



YSAS Submission: Inquiry into Australia's Youth Justice and Incarceration System

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Submission made to:

Senate Legal and Constitutional Affairs References Committee

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Acknowledgement of Country

The Youth Support and Advocacy Service (**YSAS**) would like to acknowledge the First Nations people of Victoria for their ongoing connection to Country, custodianship and care for the land and waterways on which we live, work and rely. YSAS acknowledges the inherent cultural strength, wisdom and guidance of all Aboriginal and Torres Strait Islander Peoples and their vast experience in caring for the social, cultural and emotional wellbeing of their Community.

We are committed to supporting Aboriginal and Torres Strait Islander self determination.

About YSAS

YSAS is Australia's largest, youth-specific community service organisation. Operating since 1998 as Victoria's flagship Youth Alcohol and Other Drugs (AOD) service, YSAS now employs over 350 skilled staff across 19 sites in metropolitan and regional Victoria. While the prime focus of YSAS remains on effective Youth AOD Treatment and sector leadership, the organisation also has extensive experience in providing young people, their families and communities with services that support improved mental health and improve meaningful community participation.

Crime Prevention, Justice Diversion and Early Intervention at YSAS

YSAS provides a variety of youth-focused crime prevention and early intervention programs as part of the organisations wider body of work. Such programs include the *YSAS Youth Support Service (YSS)*, a crime prevention and early intervention program that commenced in 2011 and is funded by the Victorian Government. YSS enables young people, their families and communities to self-refer or be referred by Victoria Police to tailored case management support provided by specialist youth community agencies. Drawing upon principles of trauma-informed, resilience based and person-centred approaches – these developmentally tailored programs were established as community and youth sector facilitated early interventions to address a wide range of wellbeing and criminogenic needs. Recent independent evaluation of YSS has shown the effectiveness of YSS¹ in diverting young people away from the justice system. It also highlighted the complexities of the young people accessing the service in requiring intervention beyond brief modalities.

In 2015, alongside the Jesuit Social Services (JSS) YSAS - YSS co-piloted the *Youth Diversion Pilot Project (YDPP)* trial court diversion initiative in Metropolitan Melbourne. Operating for 12 months as a pilot facilitated by community services agencies, this was a highly successful program performing well against diversion practice principles during independent evaluation². This pilot evolved into the Children's Court Youth Diversion (CCYD) now coordinated and delivered by the Victorian State Government. Like many other Victorian youth services, YSS continues to provide brief intervention and therapeutic individual and family support to young people, with the program also acting as a referral point for CCYD.

¹ Ruffles, Fullam, Dent, Thomson, Richardson & Daffern, 2024

² Thomas, Liddell & Johns, 2016



The *Embedded Youth Outreach Program (EYOP)* is a partnership between YSAS and Victoria Police which pairs a YSAS youth worker with a Victorian Police Officer to provide after hours secondary responses to young people coming into contact with the police. Recent evaluation also highlighted a range of positive and successful outcomes from this program³. In addition to YSS and EYOP, YSAS also delivers a range of programs focused on early intervention, diversion from the justice system and providing AOD intervention to justice-involved youth.

In partnership with YSAS, Odyssey House and Drummond Street Services, also delivers *The Zone* Intersectional Youth Service Partnership, a service providing culturally respectful and intersectionally informed youth-focused practice. Using a range of flexible applications including Community events, outreach, youth centres and health services, this model embeds cultural and social identity and intersectional approaches into all aspects of the youth, family and community, and youth AoD work undertaken.

YSAS has also undertaken a range of research activities in partnership with universities regarding the complex experiences of young people and justice involvement. YSAS has worked closely with the Justice Health Group, which spans the Centre for Adolescent Health, Murdoch Children's Research Institute (MCRI) and focuses on generating evidence regarding the health and health service experiences of justice-involved populations. Since 2016, YSAS has worked closely with the Justice Health Group including through a funded Public Health Industry Partnership since 2019. Most recently this collaborative working partnership undertook research on preventing violence against young women exposed to the criminal justice system, funded by the Melbourne Social Equity Institute (MSEI). This research involved the completion of a scoping review to identify interventions designed to prevent or respond to violence against justice involved young women, the results of which were published in the international journal *Trauma, Violence and Abuse* in 2023⁴. In 2022, the Justice Health Group and YSAS also partnered on a VicHealth funding proposal to improve mental wellness for marginalised young Victorians, with a particular focus on those in contact with the criminal justice system.

YSAS's Submission to this Inquiry

The Victorian Youth Support and Advocacy Service (YSAS) welcomes the opportunity to provide a submission to the Legal and Constitutional Affairs References Committee inquiry into Australia's youth justice and incarceration system.

Although the administration of Youth Justice in Australia is coordinated at State and Territory levels, YSAS recognizes the political, social, legal and historical context of youth justice and the dynamic nature of youth justice nationally. We believe that this Inquiry is an important opportunity to gain further understanding into the challenges and opportunities provided by youth justice for children, young people, their families and communities.

³ Luebbers, Pichler, Fullam & Ogleoff, 2019

⁴ Willoughby, Janca, Kwon, Johnston, Collins, Kinner, Johns, Gallant, Glover-Wright & Borschmann, 2023



YSAS's submission to this Inquiry provides a series of recommendations and accompanying rationales that address the Committee's terms of reference by examining:

1. The outcomes and impacts of youth incarceration in jurisdictions across Australia.
2. The over-incarceration of First Nations children.
3. The degree of compliance and non-compliance by State, Territory and Federal prisons and detention centres with the human rights of children and young people in detention.
4. The Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights.
5. The benefits and need for enforceable national minimum standards for youth justice consistent with our international obligations.
6. Any related matters.

We believe that this Inquiry has the potential to enable transformative change in the lives of young people, their families and communities irrespective of which Australian jurisdiction they reside, by providing fairer, consistent and evidence-informed youth justice responses that centre the human rights of children and young people, their families and communities.

Summary of YSAS Recommendations

YSAS provides the following recommendations in response to this Inquiry:

1. That Australia's youth justice system centres and provides greater coordinated investment in prevention, early intervention and diversion approaches; and that such are accessible, evidence-informed, needs-responsive and appropriately resourced.
2. Self-Determined and meaningful action to end the over-incarceration of First Nations children and young people.
3. That no child is placed within the youth justice system, and that the age of criminal responsibility is raised across all Australian jurisdictions to the minimum age of 14 years old.
4. That detention is used only as a last resort, and further, that young people in custody and detention have access to programs, services and supports that centre their human rights and wellbeing needs.
5. That detention is used only as a last resort, and when so, it is provided through the wider use of small-scale, decentralised youth justice facilities.
6. That a set of standards, principles and advisory guidelines are established for media reporting on youth justice and offending related issues in Australia.
7. Deliver Intensive support to children and young people rather than use Electronic Monitoring.
8. That Youth Justice Assessments incorporate strengths and resilience-based assessment frameworks and principles.



Inquiry into Australia's Youth Justice and Incarceration System

- 1. That Australia's youth justice system centres and provides greater coordinated investment in prevention, early intervention and diversion approaches; and that such are accessible, evidence-informed, needs-responsive and appropriately resourced.*

Rationale: It is well established in both Australian⁵ and International⁶ evidence bases that justice-involved young people hold a variety of complex experiences, vulnerabilities and needs. Repeated reviews of the Youth Justice system state that justice-involved young people experience disability, mental health concerns, cognitive/neuro-disabilities⁷, prior experiences of trauma, socio-economic disadvantage, substance use issues and family violence⁸ at higher rates than their non-justice involved peers.

Trauma

On average, young people categorized as youth justice custodial offenders had experienced trauma, abuse and neglect⁹ at a rate of 66.2% as identified in data from the Victorian Youth Parole Board in the period of 2020-2021¹⁰. The impacts of trauma such as hypervigilance, impulsivity, difficulties regulating emotions and reacting with panic, damaged trust and isolation were further detailed in a report by the Sentencing Advisory Council in 2020, as being characteristic trauma responses for youth leading to increased risks of contact with and entrenchment within the youth justice system¹¹.

Mental Health

Young people in youth justice custody are identified as holding higher rates of diagnosed mental health issues than non-justice involved peers – an issue also seen globally¹² with diagnosed mental health concerns for justice-involved youth including mood disorders, major depressive disorders, anxiety disorders, post-traumatic stress disorder, obsessive-compulsive disorder and conduct disorder¹³ prevalent. The recent Victorian Royal Commission into Mental Health (2021)¹⁴ identified that, except for substance-use related diagnoses, the most common forms of mental health diagnosis for young people involved in youth justice supervision include

⁵ Clancey et. Al., 2020

⁶ Borschmann et. Al., 2020

⁷ Goldson et. Al., 2020

⁸ Armytage & Ogloff, 2017; DCJS, 2022, Yoorrook for Justice, 2024;

⁹ Armytage & Ogloff, 2017 p.165

¹⁰ Youth Parole Board, 2021

¹¹ Sentencing Advisory Council, 2020

¹² Borschmann et. Al., 2020

¹³ Borschmann et. Al., 2020

¹⁴ Royal Commission into Mental Health, 2021. Volume 3.



reaction to stress and adjustment disorders¹⁵, attention deficit hyperactive disorder or other forms of hyperkinetic disorders, depression and schizophrenia or other forms of schizotypal and delusional disorders. The Youth Parole Board report of 2020-2021 identifies that during this period 46.9% of justice-involved young people were identified as accessing mental health services¹⁶. Difficulty accessing mental health services within community settings alongside significant mental health needs are implicated in both young people's recidivist cycling through the youth justice system, as well as barriers in accessing parole¹⁷.

Disability, Cognitive Impairment and/or Neurodiversity

The high proportion of children and young people with disabilities, cognitive impairments and/or neurodiversity in the youth justice system is an issue that is noted internationally¹⁸ as well as experienced in Victoria¹⁹. The presence of disability, cognitive impairments and/or neurodiversity in justice involved children and young people is recognized as including young people with speech, hearing, language and communication difficulties, attention deficit hyperactive disorder, autism spectrum disorders, foetal alcohol spectrum disorders, acquired traumatic brain injury²⁰ and other diagnosed and undiagnosed disabilities²¹. Both in Australia and internationally, young people with disability, neurodiversity and cognitive impairment are grossly over-represented in youth justice custody and penal remand²². This corresponds to a concerning lack of alternative needs-sensitive specific diversion and early intervention services available to this cohort²³.

Child Protection Involvement and “Cross Over” Youth

The complexity of young people involved in the youth justice system is particularly evidenced by the presence of “crossover” youth being disproportionately represented in the youth justice system²⁴. “Crossover” youth is a term used to refer to children and young people who have dual involvement of both child protection and youth justice systems²⁵. Described as the “care to custody pipeline²⁶”, young people with child protection involvement are nine times more likely to be involved in the youth justice system and are disproportionately represented in youth detention centers²⁷. Experiences of out-of-home care have also been identified as creating an

¹⁵ Royal Commission into Mental Health, 2021, Volume 3 p.401. Reaction to stress and adjustment disorders included post traumatic stress disorder, acute stress reaction and adjustment disorder

¹⁶ Youth Parole Board, 2021, p.31

¹⁷ Royal Commission into Mental Health, 2021. Volume 3 p.402

¹⁸ Goldson & Cuneen, 2020

¹⁹ Armytage & Ogloff, 2017

²⁰ Goldson & Cuneen, 2020

²¹ Armytage & Ogloff, 2017

²² Goldson & Cuneen, 2020

²³ Goldson & Cuneen, 2020

²⁴ Baidawi, 2020

²⁵ Baidawi & Sheenan, 2019

²⁶ Baidawi & Sheenan, 2019

²⁷ Baidawi & Sheenan, 2019



elevated risk of youth justice involvement, particularly in terms of placement instability, peer exposure and increased police and legal responses to minor incidents in residential settings resulting in greater justice system involvement²⁸. Crossover youth are also more likely to receive greater police surveillance, longer remand periods and harsher sentencing²⁹. It is noted that initial contact with the criminal justice system, including first charges, are often experienced by this group under the ages of 14 years old³⁰ and that charges relate to property offences, offences against the person and offences against justice procedures³¹.

Young People of Culturally and Linguistically Diverse Backgrounds

In Victoria, young people from Culturally and Linguistically Diverse groups remain over-represented in the Victorian Youth Justice system, particularly youth who hold Pasifika, Māori, Sudanese and South Sudanese cultural identities³². Issues such as racial discrimination, targeted policing and inflammatory and relentless media reporting³³ have been associated with increased justice system contact and policing surveillance experienced by young people from Culturally and Linguistically Diverse communities³⁴. Unique experiences are further compounded by issues such as economic disparity, cultural stigma associated with justice contact and mental health issues³⁵ alongside a lack of widely accessible and available culturally tailored and culturally led diversion and early intervention programs³⁶. Despite the continued issue of over-representation of young people from Culturally and Linguistically diverse backgrounds in the Victorian Youth Justice remand and custody, this increase has not been matched by an increase in this cohort being referred to diversionary programs such as CCYD³⁷, with only 5% of youth participants provided with opportunities to engage in CCYD being reported as holding African Australian identities³⁸ between the period of 2017-2020. This has raised concerns to the inconsistent access and barriers to CCYD and other forms of diversion experienced by Culturally and Linguistically Diverse young people³⁹.

Young Women

In both Australia and Victoria, young women constitute a smaller proportion of the justice involved youth compared to young men and are less likely to enter the justice

²⁸ Baidawi, 2020

²⁹ Baidawi, 2020

³⁰ Baidawi & Sheenan, 2019.

³¹ Baidawi & Sheenan, 2019.

³² DCJS, 2022

³³ Cunningham, Egan, Goff, Kuol, Martin, Nguyen, O'Keefe, Williams, 2024

³⁴ Commission for Children and Young People, 2024

³⁵ Commission for Children and Young People, 2024

³⁶ Cunningham, Egan, Goff, Kuol, Martin, Nguyen, O'Keefe, Williams, 2024

³⁷ DCJS, 2022

³⁸ DCJS, 2022.

³⁹ DCJS, 2022 pp76-78



system⁴⁰. Justice involved young women, however, are more likely to have contact with the system at a younger age than their male counterparts⁴¹ and to be charged with cumulative minor assault and property offences such as shoplifting⁴², or other low-level offences⁴³. Justice-involved young women require access to gender-responsive intervention and programming⁴⁴ that must be further trauma-informed to the unique experiences and risks of victimization experienced by this cohort. It is noted that young women often experience victimization (including sexual assault victimization and intimate partner violence⁴⁵) and engage in offending differently to young men including having different pathways into and out of justice involvement⁴⁶. YSAS's recent research collaboration with the University of Melbourne Murdoch Children Research Centre (MCRI) Justice Health Unit into interventions to prevent and respond to violence against Justice-involved young women⁴⁷ identified that there is "a need for all types of violence prevention (ie. primary, secondary and tertiary prevention) across different settings (eg. detention and community settings) to effectively prevent and respond to violence victimization and victimization among justice-involved young women"⁴⁸.

Over-Representation of Young People

The over-representation of young people with complex experiences in the Victorian and Australian Youth Justice system highlights the needs for *coordinated, funded, resourced* and *consistent* investment in ongoing prevention, early intervention and diversion approaches. It is our belief that such approaches should be comprehensive, tailored, and developmentally and contextually sensitive to the complex needs of young people.

Consistent with evidence indicating the tenancy of the justice system to "sweep up"⁴⁹ young people who experience complex life experiences and disadvantage, it is our belief that young people with such experiences should have meaningful and tangible opportunities to access ongoing supports tailored to the needs of themselves, their families and communities. Importantly, we believe that young people require the right to have access to these services prior to, or very early in their justice system contact as well as consistently along all other points of justice trajectories.

Despite the ongoing support that YSS has provided to young people, their communities and families over prior decades, the program recently experienced funding cuts by the Victorian

⁴⁰ Australian Institute of Health and Welfare (AIHW), 2012

⁴¹AIHW, 2012

⁴² AIHW, 2012

⁴³ Chesney-Lind & Shelden, 2014 p.42

⁴⁴ Willoughby, Janca, Kwon, Johnston, Collins, Kinner, Johns, Gallant, Glover-Wright & Borschmann, 2023

⁴⁵ Mottram & Salter, 2016; Davis & Lee, 1996

⁴⁶ Miller et. Al., 2012

⁴⁷ Willoughby, Janca, Kwon, Johnston, Collins, Kinner, Johns, Gallant, Glover-Wright & Borschmann, 2023..

⁴⁸ Willoughby, Janca, Kwon, Johnston, Collins, Kinner, Johns, Gallant, Glover-Wright & Borschmann, 2023 p.2

⁴⁹ Goldson et. Al., 2020 p.6



State Government⁵⁰ resulting in a loss of \$1.85 million from the program's budget, particularly impacting young people in the Western region of Melbourne. Despite high demand for the service, this funding cut has been estimated at impacting 330 at-risk young people⁵¹ and their families in being able to access support, early intervention and diversion.

Resource constraints such as the recent funding cuts to YSS represent our concerns with existing models of youth justice funding and coordination. Given the wide disparity of youth justice responses used across Australia, there is an important opportunity for National leadership to transform youth justice discourses in ways that utilize evidence-informed approaches, center human rights and respond to the wide range of needs and vulnerabilities associated with justice-system contact.

The systemic implementation of diversion, early intervention and other service referral points for complex needs is an important opportunity to not only change the trajectories of young people's lives but also to mitigate the harms of justice system contact.

YSAS proposes that programs focused on prevention, early intervention and diversion are tailored to the specific and complex needs of young people, their families and communities. Such approaches require further focus and greater systemic coordination in the broader Australian youth justice discourses coupled with consistent, ongoing and reliable funding and resourcing.

2. Self-Determined and meaningful action to end the over-incarceration of First Nations children and young people.

Rationale: Over-representation of First Nations young people in the Youth Justice system continues to remain a serious and chronic human rights issue in Victoria⁵² and, more broadly in Australia⁵³. In Australia, the over-representation of First Nations peoples has been considered evidence of an enduring colonial carceral landscape⁵⁴ and demonstrated by disproportionate targeting by the police, more likelihood of having bail refused and higher rates of sentencing and remand⁵⁵ as well as the significant rates of over-representation of First Nations young people and children in detention⁵⁶. This has been particularly concerning in relation to First Nations young people who are 'crossover kids' with 64% of First Nations young people involved in the justice system also having had child

⁵⁰ Wong, 2024 ; YSAS, 2024

⁵¹ Wong, 2024; YSAS, 2024

⁵² Yoorrook Justice Commission, 2024

⁵³ Clancey et. Al., 2020

⁵⁴ Baldry, Carlton & Cunneen, 2013

⁵⁵ Yoorrook Justice Commission, 2024

⁵⁶ Australian Institute of Health and Welfare, 2021



protection involvement⁵⁷. This is particularly high for First Nations children and young people aged 10 to 14 years old in residential care facilities⁵⁸, many of whom have complex mental health and behavioral needs in addition to histories of trauma and intellectual disabilities⁵⁹. The over-representation of First Nations young people with disabilities, neurodiversity and/or other cognitive impairments in the Youth Justice System is also an issue that has been raised in recent scholarship and review⁶⁰. The Yoorrook for Justice Commission Report identifies that of the First Nations young people in Victorian Youth Justice custody in 2021-2022 who had diagnosed disability, 70% held an intellectual disability⁶¹.

The need for Self-Determined, Community-led and culturally informed programs, services and approaches to youth justice has been firmly established across multiple Australian reviews, inquiries⁶² and in academic scholarship.

3. That no child is placed within the youth justice system, and that the age of criminal responsibility is raised across all Australian jurisdictions to a minimum age of 14 years old.

Rationale: Raising the age of criminal responsibility has been consistently raised as a significant need of youth justice systems across all Australian States and Territories⁶³. Australia has one of the lowest ages of criminal responsibility internationally⁶⁴, with recommendations from the United Nations Committee that the age of criminal responsibility is established at 14-16 years old to ensure that the child's legal and human rights are safeguarded⁶⁵. This age bracket is also identified as being aligned with the developmental needs of children and young people and reducing the risk of criminalisation, and the over-representation in entrenched justice trajectories⁶⁶.

The United Nations Convention on the Rights of the Child (UNCROC) was ratified by Australia in 1990⁶⁷ and outlines the nations obligations to ensure that children's rights are upheld and protected across youth justice processes⁶⁸. The UNCROC includes a range of provisions such as non-discrimination (Article 2), the best interests of the child (Article 3), survival and development (Article 6) identity (Article 7) and participation (Article 12)

⁵⁷ Yoorrook Justice Commission, 2024

⁵⁸ Yoorrook Justice Commission, 2024

⁵⁹ Yoorrook Justice Commission, 2024

⁶⁰ Goldson & Cuneen, 2020

⁶¹ Yoorrook Justice Commission, 2024 p.324

⁶² Yoorrook Justice Commission, 2024

⁶³ Clancey et. Al., 2020

⁶⁴ O'Brien & Fitz-Gibbons, 2018

⁶⁵ Goldson et. Al., 2020

⁶⁶ Goldson et. Al., 2020

⁶⁷ O'Halloran, 2024

⁶⁸ Malvaso et. Al., 2024



amongst other key dimensions to children's moral, personal, social, cultural and wellbeing needs and rights.

Australia has received a broad range of criticism and concern regarding its adherence to the obligations to the UNCROC and other international obligations⁶⁹, particularly in regard to the minimum age of criminal responsibility⁷⁰, the treatment of young people in youth detention⁷¹, the over-representation of First Nations children and young people in youth justice systems⁷². Criticism has also been directed at the failure to adhere to the principle of detention as a last resort, the use of mandatory and indeterminate sentencing⁷³ and the detainment of children in adult prisons⁷⁴.

We note that the recent Victorian *Youth Justice Bill 2024* has committed to raising the age of criminal responsibility in Victoria to 12 years of age, and this is considered a progressive step. It is the belief of YSAS - in line with international human rights standards and developmentally centred evidence - that further progress is made to raise the age of criminal responsibility to a minimum of 14 years of age across all Australian States and Territories.

4. That detention is used only as a last resort, and further that young people in custody and detention have access to programs, services and supports that centre their human rights and wellbeing needs.

Rationale: As raised earlier in this submission, it is our belief that young people and their families and communities require meaningful, accessible, evidence-informed and tangible opportunities for change, support and diversion from youth justice system trajectories. Nationally, concerns continue to be raised about the standards and treatment of children and young people in youth detention in Australian States and Territories through a broad range of inquiries⁷⁵. Key themes from such highlight that children and young people who have contact with the youth justice system and youth detention hold a wide range of complex needs and vulnerabilities which are further compounded whilst in custody⁷⁶.

It is our belief in alignment with the UNCROC and other obligations pertaining to the rights of the child, that custody and detention should be used only as a last resort. However, in such cases, we highlight the importance of providing adequately resourced programs and

⁶⁹ O'Brien & Fitz-Gibbon, 2018; Malvaso et. Al., 2024

⁷⁰ Malvaso et. Al., 2024

⁷¹ O'Brien & Fitz-Gibbon, 2018

⁷² Goldson et. Al., 2020

⁷³ Goldson et. Al., 2020

⁷⁴ O'Brien & Fitz-Gibbon, 2018

⁷⁵ Armytage & Ogloff, 2017; Clancey et. Al., 2020; Goldson et. Al., 2020

⁷⁶ Clancey et. Al., 2020; Case & Haines, 2021



services for young people in detention and custody⁷⁷. We believe such services should genuinely invest in and be responsive to the complex needs of justice-involved young people with access to wellbeing and health care, education⁷⁸, mental health services, drug and alcohol services, disability and neurodiversity support and culturally informed and culturally safe responses. In addition to ensuring the fundamental human rights and wellbeing needs in the treatment of young people who have contact with the justice and custodial system, it is our belief that such responses should not only be universally accessible, but further tailored to young people's strengths⁷⁹ and be trauma informed, developmentally sensitive, rehabilitative and centred upon human rights frameworks.

5. That detention is used only as a last resort, and when so, it is provided through the wider use of small-scale, decentralised youth justice facilities

Rationale: We highlight the potential for small-scale decentralised youth justice facilities successfully evidenced in the Netherlands⁸⁰, Minnesota⁸¹ and other regions of the United States⁸² as well as in England and Scotland⁸³. Such facilities are designed in ways which are community integrated and comprise a range of therapeutic aspects, encourage positive relational interactions, incorporate rehabilitative elements⁸⁴ and wellbeing outcomes⁸⁵. Young people's connection to positive institutions such as education and school, family involvement and continuity of care⁸⁶ have also been found to benefit from such facilities as they involve opportunities to maintain consistent or pre-established routines without the disruption that occurs when detained in large scale facilities located in geographical regions far from their homes, schools and communities⁸⁷. The transferability of such models to an Australian⁸⁸ and Victorian⁸⁹ context has been examined in recent research, with recommendations identifying not only the benefits and potential applicability of this approach⁹⁰ but also structural requirements in terms of capacity, design, location considerations and community integration and programming needs⁹¹.

⁷⁷ Clancey et. Al., 2020

⁷⁸ Te Riele et. Al., 2023

⁷⁹ Day, 2023

⁸⁰ Oostermeijer, Souverein, Popma, Ross, Johns, Domburgh, 2024

⁸¹ Brown, Davis & Shlafer, 2020

⁸² Dwyer, 2020

⁸³ Dwyer, 2020

⁸⁴ Oostermeijer et. Al., 2024

⁸⁵ Brown, Davis & Shlafer, 2020

⁸⁶ Dwyer, 2020

⁸⁷ Oostermeijer et. al., 2024

⁸⁸ Dwyer, 2020

⁸⁹ Oostermeijer et. Al., 2024

⁹⁰ Oostermeijer et. Al., 2024

⁹¹ Dwyer, 2020



6. That a set of standards, principles and advisory guidelines are established for media reporting on youth justice and offending related issues in Australia.

Rationale: Media representation of young people can directly shape and influence broader public and social opinion and generate both populist discourses and reactionary political responses⁹². The representation of young people and crime in the media has been traditionally positioned under a wider “law and order” framework⁹³ in ways which use tones of anxiety, risk, social decline and moral panic. YSAS notes that in various Australian jurisdictions including Victoria, a range of media reporting has been highly sensationalized towards “youth crime waves⁹⁴” and further racialized in coverage⁹⁵, and has particularly centred on harmful racial stereotyping towards young men of Pasifika or African heritage⁹⁶.

YSAS recognizes that the impacts of such reporting may in turn, create and compound stigma⁹⁷, othering⁹⁸ and reinforce the rationale that such young people are deserving of harsh and punitive treatment⁹⁹. The impacts of such reporting have not only been linked to the establishment of local vigilante-style groups¹⁰⁰, but further escalated tensions and increased police surveillance¹⁰¹, social exclusion and enabled public support for heavier penalties¹⁰². Currently there are national advisory guidelines for the reporting of a range of different issues¹⁰³, but no standardized guidelines on the reporting of youth justice and youth offending in Australia or Victoria. Such standards hold the potential to support a more nuanced public understanding of the complex discourses (such as disadvantage and trauma¹⁰⁴) that have impacted young people’s youth justice involvement.

7. Deliver Intensive Support to Children and Young People rather than use Electronic Monitoring.

Rationale: Electronic Monitoring (EM) emerged in the late 1980’s¹⁰⁵ as a way of tagging and monitoring movements to enforce a curfew, house arrest or other conditions¹⁰⁶. EM uses radio frequency (RF) technology and/or Global Positioning Technology (GPS) in wider

⁹² Goldson et. Al., 2020

⁹³ Goldson et. Al., 2020

⁹⁴ Sato, 2023

⁹⁵ Majavu, 2020

⁹⁶ Te Riele et. Al., 2023

⁹⁷ Klose & Gordon, 2023

⁹⁸ Oostermeijer et. Al., 2024

⁹⁹ Oostermeijer et. Al., 2024

¹⁰⁰ Te Riele et. Al., 2023

¹⁰¹ Klose & Gordon, 2023

¹⁰² Goldson et. Al., 2020

¹⁰³ Australian Press Council, 2024; Ourwatch, 2024

¹⁰⁴ Klose & Gordon, 2023

¹⁰⁵ Deuchar, 2011

¹⁰⁶ Daems, 2020



geographical areas¹⁰⁷ to provide both historical and real time movements. It is often operationalized by offenders wearing an ankle bracelet or wrist band that is used to verify their location¹⁰⁸.

Although EM does not appear in the way that punishment is traditionally viewed¹⁰⁹ arguments proposing it as rehabilitative are misleading. Understandings of EM must be centred in the knowledge that inherently EM is “punishment based on a technology”¹¹⁰. This is because monitoring may be a component of rehabilitation alongside other therapeutic interventions and supports, however surveillance and monitoring are distinct from, and not within themselves, rehabilitation¹¹¹. As raised by Deuchar¹¹² “punishment itself often functions as a social strain conducive to crime”. Some critiques have further raised the issues of EM undermining rehabilitative goals due to the potential of the technology to shift in interactions between youth and justice representatives. This is because EM allow for potentially less interpersonal contact between workers and young people¹¹³ and the potential for a shift in focus to compliance and monitoring, rather than more time-consuming and costly case management and rehabilitative programming¹¹⁴.

Although EM has been identified in having some instrumental compliance benefits by youth, this has been identified as mainly being motivated by fear¹¹⁵. Other emotions experienced by young people have included anger, frustration and alienation from social bonds¹¹⁶ as well as embarrassment and shame¹¹⁷. Stigma, confinement and feelings of oppression may further exacerbate stress, trauma and mental health¹¹⁸. In a Scottish study into both curfew use and EM, the alcohol and drug dependency of young people were identified as worsening during the period in which young people were subject to such¹¹⁹. In these contexts “substance use was used as a coping mechanism to deal with the perceived strains associated with restrictions of liberty”¹²⁰.

Risk taking and novelty seeking behavior are common traits and developmentally appropriate and required forms of adolescent behavior that are necessary for the development of a sense of autonomy, identity and boundaries. These are areas of development that are directly challenged by EM¹²¹ and may be further compounded by

¹⁰⁷ Nancarrow & Modini, 2018

¹⁰⁸ Daems, 2020

¹⁰⁹ Weisburd, 2015

¹¹⁰ Hucklesby, 2011

¹¹¹ Weisburd, 2015

¹¹² 2011 p.125

¹¹³ Weisburd, 2015

¹¹⁴ Weisburd, 2015

¹¹⁵ Deuchar, 2011

¹¹⁶ Deuchar, 2011

¹¹⁷ Weisburd, 2015

¹¹⁸ Weisburd, 2015

¹¹⁹ Deuchar, 2011

¹²⁰ Deuchar, 2011 p. 119

¹²¹ Weisburd, 2015



youth that have experiences of adversity, disadvantage and trauma as well as those with disability or neurodiversity. In a comparative critique from the United States, concerns have been raised about the potential of electronic monitoring in creating youth justice system cycling and extended probation¹²². This has been referred to as the net-widening and net-deepening potential of EM and in particular - the concept of greater control for longer¹²³. These concerns have been raised because of monitoring period extensions resulting from breaches and violations, not new offences¹²⁴.

Furthermore, Electronic Monitoring makes possible the transformation of settings and relationships which primarily fulfil other functions into extensions of the criminal justice system¹²⁵. Consequently, private settings such as homes can become 'de-privatized'¹²⁶ as sites of monitoring and surveillance and can place undue pressure and resource burden on household and family members to provide ancillary supervision to those subject to EM¹²⁷.

Given the concerns raised about the use of EM on justice-involved young people and the potential for stress, stigma and net-widening and net-deepening, we oppose and remain strongly concerned about the use of Electronic Monitoring on justice-involved youth both in Victoria and in other Australian States and Territories. As an alternative to EM, YSAS strongly encourages the funding of more comprehensive and intensive support to this cohort of justice-involved young people.

8. That Youth Justice Assessments incorporate strengths and resilience-based assessment frameworks and principles

Although some assessment for justice-involved young people incorporates strengths and protective factors into the assessment process, across the wider youth justice discourses in Australia and internationally, there is a lack of consistently used, validated measurement tools specific to strengths and resilience¹²⁸. Contemporary critiques have also highlighted the deficit focus held within risk assessment paradigms¹²⁹ and the interchangeable and lack of consistent definition for how strengths-based components are broadly understood¹³⁰ and often considered only the context of an absence of criminogenic needs¹³¹.

¹²² Weisburd, 2015

¹²³ Weisburd, 2015

¹²⁴ Weisburd, 2015

¹²⁵ Daems, 2020

¹²⁶ Corbett & Marx, 1991 cited in Daems, 2020

¹²⁷ Hucklesby et. Al., 2024

¹²⁸ Hamby et. Al., 2018

¹²⁹ Barnes-Lee, 2020

¹³⁰ Brown, Robinson, Wanamaker, Wagstaff, 2020

¹³¹ Brown, Robinson, Wanamaker, Wagstaff, 2020



Presently, many existing assessment tools focus on one strength¹³² and within the Risk-Need-Responsivity (RNR) model strengths are considered from the perspective of “specific responsibility” in client characteristics¹³³ and there is a limited lack of empirical evidence regarding the relationship between specific responsibility and strengths¹³⁴. Although protective factors can also be considered in risk assessments, they are often limited to three factors¹³⁵, and critiques of such applications emphasize the Anglo-centric nature of focus and failure to incorporate the strengths and protective factors specific to different cultures and communities¹³⁶. The lack of validated strengths, and resilience-based assessments in youth justice is considered a “critical gap¹³⁷” in current youth justice approaches.

We recommend the establishment and incorporation as part of a standardized National minimum practice in Youth Justice, that assessment processes provide nuanced, intersectional and detailed assessments and explorations of strength, resilience and protective factors.

Conclusion

Youth Justice in Australia has been previously described as being wedged between an unhelpful binary of risk-prevention paradigms and welfare/needs-based responses¹³⁸. This tension has had very real implications for the way in which youth justice has been administered and enacted across Australia¹³⁹.

Changes in law, definitions of criminality, media sensationalism and conceptualizations of risk can also increase the “arrest proneness¹⁴⁰” of cohorts, initiating and entrenching youth justice trajectories. This is morally and practically important because it relates to the ways in which the youth justice system initially and continually determines who ‘deserves’ involvement in the youth justice system¹⁴¹ and who ‘deserves’ diversion from this system, and where or what programs they are diverted to¹⁴².

YSAS’s approach to this submission for the Inquiry into Australia’s Youth Justice and Incarceration system is reflective of the knowledge, values and practice principles of YSAS as

¹³² Hamby et. Al., 2018

¹³³ Miller & Maloney, 2020

¹³⁴ Barnes-Lee, 2020

¹³⁵ Individual, Social bonding, healthy beliefs and clear standards. See Cliffe-Tautari, 2024 p.2

¹³⁶ Cliffe-Tautari, 2024

¹³⁷ Barnes-Lee, 2020

¹³⁸ Goldson et. Al., 2020

¹³⁹ Clancey et. Al., 2020

¹⁴⁰ Schwartz & Steffensmeier, 2012

¹⁴¹ Goldson, 2020

¹⁴² Zane & Mears, 2023



an organization¹⁴³. It is our belief as an organisation that all young people are valued, included and have every opportunity to thrive.

We would like to thank the Committee for the time taken to consider the recommendations made by YSAS in the Inquiry into Australia's Youth Justice and Incarceration system. We hope that this submission contributes important perspectives, opportunities and considerations in the work of the Committee in undertaking the Inquiry into Australia's Youth Justice and incarceration system. This Inquiry is an important opportunity for the establishment of a coordinated national approach to youth justice that centres the rights of children and young people in systemic reform.

We welcome any discussions or requests from the Committee to discuss our submission in more detail and look forward to the findings of the Inquiry.

¹⁴³ [YSAS Strategic Plan 2021-25.pdf](#)



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