in and return to the community, as well as reducing re-offending behaviour.
4. Provided opportunity to make reparation to the community.
5. Managed consistent with the Acts and Regulations applicable to each jurisdiction, and the sentences and requirements imposed by the Courts.
6. Held at a level of security which is commensurate with the level of risk posed by that prisoner.
7. Where practicable, placed in correctional facilities with a regard to their community of interest and other support needs.
8. Supervised fairly and consistently with the aims of encouraging positive behaviours and maintaining security.
9. Provided with access to health care, to the same standard as in the community, in response to need, with an appropriate range of preventative services, and promoting continuity with external health services upon release.

Corrective Services ACT, Corrective Services NSW, Northern Territory Correctional Services, Correctional Services S.A., Queensland Government, Victorian Government Department of Justice, Tasmanian Government Department of Justice, and Government of Western Australia Department of Corrective Services. (2012). Standard Guidelines for Corrections in Australia. Revised. <http://assets.justice.vic.gov.au/corrections/resources/d16d61ab-ea20-4277-9cfe-adc2ee5162d8/standardguidelines%2b2012.pdf>

Appendix C

Standard Guidelines for Corrections in Australia (extract)

Punishment of Prisoners

.....

1.80 Prolonged solitary confinement, corporal punishment, punishment by placement in a dark cell, reduction of diet, sensory deprivation and all cruel, inhumane or degrading punishments should not be used.

1.81 Every prisoner who is placed in segregation should be visited daily by a member of the prison management or approved delegate, and as frequently as practicable (preferably daily) by a representative of the medical officer. The medical officer or their representative should advise the officer in charge of the prison if they consider the termination or alteration of the segregation is necessary on grounds of physical or mental health.

Segregation of Prisoners for Management or Administrative Reasons

(Also see under Psychological Services and Managing Prisoner Stress for when segregation may be used to prevent self-harm)

1.82 Prisoners placed in segregation for the security and good order of the prison are to be managed under the least restrictive conditions consistent with the reasons for their placement.

1.83 A record should be made of the reason(s) for the segregation and the regime under which access to facilities and privileges is determined.

1.84 The prisoner should be informed verbally and in writing of the reason(s) for the segregation and the period of the segregation placement as well as any appeal rights.

1.85 Every prisoner who is placed in segregation for management or administrative reasons should be visited daily by a member of the prison management, or approved delegate, and as frequently as practicable (preferably daily) by a representative of the medical officer. The medical officer or their representative should advise the officer in charge of the prison if they consider the termination or alteration of the segregation is necessary on grounds of physical or mental health.

.....

Psychological Services and managing Prisoners' Stress

2.22 Prisoners who are identified as being at risk of self-harm should be placed under a management regime appropriate to their individual needs that is designed to ensure their well-being.

2.23 Prisoners placed under a special management regime should not be denied access to privileges or entitlements other than those necessarily removed for their own protection, and such removal should be for the minimum time necessary. Prisoners should only be segregated as a last resort in order to prevent self-harm or suicide and should be closely monitored.

See Appendix B. Retrieved from [http://assets.justice.vic.gov.au/corrections/resources/d16d61ab-ea20-4277-9cfe-
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Appendix D: Extract from Jesuit Social Services' Submission to the Inquiry into Youth Justice Centres in Victoria, March 2017

Staff capacity and 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. 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 must 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. Training in cultural competency will further assist staff in engaging with young people from Aboriginal and Torres Strait Islander (ATSI) or Culturally and Linguistically Diverse backgrounds. Additionally, the Victorian Government should also look to recruit more staff from CALD and ATSI backgrounds.

A therapeutic and trauma-informed approach to youth detention is the beginning of an approach which –when delivered together with purposeful day-based activities, day leaves, access to therapy, restorative practice, and offender specific programs –has the potential to greatly improve outcomes for young people leaving detention.

We call on the Victorian 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. We believe this should be delivered by an accredited provider, be part of a program of ongoing professional development, complemented by Senior Practitioners and supported by regular reflective practice.

Jesuit Social Services believes that recent events in Victoria have highlighted the risk of using an underskilled, under-resourced and casualised workforce to address the needs of a vulnerable and complex group of young people.

We can turn to international jurisdictions to see examples of best-practice in youth justice workforce capability (see table below). In the United States, industry hiring process have tightened over time largely due to staff misconduct. Juvenile corrections officers working in federal youth detention centres are required to possess a university level degree and the selection process involves a thorough background investigation that includes inquiries with family members and friends.¹⁵⁴ In the Netherlands, staff require a minimum three-year bachelor degree to work in youth prisons,¹⁵⁵ and in Spain's youth detention 'Re-education Centres' run by non-profit organisation Diagrama, front-line staff (named 'educators') are expected to have a professional qualification.¹⁵⁶

Jurisdiction	Facility	Minimum qualification
Victoria	Youth justice centre	None
United States	Federal youth detention centre	Undergraduate university degree
The Netherlands	Youth detention centre	Undergraduate university degree
Spain	Re-education centre	Professional qualification

We envision a Victorian youth justice workforce that is highly qualified and grounded in principles that place the interests, developmental needs and rehabilitation of children and young people at the forefront.

We call on the Victorian Government to require that youth detention officers and other staff in youth detention centres possess a relevant professional qualification.

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