Human Rights Law Centre

Our Youth, Our Way

Submission to the inquiry into the overrepresentation of Aboriginal children and young people in youth justice

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Human Rights Law Centre

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About this submission

The Commission for Children and Young People has launched an independent inquiry - Our Youth, Our Way - to investigate and provide solutions to the overrepresentation of Aboriginal children and young people in the Victorian youth legal system. This submission from the Human Rights Law Centre is directed at particular aspects of the legal system, including law, policies and processes that contribute to the overrepresentation of Aboriginal children and young people and provides recommendations aimed at addressing systemic issues.

Note on language

The use of the term ‘Aboriginal’ in this submission refers to both Aboriginal and Torres Strait Islander people, children and young people. The terms ‘First Nations’ and ‘Indigenous’ are also used in particular contexts to reflect the language being used by Aboriginal organisations working in particular spaces.

I. Executive summary

This submission makes 9 overarching recommendations to reduce the over-representation of Aboriginal children in the youth legal system. These recommendations are premised on the understanding that massive inequality exists not because Aboriginal children commit more crimes, but because of the operation of discriminatory laws and policies that result in Aboriginal children being targeted by police, stigmatised and harmed by contact with the system and subsequently denied culturally relevant and community based supports.

This results in Aboriginal children faring the worst in Victoria's youth legal system. While Aboriginal children account for just 2 percent of the Victorian youth population, Aboriginal children make up around 17 percent of all children under youth justice supervision.[1] Aboriginal children are 13 times as likely as their non-Indigenous counterparts aged 10-17 years to be under youth justice supervision.[2]

The discrepancy in these statistics is largely attributable to structural issues, like inconsistent police practices, bias and discrimination in the exercise of decision-making powers, the criminalisation of health conditions and mental illness and so on.

The majority of children in detention, around 60%, are on remand waiting for their trial or sentence.[3] These statistics reveal a system that is geared towards imprisoning children, rather than addressing the underlying causes of 'problematic' behaviour, particularly through prevention and early intervention programs and services that are therapeutic, rehabilitative and youth specific. Punitive bail laws and the absence of legislative safeguards to ensure detention is an option of last resort and to prescribe diversion and alternatives to the formal system, contribute to these statistics.

Police cells, courts and prisons are no place for children. Being arrested and imprisoned can have devastating and long-term impacts on a child's health, development and ultimate wellbeing. In prisons, children are subjected to routine strip searches, they can be held in solitary confinement, and they have very little access to family, adequate health care and other important social supports. Children who are imprisoned are much more likely to remain stuck in the prison system and to die an early death.

Children who have been exposed to violence, abuse, neglect, and challenging home environments should receive care and love rather than be criminalised for untreated trauma and difficult behaviour. In recognition of the immense harm caused by contact with the criminal legal system, the Victorian Government must raise the age of criminal responsibility from 10 to 14 years and provide access to health, education and support services that will help children to stay with their families and in their communities.

If the Victorian Government is serious about reducing the overrepresentation of Aboriginal children in the youth legal system, the approach to youth offending must be culturally safe and reflect current

[1] Australian Institute of Health and Welfare, Youth justice in Victoria 2017-18 factsheet.
[2] Ibid.
[3] Australian Institute of Health and Welfare, Youth justice in Australia, data table S110a: Young people aged 10-17 in detention on an average day by legal status and Indigenous status, states and territories, 2017-18.

research and knowledge of adolescent development and neuroscience. Aboriginal community input and the evidence should inform the goals, design and implementation of Victoria's youth justice law and policy framework.

The response and interventions must be flexible and adaptive to the needs of each individual child who comes into contact with the system and in turn assists them to realise a better future. This will not come about through a 'one size fits all' model. Rather, what is needed is a range of responses that assist young offenders to learn from their experiences and accept responsibility for their behavior, deal with the factors contributing to offending and ensure they can reconnect and reintegrate back into their community.

In recognition of the over-representation of Aboriginal children, responses must be culturally strengthening, relevant, effective and informed by their family and Aboriginal community. Alternatives to the formal youth legal system need to involve genuine engagement with and empowerment of Aboriginal families and communities to provide culturally-appropriate community led solutions.

We must, as a progressive state, focus on diverting children out of the criminal legal system and preventing harm caused by engagement with that system.

II. Recommendations

Prevent early criminalisation

1. Raise the age of legal responsibility

(a) Section 344 of the *Children, Youth and Families Act 2005* be amended to **raise the age** of criminal responsibility to 14 years.

2. Stop the child protection to prison pipeline

(a) The Department of Health and Human Services, Victoria Police and other relevant stakeholders develop and enter into an inter-agency agreement to **reduce the criminalisation of children in residential care**.

3. Address barriers to school engagement and educational achievement

(a) The Victorian Government commission a **review into the high rates of disengagement and exclusion of Aboriginal children from school**, with a focus on policies, procedures and practices that may contribute to suspension, expulsion, truancy, attendance and engagement issues. This review should involve direct consultation and engagement with Aboriginal children and their families, in a process that is designed and led by a culturally-appropriate educator or researcher.

(b) The Victorian Government working with Aboriginal Community Controlled Organisations and representative education services, **review the School Policy and Advisory Guide** and other guidance materials provided to schools on student engagement, behaviour management and support plans, discipline, suspension and expulsion and make it explicit that children should not be excluded from school as a result of disability, health and mental health issues, trauma, disadvantage or poverty.

(c) The Victorian Government commission a **review into national reform in First Nations led education** and with Aboriginal Community Controlled Organisations and representative education services, develop a **joint committee to develop a reform agenda** for Victoria to establish a First Nation led education system.

(d) The Victorian Government working with Aboriginal Community Controlled Organisations and representative education services, design and **deliver alternative and flexible schooling options** and pathways into them for Aboriginal children in the youth legal system and those at high risk of mainstream school disengagement.

(e) The Victorian Government working with Aboriginal Community Controlled Organisations and representative education services, increase the availability and **resourcing for vocational training, job readiness and employment opportunities** for young people, in particular for older Aboriginal young people who are involved in the criminal legal system.

4. Reduce contact with police and the legal system

(a) Victoria Police establish a specialist, highly trained **Youth Division**, similar to New Zealand Police Youth Aid.

(b) All officers involved in youth cautioning, diversion or youth engagement be encouraged to hold or gain **specialist qualifications in youth justice** and receive ongoing professional development in youth justice.

(c) Victorian Police organisation and remuneration structures appropriately **recognise officers** with specialist skills in youth justice.

(d) All Victorian Police receive **training in youth justice** which contains components about cautioning and diversionary alternatives, childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD, cultural awareness and the effects of trauma, including intergenerational trauma.

(e) Victorian Police **collect data** on the incidence of arrest of children and young people, the reasons for the use of arrest, rather than summons, the outcome of the charges laid against children and young people who were arrested and **prepare a report** to be published annually.

(f) The *Children, Youth and Families Act 2005* or specific youth justice legislation:

(i) create a **presumption in favour of alternative measures** for dealing with a child believed to have committed an offence, including a specific requirement on police to divert a child rather than charge the child with an offence either through provision of:

i. a verbal warning;

ii. a written warning;

iii. convening a Youth Justice Conference involving the youth;

iv. referring the youth to a diversion program;

(ii) in circumstances where pre-charge diversion may not be appropriate, require police, prosecutors, judicial officers and corrections officers to **prioritise diversion programs** at all stages of the legal process; and

(iii) **repeal section 356B** of the *Children, Youth and Families Act 2005* to expand the circumstances and offences for which diversion could be made available.

(g) The Victorian Government **remove the prosecution veto** on referrals to diversion by:

(i) amending section 356D(3)(a) of the *Children, Youth and Families Act 2005* to remove the requirement for "the prosecution" to consent to a court adjourning a criminal proceeding to enable participation in diversion; and

(ii) repealing section 356F of the *Children, Youth and Families Act 2005*.

5. Empower Aboriginal families and communities in the diversion of Aboriginal children

(a) The Victorian Government, in partnership with Aboriginal Community Controlled Organisations, develop and provide a range of **culturally responsive and gender specific diversionary programs** tailored to meet the intersectional needs of Aboriginal children and young people.

(b) The Victorian Government provide **funding security for diversion programs** tailored to meet the intersectional needs of Aboriginal children and young people, designed and delivered by, or in partnership with, Aboriginal Community Controlled Organisations.

(c) The Victorian Government **prioritise investment in diverting** Aboriginal children and young people, away from the legal system, rather than funding the constructions of

facilities that are fundamentally harmful and ill-equipped to support children and young people.

6. Reducing growing remand rates

(a) The Victorian Government **exempt children and young people from reverse-onus provisions**, particularly the application of 'show compelling reason' and 'exceptional circumstances' provisions (sections 4AA, 4A, 4C, 4D and schedules 1 and 2 of the *Bail Act 1977*).

(b) The Victorian Government **exempt children and young people from the offences section 30B** commit indictable offence on bail and **section 30** fail to answer bail.

(c) The Victorian Government expand the operation and scope of the **Koori Youth Justice Program** to ensure it is state wide and able to provide culturally strengthening early intervention and prevention opportunities for Aboriginal children and young people.

7. Health and wellbeing needs of children behind bars

(a) Procedures be put in place to **systematically screen** children and young people entering detention for all types of mental health conditions and disability upon entry and to ensure their diversion from a custodial setting to appropriate community based services.

(b) The Victorian Government call on the Prime Minister and the Federal Government to grant an exemption under section 19(2) of the *Health Insurance Act 1973* to allow health care providers in youth detention facilities to claim **Medicare subsidies**.

(c) The Victorian Government resource and support Aboriginal health organisations to deliver **culturally competent health services** to Aboriginal detainees and prisoners and to facilitate continuity of care upon release.

8. Stop cruel and inhuman treatment in prisons

(a) The Victorian Government enact laws, which **prohibit routine strip searches** and clearly articulate the circumstances in which a strip search can take place.

(b) The Victorian Government amend legislation, policies and internal guidelines applicable to all detention facilities and prisons to **prohibit solitary confinement** and to clearly confine the circumstances for legitimate separation or confinement with **appropriate safeguards**, that will:

(i) ensure it is a practice of last resort when all other measures to address risk or behaviour (including de-escalation strategies) have been exhausted;

(ii) require that the individual circumstances of the person be taken into account and an assessment be conducted of the likely impact a period of separation will have on a person's physical and mental health;

(iii) set non-extendable timeframes for how long a person can be separated and regular review to ensure it does not extend longer than required;

(iv) require that a separated person still be provided with access to family, lawyers, therapeutic professionals, appropriate peers, access to education including educational materials, access to outdoor exercise or recreation at regular time intervals, and access to appropriate recreational material including reading material;

(v) a requirement that a separated person be seen by a health professional prior to their separation, or within a reasonable timeframe after separation; and

(vi) a requirement that precise and transparent records (including reason for use, length of use as well as the age, Aboriginal status and gender of the person detained) and data be maintained and regularly published.

(c) The Victorian Government adequately **fund a National Preventative Mechanism (NPM)** or multiple NPMs to implement Victoria's obligations to **prevent torture and cruel, inhuman or degrading treatment** or punishment in detention facilities and prisons pursuant to the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

9. Support children leaving custody

(a) The Victorian Government invest in, and provide funding certainty to, culturally safe and responsive **throughcare programs**.

III. Prevent early criminalisation

The Victorian youth legal system has proven to be harmful and unresponsive to the unique experiences and needs of some of the most marginalised and disadvantaged children at risk of getting in trouble with the law. In particular, engagement with the Victorian youth legal system compounds disadvantage, trauma and increases the potential for further offending by children. Inappropriate and ineffective laws and policies, including an overreliance on a punitive and overcrowded detention system, contributes to this.

When a child is incarcerated they are removed from their home, family and other social supports. The loss of liberty, personal identity and protective factors that may have been available in the community can place great stress on a child, impair adolescent development and compound mental illness and

trauma.[4] In these circumstances, children in prison are particularly susceptible to victimisation (by adults and other children), stigmatisation by the criminal legal system and negative peer contagion.[5]

For Aboriginal children in particular, the social isolation and alienation from family, community and country can be more intense especially for children from regional areas. The flow on effect is also felt through family and community disharmony, impaired connection to positive family members including elders and reduced opportunities to fulfil and engage in important cultural obligations including ceremonies and initiation.

In addition, the removal of a child from their community can serve to reinforce negative behaviours and increase the influence of peers in the detention facility. It is accepted that youth prisons are 'universities of crime' that enable offenders to build and maintain criminal networks, learn and improve offending techniques and strategies. So rather than assisting a child to develop in socially responsible ways and address needs and risk factors, incarceration itself can increase the likelihood of re-offending.

Criminalising the behaviour of young children creates a vicious cycle of disadvantage that can entrench children in the criminal legal system.[6] Studies show that the younger a child has their first contact with the legal system, the higher the chance of future offending.[7] The Victorian Sentencing Advisory Council recently found that with each one year increase in a child's age at first sentence, there is an 18 per cent reduction in the likelihood of reoffending.[8]

Children who are themselves victims and survivors of violence, abuse and neglect should receive care and love rather than be criminalised for their experiences of trauma and challenging behaviour. In recognition of the immense harm caused by early contact with the criminal legal system, the Victorian Government must ensure they receive love and care and given access to health, education and support services that will help them to stay with their families and in their communities.

IV. Raise the age of legal responsibility

To support children and prevent early criminalisation, which can be a precursor, causal and aggravating factor for mental illness and adverse life outcomes for children, the Victorian Government should raise the age of criminal responsibility to at least 14 years old.

[4] Royal Australian and New Zealand College of Psychiatrists submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory (2017). Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 51.
[5] Kelly Richards, Australian Institute of Criminology, Trends & issues in crime and criminal justice No.409, What makes juvenile offenders different from adult offenders? (2011), 7.
[6] Australian Institute of Health and Welfare 2016. Young people returning to sentenced youth justice supervision 2014–15. Juvenile justice series no. 20. Cat. no. JUV 84. Canberra: AIHW: The younger a person was at the start of their first supervised sentence, the more likely they were to return to sentenced supervision. For those whose first supervised sentenced was community-based, 90% of those aged 10-12 at the start of this sentence returned to sentenced supervision, compared with 23% of those aged 16 and just 3% of those aged 17. More staggering were those sentenced to detention as their first supervised sentence, all (100%) those aged 10-12 at the start of his sentence returned to some type of sentenced supervision before they turned 18. This rate of return decreased with age, to around 80% of those 14 and 15, 56% of those 16 and 17% of those 17.
7 Ibid and AIHW (2013) Young People Aged 10 – 14 in the Youth Legal system, 2011-2012, AIHW, Canberra.
8 Sentencing Advisory Council, Reoffending by Children and Young People in Victoria, (December 2016), 26.

The age of criminal responsibility in all jurisdictions in Australia is currently just 10 years old.[9] This is the age at which a child can be investigated for an offence, arrested by police, charged and locked up in a prison.

When a child is over the age of 10 but under 14, there is an old, common law presumption that the child lacks the capacity to be criminally responsible for their acts, known as *doli incapax* (incapable of crime). In order to rebut the presumption, it must be proved that at the time of an offence the child knew that their actions were seriously wrong in the moral sense.[10]

This archaic presumption routinely fails to safeguard children. It is applied inconsistently and it can be very difficult for children to access expert assessments/evidence, particularly children in regional and remote areas.[11] Importantly, the presumption does not reflect contemporary medical knowledge of childhood brain development, social science, long term health effects or human rights law.[12]

Children aged 10 to 14 years lack emotional, mental and intellectual maturity. Research shows that children's brains are still developing throughout these formative years where they have limited capacity for reflection before action.[13] Children in grades four, five and six are not at a cognitive level of development where they are able to fully appreciate the criminal nature of their actions or the life-long consequences of criminalisation.[14]

The Victorian Sentencing Advisory Council, consistent with other research, has found 'that the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, continue offending into the adult criminal jurisdiction, and be sentenced to imprisonment in an adult court before their 22nd birthday. Each additional year in age at entry into the criminal courts was associated with an 18% decline in the likelihood of reoffending. These findings may not be surprising in light of studies showing that the youngest offenders are more likely to have been exposed to violence, abuse, neglect, and chaotic, dysfunctional lifestyles'.[15]

Children who are forced into contact with the criminal legal system at a young age are less likely to complete their education and find employment and are more likely to die an early death. The current

[9] Commonwealth- *Crimes Act 1914*, s 4M; *Criminal Code Act 1995*, s 7.1; Australian Capital Territory- Crim*inal Code 2002*, s 25; Northern Territory- *Criminal Code*, s 38(1) & 42AP; New South Wales- *Children (Criminal Proceedings) Act 1987*, s 5; Victoria- *Children, Youth and Families Act 2005*, s 344; South Australia- *Young Offenders Act 1993*, s 5; Western Australia- *Criminal Code Act Compilation Act 1913*, s 29; Queensland- *Criminal Code Act 1899*, s 29(1); Tasmania- *Criminal Code 1924*, s 18(1).
[10] *RP v The Queen* [2016] HCA 53.
[11] See O'Brien, W. & Fitz-Gibbon, K. (2017) 'The Minimum Age of Criminal Responsibility in Victoria (Australia): Examining Stakeholders' Views and the Need for Principled Reform', Youth Justice, vol. 17, no. 2.
[12] See, eg, Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Australia,* UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].
[13] Andrew Becroft, 'From Little Things, Big Things Grow' Emerging Youth Justice Themes in the South Pacific, 5 referring to Sir Peter Gluckman *Improving the Transition: Reducing Social and Psychological Morbidity During Adolescence* (Wellington, Office of the Prime Minister's Science Advisory Committee, 2011), 24. See also Kelly Richards, 'What makes juvenile offenders different from adult offenders? Trends & Issues in crime and criminal justice' (2011), 4; Laurence Steinberg 'Risk Taking in Adolescence: New Perspectives from Brain and Behavioural Science" (2007) 16 *Current Directions in Psychological Science* 55, 56.
[14] Ibid.
[15] Sentencing Council Victoria, Reoffending by children and young people in Victoria, (2016), 52.

system traps children who would otherwise grow out of the behaviours and benefit from social interventions and support.

The current minimum age is in breach of international human rights law and is inconsistent with international standards which Australia has been urged to meet.[16] The median age of criminal responsibility worldwide is 14 years old. The United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older.[17] The NT Royal Commission recommended that the Northern Territory raise the age of criminal responsibility.[18]

V. Stop the child protection to prison pipeline

The failure to identify health needs and understand the link between challenging behaviours and the traumatic impact of abuse and neglect on children can lead to children being forced through the criminal legal system.

There is a strong association between child protection and youth offending, with research suggesting a trajectory between child protection service engagement and entry into the youth legal system. The NT Royal Commission investigated the extent of this association through its crossover research which found that the level of offending increased as the level of involvement with the child protection system increased - from notification to substantiation to being placed in out of home care.[19] In Victoria, the Sentencing Advisory Council has also confirmed the over-representation of children known to the child protection system in the youth legal system and the increased likelihood of children with child protection history receiving the most severe sentence types, including detention.[20]

As the NT Royal Commission found 'understanding the underlying characteristics and needs of children who offend is a necessary precondition to addressing their behaviour, especially in terms of the neurobiological consequences of maltreatment and trauma, and how they affect behaviour. Screening and assessments are believed to be critical in achieving an understanding of individual needs across both the child protection and youth legal systems,'[21] and for ensuring better health outcomes. The failure to appropriately assess health needs and address the link between challenging behaviours and the traumatic impact of abuse and neglect can lead to children being further re-traumatised and pushed into detention.[22]

[16] See, eg, Human Rights Committee, *Concluding Observations on the Sixth Periodic Report of Australia,* UN Doc CCPR/C/AUS/CO/6 (1 December 2017) [44]; Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].
[17] Committee on the Rights of the Child, General Comment No. 10 Children's rights in juvenile justice, 44th sess, UN Doc CRC/C/GC/10 (25 April 2007), [32-33].
[18] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), rec 27.1.
[19] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 3B, Chapter 35.
[20] Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (2019).
[21] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 3B, Chapter 35.
[22] Ibid and Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System (2019), 77.

Children in out-of-home care are particularly susceptible to being criminalised with children in residential care over-represented in the youth legal system.[23] Children in residential care often present with complex mental health and behavioural needs that are usually closely linked to previous trauma, mental health issues and intellectual disability.[24] Once in residential care, failure to provide appropriate therapeutic and mental health services or equipping staff with alternative strategies to manage challenging behaviours can result in an over-reliance on police and the courts.[25]

In contrast to parents, there is strong evidence to suggest that carers and residential care workers are more likely to call police to manage behaviour in out-of-home care settings.[26]

Children who have suffered abuse, experienced neglect and/or been involved in the child protection system are over-represented among children and young people in custody.[27] In Victoria, the majority of young people under youth justice supervision (60.4%) also received a child protection service over a recent 4 year period. This is just over 10 times the rate of child protection among the general Victorian youth population.[28] In relation to Aboriginal children under youth justice supervision, 69% also received child protection services.[29]

Recently, New South Wales and Queensland have adopted inter-agency protocols to reduce unnecessary police involvement in response to behaviour by young people living in residential care.[30] These protocols provide a clear and consistent framework for responding to behavioural incidents within residential units whilst increasing the capability of staff to positively manage behaviour, without involving police. In order to stop the criminalisation of children's health and trauma experiences, the Victorian Government in partnership with key stakeholders including Victoria Police, legal aid organisations and the Department of Health and Human Services, should develop and enter into a similar inter-agency protocol.

VI. Address barriers to school engagement and educational achievement

There is a clear link between disengagement from school and poor school attendance and a child's entry into the youth legal system. In many cases, the disconnection from school results not only in

[23] Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Legal system (2019), 37.
[24] Victoria Legal Aid, 'Care Not Custody: A New Approach to Keep Kids in Residential Care out of the Criminal Justice System' (Report, 2016), 11.
[25] Ibid.
[26] Ibid.
[27] Sentencing Advisory Council, Reoffending by Children and Young People in Victoria, (2016), 6.
[28] Australian Institute of Health and Welfare 2018, Young people in child protection and under youth justice supervision 1 July 2013-30 June 2017, table S4a.
[29] Ibid.
[30] See, eg, Protocol to Reduce the Criminalisation of Young People in Residential Out of Home Care (New South Wales, 2016); Joint Agency Protocol to Reduce Preventable Police Call-outs to Residential Care Services (Queensland, 2018).

removal from pro-social peers and important support structures, but also leads to low levels of education which can significantly limit a child's employment and future prospects, aspirations and self-esteem.

In Queensland, a recent review of their youth legal system drew this link.[31] It found that many children in the youth legal system had poor levels of school engagement and attendance, with a significant number not attending or enrolled in school. A recent census of children in Queensland subject to youth justice supervision confirmed high levels of education disengagement, with records showing just 30% of compulsory school aged children were regularly attending school and around one third of children were not even enrolled in school though they were of compulsory school age. The same census showed that many of the justice involved young people had poor levels of mental health, high disability rates, behavioural issues, substance misuse, family conflict and housing instability.

In Victoria, the recent youth detention inquiry observed that many young offenders experience significant disruption to their education, and many experience difficulties with literacy and numeracy, disabilities such as cognitive impairment, intellectual disability or language and communication disorders.[32] It found that young people 'often have fragmented and persistently problematic contact with education services.' It noted in many cases, 'this results in low levels of education across the offender profile, significantly increasing the risk of current and future exclusion from employment. This, in turn, affects how well a young person integrates back into the community.' It found 80.1 per cent of young people in custody were at risk of not participating in education, and 76.8% were truant in the past year.

There were also high rates of disruptive behaviour at school and of young people who left school early where it was noted that of children aged 13–17 years, 93.8% of those serving a custodial sentence recorded truancy in the past year, and 76.9% recorded low academic achievement. Similarly, expulsion rates were high amongst the youth detention population, with 145 incidents of expulsion in 2016.

School engagement and educational success are key factors to the prevention of incarceration. However the current school system is not designed for, nor responsive to the unique needs and experiences of Aboriginal students leading to unacceptable educational outcomes and increased risk of incarceration. Critical review and educational reform is required to create culturally responsive and inclusive education. This requires improved educational practices, training, curriculum in mainstream education as well as the establishment of First Nations (Aboriginal) led education. Education reform in Australia is being designed by First Nations people and championed through a National First Nations Educators Network and Children's Ground. This work recognises the long standing educational systems and practice by First Nations peoples and the impact these systems of education have on the identity, wellbeing and educational engagement of Aboriginal children and young people. The investment in education reform as a key prevention measure to incarceration is a priority.

[31] Bob Atkinson, Youth Justice Taskforce, Department of Child Safety, Youth and Women, Queensland Government, Report on Youth Justice, June 2018, 34.
[32] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), Part 1, 161.

VII. Overrepresentation of Aboriginal children

Aboriginal children are over represented in both custodial and community based supervision populations. Whilst Aboriginal children account for just 2 percent of the Victorian youth population and, Aboriginal children make up around 17 percent of all children under youth justice supervision.[33] Aboriginal children were 13 times as likely as their non-Indigenous counterparts aged 10-17 years to be under youth justice supervision.[34]

The discrepancy in these statistics is not because Aboriginal children commit more crimes. Over-representation is largely attributable to structural issues, like inconsistent police practices, bias and discrimination in the exercise of decision-making powers, the criminalisation of health conditions and mental illness and so on. For example, the current legislative schemes supporting cautioning and diversion in Australian jurisdictions give police significant discretion and ensures they are 'gate keepers' to diversion.[35] Aboriginal legal services have criticised this discretionary scheme as open to misuse and bias, especially in its application to Aboriginal children.[36]

An early study by the Australian Institute of Criminology found that Aboriginal children were 'significantly more likely' to be referred to court than non-Aboriginal children.[37] Aboriginal children were also more likely to be dealt with by way of court for their first, second and third contacts with police.[38] Recent data shows that Australia-wide, police proceed with formal charges against Aboriginal children and young people at a rate of five to 10 times more often than they do against non-Aboriginal offenders aged 10–14, and three to five times more often against Aboriginal offenders aged 15–17.[39] In the Victorian context a recent study of police cautioning by the Crime Statistics Agency found that Aboriginal children were approximately twice as likely (OR=2.1) to be charged compared to non-Indigenous young people.[40]

In addition to the failure by police to caution or divert, Aboriginal children are more likely to be arrested rather than summonsed and remanded in custody rather than bailed. For example, the NT Royal Commission found that arrests of young people increased significantly over the preceding decade, an increase of 15 times for Aboriginal females and tripling for Aboriginal males. The Royal Commission also found that Aboriginal children were being arrested more readily and frequently for low level

[33] Australian Institute of Health and Welfare, Youth justice in Victoria 2017-18 factsheet.
[34] Ibid.
[35] See further discussion in House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time–Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) 202.
[36] Ibid 202.
[37] House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, Parliament of Australia, *Doing Time–Time for Doing: Indigenous Youth in the Criminal Justice System* (2011), 204.
[38] Bob Atkinson, Youth Justice Taskforce, Department of Child Safety, Youth and Women, Queensland Government, Report on Youth Justice, June 2018, 108.
[39] Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (November 2017), Volume 2B, Chapter 25, 222.
[40] Crime Statistics Agency, The Cautious Approach: Police cautions and the impact on youth offending, September 2017, 13.

offences like breach of bail, with Aboriginal children accounting for 95% of those arrested for this offence in one year, 49% of those arrested aged 10-14 years.[41]

In order to overcome inconsistency and either real or perceived bias in the exercise of police discretion in relation to Aboriginal children there would need to be substantive reforms to legislation, internal policies and training for Victoria Police.

Many of the recommendations from the NT Royal Commission directed at improving the effectiveness and responsiveness of policing would have equal application and relevance to Victoria. In particular, the NT Royal Commission recommended that police establish a specialist and highly trained youth division, and that all officers in youth diversion or youth engagement be encouraged to hold or gain specialist qualifications in youth justice. The Commission further recommended that all police receive training in youth justice which contains components about childhood and adolescent brain development, the impact of cognitive and intellectual disabilities including FASD and the effects of trauma.[42]

In addition, there were a number of recommendations aimed at legislative and policy reforms to increase the circumstances and opportunities for diversion.[43] The Commission recognised that changes to the legislative framework and internal guidelines were part of essential reforms that could increase diversion opportunities for children which in turn would provide 'an integral and effective opportunity to intervene early with young offenders to divert them from further offending.'

VIII. Reduce contact with police and the legal system

Acknowledging the role interactions with police, the courts and the experience of prison play in reinforcing negative behaviours, increased offending and poor health outcomes for children and young people, it is crucial young people are diverted away from the criminal legal system.

The recent review of Victoria's legal system pressed the importance of diverting children from custody reporting that: "depriving a child or young person of their liberty is detrimental to adolescent development, dislocates young people from any protective factors they may have, and must only be an option of last resort. No evidence shows that a custodial order reduces offending – in fact, the Sentence Advisory Council (2016) found that more than 80 per cent of young people on a custodial order reoffended, reflecting among the highest rates of recidivism of all young offenders."[44]

Research confirms that once a child enters the formal criminal legal system, they are more likely to return, particularly if they are detained.[45] In contrast, diversion pathways, which operate outside the

[41] Exh.045.002 Joe Yick, statement to the Royal Commission into the Protection and Detention of the Northern Territory, 14 October 2016; see further Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Final Report (November 2017), Volume 2B, Chapter 25, 293.
[42] Commonwealth, Royal Commission into the Protection and Detention of Children in the Northern Territory, Findings and Recommendations (November 2017), Recommendation 25.1
[43] Ibid, Recommendation 25.7 to 25.14 inclusive.
[44] Victorian Department of Justice, Penny Armytage and John Ogloff, Meeting needs and reducing offending, executive summary (2017), 15.
[45] Sentencing Advisory Council, *Reoffending by Children and Young People in Victoria* (2016), 4, 52.

formal court system, are effective in helping children get back on track and reduce the risks of further offending.[46] Diversionary mechanisms are intended to avoid the stigmatisation associated with involvement in the formal criminal legal system and can create better opportunities to identify and respond to family, behavioural and health problems contributing to offending behaviour.

Diversion programs provide an opportunity to link young people with tailored community based interventions and supports whilst also reducing rates of reoffending.[47]

Given the risk of harm through incarceration and the danger of exacerbating mental health conditions, there should be multiple opportunities for the diversion of children and young people at all stages of the youth legal system, particularly prior to charge.[48]

The NT Royal Commission recognised the importance of successful diversion programs as a fundamental aspect of a good youth legal system.[49] The NT Royal Commission impressed that diversion programs 'must be culturally appropriate, promote health and self-respect, foster a sense of responsibility and encourage attitudes and the development of skills that will help young people develop their potential as productive members of society'.[50] Whilst the NT Royal Commission delineated the key features for a successful diversion program,[51] the majority of existing Victorian diversion programs fail to embody all these essential criteria. Aboriginal children are most disadvantaged by this being less likely to be referred to a diversion program[52] and, if referred, linked to a diversion program that may not be culturally appropriate, like ROPES, which are often based in mainstream or governmental agencies.[53]

In addition to more culturally safe diversion programs, the Victorian Government should be increasing the capacity of Aboriginal health and mental health services and Aboriginal Community Controlled Organisations more generally to provide referrals and linkages to health and welfare services including alcohol and other drug rehabilitation. These culturally strengthening alternatives should be funded and made available at all points of interaction with the youth legal system to effectively divert children and

[46] Carney J, Northern Territory Government, Review of the Northern Territory Youth Justice System: Report (2011), 94-96. See further Kaye McLaren, Alternative Actions That Work: A Review of the Research on Police Warnings and Alternative Action (2011) Police Youth Services Group, New Zealand Police. Note that this report provides a review of research into NZ police warnings and diversionary practices but also international models. It identifies 23 principles, starting with overarching principles, followed by principles that relate to the various stages of the youth diversion process. These principles have then been distilled into 11 key findings, outlined in the report.
[47] Parliament of Victoria, Legal and Social Issues Committee, Inquiry into youth justice centres in Victoria (2018), 34-35.
[48] Victorian Department of Justice & Jones R 2006. *Diversion: A model for reducing Indigenous criminal justice over representation*. Paper prepared for consideration at the Second National Indigenous Justice Forum, Melbourne.
[49] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.
[50] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 250.
[51] Ibid, 250-251. These include: Timely referral, assessment and participation; Availability without admission of guilt; Availability for repeated referrals; Inclusion of a conference with the victim or family; A diversion plan and a specialist case manager; 'Wraparound' services for the young person; Engagement with the young person's family; Built-in education, rehabilitative programs, cultural activities, employment pathways, mentoring and community service (with services such as mental health services and substance abuse services available through the diversion program); Culturally appropriate plans and programs; Community input and control of diversion programs; and Measureable and evaluated outcomes.
[52] Human Rights Law Centre and Change the Record Coalition, Over-Represented and Overlooked: The Crisis of Aboriginal and Torres Strait Islander Women's Growing Over-Imprisonment (2017) 22.
[53] Victorian Aboriginal Legal Service, Submission No 39 to the Australian Law Reform Commission, *Inquiry into the Incarceration Rates of Aboriginal and Torres Strait Islander Peoples,* September 2017, 16.

young people. This is in line with recommendations made by the United Nations Committee on the Elimination of Racial Discrimination to 'develop alternatives to detention and introduce effective diversion programmes in all states and territories'.[54]

IX. Empower Aboriginal families and communities in the diversion of Aboriginal young people

In order to increase the accessibility and efficacy of cautionary and diversionary opportunities for Aboriginal children in Victoria, the *Children, Youth and Families Act* should be amended to empower Aboriginal families and communities to perform an active role. While not the sole solution, specific legislative amendment that makes it imperative to include the family and community in the rehabilitation and reintegration of a child is a positive, first step. For example, in Queensland,[55] the objects of the *Youth Justice Act 1992* (Qld) include:

> to recognise the importance of families of children and communities, in particular Aboriginal and Torres Strait Islander communities, in the provision of services designed to—
>
> (i) rehabilitate children who commit offences; and
>
> (ii) reintegrate children who commit offences into the community.

Further, in administering a caution to an Aboriginal child as a diversionary option, a respected elder of the community could be empowered to issue the caution instead of police.[56] This would have the benefit of strengthening cultural connections, re-establishing broken relationships and community building.

In Western Australia, the law allows referrals from police/prosecutions or the court to Juvenile Justice Teams - a multi-disciplined team with a focus on restorative justice.[57] The Juvenile Justice Team model makes specific provision for Aboriginal community members to sit on the panel to engage and deal with the young person. This model could work well in parts of Victoria by expanding the opportunity for diversion that would re-establish cultural authority, positive peer relationships, cultural reconnection and social inclusiveness.

In addition, the law could require police to involve, consult and empower Aboriginal communities and Aboriginal Community Controlled Organisations in the delivery of diversion programs. For example, Youth Justice Conferences[58] involve bringing together a young offender with family members, the victim(s), police and community leaders to discuss the impact of the crime and agree to a plan for the offender to make amends and avoid reoffending. These conferences, often referred to as 'restorative justice', could be used in remote communities and small townships immediately after an offence to

[54] Committee on the Elimination of Racial Discrimination, *Concluding Observations on the Eighteenth to Twentieth Periodic Reports of Australia,* UN Doc CERD/C/AUS/CO/18-20 (29 December 2017) [25]-[26].
[55] *Youth Justice Act 1992* (QLD), s2.
[56] See further ibid, s17.
[57] *Young Offenders Act* 1994 (WA), ss 26 & 27.
[58] See s 39(2)(c) *Youth Justice Act* (NT).

ensure offenders learn from the consequences of their actions and work with family and community to address the challenges in their lives that led to offending, while strengthening the structures in communities to reduce youth offending rates.

By involving and empowering Aboriginal families and communities, such diversionary models have greater potential to achieve the key objects and principles of an effective youth legal system. An example of such a model in practice is the Tiwi Islands Youth Diversion Unit, which has been recognised as a successful and effective service due to its ability to respond and resolve family and community disputes.[59] The success of the model has been attributed to it being a locally driven service utilising key cultural values. An evaluation in 2014 found the program was culturally competent and useful in reconnecting young people to cultural norms whilst directly addressing the factors that contribute to offending behaviour, such as substance misuse, boredom and disengagement from work or education.[60]

To be effective and responsive to the unique experiences of Aboriginal children and young people, the planning, design and implementation of alternatives must be driven by Aboriginal communities and supported through Government and NGO partnerships, sufficient funding and resourcing of families and communities.[61]

X. Reducing growing remand rates

The arrest and detention of a child should be a measure of last resort and for the shortest possible period of time.[62] In Victoria this principle is reflected in certain provisions of the *Bail Act 1977* and the *Children, Youth and Families Act 2005*.[63]

In reality, children are being remanded in custody because of welfare concerns, health concerns, substance misuse and because of a lack of suitable accommodation. In addition, changes to the *Bail Act 1977* in December 2013 led to restrictions on applications for bail and led to an increase in the targeted policing of bail compliance.[64] Whilst some reforms in 2016 attempted to remedy the application of these harsh bail laws to children, the growth in the remand population is testament they are not enough. The recent review of Victoria's youth legal system pointed to 'high levels of inconsistency in

[59] Australian Centre for Indigenous Knowledges & Education, Final Report, Tiwi Islands Skin Group Project, Keeping Culture Strong and Inspiring Youth to become Community Leaders (2014), 27-28.
[60] Jacqueline Stewart, Bodean Hedwards, Kelly Richards, Matthew Willis and Daryl Higgins, Australian Institute of Criminology, Indigenous Youth Justice Programs Evaluation (2014), 47
[61] See further Commonwealth of Australia, *Doing Time–Time for Doing: Indigenous youth in the criminal justice system*, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs (2011), 51: 'The Committee considers it of paramount importance that Indigenous families and communities have the capacity to lead change and take responsibility for establishing the positive social norms that will foster a new generation of Indigenous children with choices and opportunities for the future. Social change and expectations must come from within communities, however there is a role for governments to provide an interim safe and stable community environment and to assist in developing community leadership and cohesion where needed.
[62] *Convention on the Rights of the Child*, opened for signature 20 November 1989, 1577 UNTS 3 (entered into force 2 September 1990) ('*CROC*'), art.37(b).
[63] For example s3B *Bail Act 1977* and ss.362 *Children, Youth and Families Act 2005*.
[64] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), Part 2, 305-306.

the approach to bail and remand across the system' when it came to children.[65] It noted that the number of young people on remand increased from 112 in the second quarter of 2013-14 to 210 young people in the first quarter of 2016-17.[66]

It is concerning that on any given day around 60% of children in detention are on remand (unsentenced). This means that the majority of children behind bars are not serving a sentence of detention as a result of a finding of guilt.[67] The dynamic created by a high remand population is counterproductive to rehabilitation and unconducive to addressing the risks factors and individual needs of the children detained. It is understood that children held on remand have limited access to therapeutic and rehabilitation services or supports, before being released into the community at the finalisation of court proceedings.[68] High remand rates and overcrowding in youth justice centres are very real contributing stressors to unrest and conflict between staff and detainees.[69]

Exposing young people to remand, a risk factor for reoffending, should only occur in rare and exceptional circumstances. The *Bail Act 1977* and *Children, Youth and Families Act 2005* should mandate that custody only be considered as a last resort for young people, whether at the time of arrest, when considering bail or at sentencing. In addition, children and young people should be exempt from certain offences related to bail (ss.30 and 30B) and from presumptions against bail and reverse-onus provisions, particularly the application of 'show compelling reasons' and 'exceptional circumstances' provisions (ss.4AA, 4A, 4C, 4D and schedules 1 and 2 of the *Bail Act 1977*).

Welfare considerations and police practices

Not much has changed since the 2011 report, *Doing Time - Time for Doing,* which drew attention to the correlation between welfare concerns and the increase in remand rates. Lack of suitable accommodation, inadequate parental or adult supervision, an inability to locate a responsible adult, lack of access to appropriate education and training opportunities, drug and alcohol dependence, and health concerns were among the reasons cited for young people being refused bail and held in detention facilities.[70] Many of these factors influence bail refusals in Victoria, as confirmed during the recent Victorian Parliamentary Inquiry into youth justice centres.[71]

Both reports highlighted the lack of safe and stable accommodation as a key factor to a young person's inability to obtain bail or comply with bail conditions.[72] Further, it has been reported that a lack of support

[65] Ibid.
[66] Ibid.
[67] Australian Institute of Health and Welfare, Youth Justice in Australia 2017-18 (2018), 16.
[68] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), Part 2, 305-306.
[69] Parliament of Victoria, Legal and Social Issues Committee, Inquiry into youth justice centres in Victoria (2018), Chapter 5.
[70] Carney J, Northern Territory Government, Review of the Northern Territory Youth Justice System: Report (2011), 50; Standing Committee on Aboriginal and Torres Strait Islander Affairs, House of Representatives, The Parliament of the Commonwealth of Australia, *Doing Time—Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) Canberra, 219-229.
[71] Parliament of Victoria, Legal and Social Issues Committee, Inquiry into youth justice centres in Victoria (2018), Chapter 5
[72] Standing Committee on Aboriginal and Torres Strait Islander Affairs, House of Representatives, The Parliament of the Commonwealth of Australia, *Doing Time—Time for Doing: Indigenous Youth in the Criminal Justice System* (2011) Canberra, 222.

and programs for young offenders has been a leading factor in decisions to refuse bail. The Aboriginal and Torres Strait Islander Legal Services have stated:

> Detention is a criminal sanction: not a 'placement' for children in need of care … It is clear and predictable that young people at risk of entry to the criminal justice system will come from homes where it is unsafe for them to be. The need to provide accommodation, other than police cells or detention centres, is chronic.[73]

Where there are concerns about a young person's home environment or lack of accommodation, a supported bail program should be available to undertake timely assessments, support children and provide advice, make arrangements for accommodation and referral to additional support services. Whilst there are a number of bail support programs operating in Victoria, a review of current services and unmet needs, particularly in areas where there are high Aboriginal populations, should be undertaken to ensure they are effective and culturally safe in line with observations of the NT Royal Commission.[74]

There is also a lack of youth accommodation and residential substance misuse services available across regional and more remote parts of Victoria. In order to ensure those most at risk are not being remanded in custody there should be a range of alternative youth accommodation services and residential substance misuse treatment services available to link in with a bail support program. In particular there should be greater investment in Aboriginal community controlled programs that aim to reconnect children with culture, family and community. The priority must be to address the individual risk factors and meet the personal needs of each child, rather than monitoring and supervision. Voluntary participation, a holistic response based on a needs assessment, coordination across government departments and adapting responses to local conditions are all critical.

XI. Health and wellbeing needs of children behind bars

Young people caught in the quick sand of criminal legal systems have significantly higher rates of mental health conditions and cognitive disabilities when compared with the general youth population.[75] They are also likely to experience co-occurring mental health disorders and/or cognitive disability. Australian research suggests that these multiple factors, when not addressed early in life, compound and interlock to create complex support needs.[76]

[73] Ibid 226.
[74] Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory (Final report, November 2017), Volume 2B, Chapter 25, 300.
[75] Chris Cuneen, Arguments for Raising the Minimum Age of Criminal Responsibility (Research Report, University of New South Wales, 2017).
[76] Eileen Baldry, Disability at the margins: limits of the law, 23(3) *Griffith Law Review* 370 (2014); Eileen Baldry, 'People with Multiple and Complex Support Needs, Disadvantage and Criminal Justice Systems' in Andrea Durbach, Brendan Edgeworth and Vicki Sentas (eds), *Law and Poverty in Australia: 40 Years after the Sackville Report* (Sydney, 2017); Leanne Dowse, Therese Cumming, Iva Strnadova and Julian Trofimovs, Young People with Complex Needs in the Criminal Justice System, 1(2) *Research and Practice in Intellectual and Developmental Disabilities* 174 (2014); Eileen Baldry and Leanne Dowse, 'Compounding Mental and Cognitive Disability and Disadvantage: Police as Care Managers' in Duncan Chappell (ed), Policing and the Mentally Ill: International Perspectives (USA: CRC Press, 2013).

In terms of objective data on the prevalence of mental health issues and other health needs, the most recent survey of 209 boys and 17 girls held in detention in Victoria on 1 December 2017, found that:

- 70 per cent were victims of abuse, trauma or neglect;
- 53 per cent presented with mental health issues;
- 30 per cent had a history of self-harm or suicidal ideation; and
- 41 per cent presented with cognitive difficulties that affect their daily functioning.[77]

Imprisoned children and young people are also likely to have been exposed to multiple traumatic events, socioeconomic disadvantage, family violence and poor educational opportunities.[78]

However the exact number of children and young people with disabilities or mental health issues is unknown due to limited screening and assessments tools at various stage of the youth legal system.[79]

The failure to screen and assess children for cognitive impairments including FASD is also a common failing of youth legal systems across Australia. This was demonstrated by a Western Australian study of young people in detention, 74% of the children assessed were Aboriginal, which found that 36% met the criteria for FASD and 89% had at least one form of severe neurodevelopmental impairment.[80] Most of the young people had gone previously undiagnosed despite multiple contacts with government and other agencies, including prior engagement with child protection services and the youth legal system. The missed opportunities for earlier diagnosis and intervention may have prevented or mitigated their involvement with justice services.[81]

Even if diagnosed, custodial facilities are ill-equipped to deal with the mental health needs of young people, despite having a dedicated funded health service.[82] In a recent review of Victoria's youth legal system, experts criticised the resourcing and current services model of youth detention as insufficient to meet the vast needs of the youth detention population and the lack of staff training and skills to appropriately assess and respond to mental health presentations.[83] In its current state simply funnelling children and young people into these ill-equipped youth prisons will only serve to compound experiences of trauma and exacerbate mental health challenges.

There is a clear link between wellbeing, mental health and youth detention, given one third of imprisoned children diagnosed with depression only experienced its onset once they were behind bars.[84] Youth

[77] Department of Health and Human Services, Youth Parole Board Annual Report 2017–18 (Melbourne: Victorian Government, 2018) 15.
[78] Department of Health and Human Services, Youth Justice in Victoria Fact Sheet (2016).
[79] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 156-160.
[80] Carol Bower, Rochelle Watkins, Raewyn Mutch, et al, Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia (Telethon Kids Institute, 2018).
[81] Senate Community Affairs Reference Committee, Parliament of Australia, Indefinite Detention of People with Cognitive and Psychiatric Impairment in Australia (2016), 23.
[82] Victorian Government, Justice and Community Safety, Peggy Armytage and Professor James Ogloff, Youth Justice Review and Strategy: Meeting needs and reducing offending, (July 2017), 45-46.
[83] Ibid.
[84] Barry Holman and Jason Ziedenberg, The Dangers of Detention: The Impact of Incarcerating Youth in Detention and Other Secure Facilities (Justice Policy Institute, 2006).

imprisonment is associated with higher risks of suicide and depression.[85] Imprisoning children impacts on their immediate and future health and should be avoided.

XII. Conclusion

This Inquiry presents an opportunity to confront the systemic issues that are causing the over-representation of Aboriginal children in the youth legal system. We urge the Commission to consider the 9 overarching recommendations made in this submission to:

1. raise the age of criminal responsibility from 10 to at least 14 years old;
2. take steps to stop the child protection to prison pipeline;
3. address the barriers to school engagement and educational achievement;
4. reduce contact between Aboriginal children with police and the legal system;
5. empower Aboriginal families and communities in the diversion of Aboriginal children;
6. reduce the growing remand rates;
7. address the health needs of Aboriginal children behind bars;
8. stop the cruel and inhuman treatment of Aboriginal children in prisons; and
9. support Aboriginal children leaving custody.

[85] Report of the Royal Commission and Board of Inquiry into the protection and detention of children in the Northern Territory (Final Report, November 2017).