



Commissioner for Children and Young People
Western Australia

Our reference: 12/9054

Ms Christine McDonald
Inquiry Secretary
Senate Legal and Constitutional Affairs Reference Committee
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Dear Ms McDonald

Inquiry into the value of a justice reinvestment approach to criminal justice in Australia

Thank you for the opportunity to make a submission to the Inquiry into the value of a justice reinvestment approach to criminal justice in Australia.

The Commissioner for Children and Young People in Western Australia (the Commissioner) has a statutory responsibility to monitor the wellbeing of all children and young people under the age of 18 years and promote their best interests. The Commissioner must have regard for Aboriginal and Torres Strait Islander children and young people and those children and young people who are vulnerable or disadvantaged in some way. Due to the profound impact the justice system can have on young people, and the vulnerability of those children and young people who are coming into contact with the criminal justice system, youth justice has been a priority area of research and advocacy since the office was established in 2007.

The demographics of youth justice in Western Australia

Western Australia's population includes around 540,000 children and young people, around one quarter of the total population. Of these, around 31,000 (nearly 6 per cent) are Aboriginal.¹ The non-Aboriginal population of young people is concentrated in the metropolitan area (around 71 per cent), while nearly two-thirds of Aboriginal young people live outside the metropolitan area.²

¹ This submission follows the preferred practice in WA of using the term "Aboriginal" to refer to Aboriginal and Torres Strait Islander peoples.

² Australian Bureau of Statistics 2009, *Experimental Estimates of Aboriginal and Torres Strait Islander Australians, Jun 2006*, Table. Experimental estimated resident Australian Indigenous and non- Indigenous population, Australia, Remoteness Area', data cube: Excel spreadsheet, cat. no. 3238.0.55.001, viewed 03

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It is important to understand that in WA very few children and young people actually have any sustained contact with the justice system. In 2008 the WA Auditor General carried out a performance examination of aspects of the youth justice system. This report, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994* assessed the existing youth justice system, and found that only around four per cent of children and young people have more than one contact with the justice system.³ Overall, the report identified that the majority of offending is concentrated in a core of around 1,000 children and young people, or to put it another way, one half of one per cent of the WA population of 10 to 17 year olds.⁴

In the financial year 2010-11, the Australian Bureau of Statistics (ABS) reported that the number of young people in WA 'proceeded against by police' decreased to 8,196, around 20 per cent less than the previous year. This category includes any type of police intervention, including formal and informal cautions, referrals to juvenile justice teams, arrests and charges.⁵ This number represents around three and a half per cent of the whole 10 to 17 year old population, and for many it is their only contact with the justice system.

In the most recent financial year, 2011-12, the ABS reported that this number had nearly halved, to 4,448.⁶ This represents 1.85 per cent of the whole 10 to 17 year old population in WA.

Despite this, the numbers in juvenile detention continue to grow. While there was a 20 per cent decrease in proceedings in 2010-11, the average daily population of 10 to 17 year olds in WA juvenile detention grew by 2.1 per cent.⁷ In the five years from 2005 to 2010, the average daily population grew from 125.8 people to 176.2 people, a 40 per cent increase.⁸

Western Australia has one of the highest rates of juvenile detention in Australia. In the last quarter of 2011-12 (the most recent comparable figures) WA had 0.69 young persons per 1,000 in detention, second only to the Northern Territory at 1.55 per 1,000. This compares to states like Victoria, where the rate is 0.12 per 1,000, and an overall Australian rate of 0.35 per 1,000.⁹

Aboriginal children and young people

The situation for Aboriginal children and young people is particularly concerning. WA has the highest rate of detention of Aboriginal young people; from 2006 to 2010 Aboriginal young people 10 to 17 years old were between 39 and 53 times more likely

May 2011,

<www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/3238.0.55.001Jun%202006?OpenDocument>

³ Office of the Auditor General 2008, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994: Performance Examination*, Office of the Auditor General, p.17.

⁴ Office of the Auditor General 2008, *The Juvenile Justice System: Dealing with Young People under the Young Offenders Act 1994: Performance Examination*, Office of the Auditor General, p.16.

⁵ 45190DO010_201011 Recorded Crime - Offenders, 2010-11 Table 1 Youth Offenders WA

⁶ 45190DO001_201112 Recorded Crime - Offenders, 2011-12 Table 7

⁷ Unpublished report, supplied by Department of Corrective Services, June 2011

⁸ Unpublished report supplied by Department of Corrective Services, June 2011

⁹ Australian Institute of Health and Welfare 2012, *Juvenile detention population in Australia 2012*, Juvenile justice series no. 11, cat. No. JUV 11, AIHW, table S10

to be in detention than non-Aboriginal people of the same age.¹⁰ At any given time in the last year, between 60 and 80 per cent of young people in detention were Aboriginal. This is despite Aboriginal young people being between five and six per cent of the overall population of young people in WA. The highest rate of detention is among young Aboriginal males. At any given time in 2010, around 1.5 per cent of the overall WA population of Aboriginal males 10 to 17 years were in detention, compared to 0.03 per cent of non-Aboriginal males in that age group.¹¹

Remand detainees

It is of particular concern that around half of the WA youth detention population is there on remand. A proportion of these are unable to obtain bail as they cannot be released to the care of a 'responsible adult' as specified in the *Bail Act 1982*. It is particularly of concern as few of those remanded go on to sentenced detention – in 2010-11 less than 15 per cent of young people on remand were subsequently sentenced to custody.¹²

Mental Health

The mental health and wellbeing of children and young people in contact with the justice system is also of great concern. Figures in WA estimate that around half of children and young people in juvenile detention experience mental health issues.¹³ A paper on the differences between young offenders and adult offenders cited a 2005 study from New South Wales, which found that 88 per cent of young people in custody reported symptoms consistent with a mild, moderate or severe psychiatric disorder.¹⁴ The Commissioner's inquiry into the mental health and wellbeing of children and young people in Western Australia found that as a state WA focusses primarily on crisis responses for mental health, rather than investing in the health system to address the needs of children and young people. At present there is no dedicated, secure mental health facility for young people in WA, and the state has only recently commenced mental health services in the Children's Court. In the 2012 State Budget, the Government announced \$1.7m over two years for mental health experts to be placed at the Perth Children's Court to establish an early intervention pilot project to support the needs of the court. This project would provide assessments, referrals and treatment, with the intention of diverting young people away from the justice system.¹⁵

¹⁰ Commissioner for Children and Young People 2012, *The State of Western Australia's children and young people: Edition One*, Commissioner for Children and Young People WA, p.173

¹¹ Commissioner for Children and Young People 2012, *The State of Western Australia's children and young people: Edition one*, Commissioner for Children and Young People WA, p.175

¹² Department of Corrective Services email communication, 12 December 2011.

¹³ Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People WA, p.81. The figure was stated in a submission from the Inspector of Custodial Services.

¹⁴ Richards K 2011, *What makes juvenile offenders different from adult offenders?*, Australian Institute of Criminology, Trends and issues in crime and criminal justice, no. 409, p.4

¹⁵ Porter C and Morton H 2012, *State Budget 2012-13: Supporting our Community – Mental health court diversion program first for WA*, Ministerial Media Statements, <http://www.mediastatements.wa.gov.au/Pages/StatementDetails.aspx?StatId=5884&listName=Statement sBarnett>

Costs

The cost of youth justice continues to rise along with the incidence of youth incarceration. The Department of Corrective Services calculated that the cost per day for juvenile detention was \$624 per person, and for juvenile community custody \$77 per person. To detain a young person for a year costs \$227,760.

What needs to be done

Whilst there have been some improvements in youth justice in WA in the last five years there remains major structural and implementation issues which require a concerted effort from all agencies related to youth justice to achieve better outcomes for children and young people coming into contact with the youth justice system.

The Commissioner has consistently identified the following as priority areas for action:

- Investing in programs that divert children and young people away from the criminal justice system is a critical priority area.^{16 17}
- Safe houses in communities across WA where children can go when it is not safe for them to be at home.¹⁸
- Establishment of a state-wide 24 hour bail service.¹⁹
- The significant over-representation of Aboriginal children and young people in contact with the justice system.²⁰
- To address the 'correctionalising' of youth justice, responsibility for youth justice should be transferred from the Department of Corrective Services to either a stand-alone department or to the Department of Child Protection to address more appropriately the underlying causes of children and young people offending, improve accountability for outcomes, and reduce government expenditure.^{21 22}
- Improved coordination and collaboration between agencies working with young people in the justice system.
- Children and young people appearing before the Children's Court of Western Australia must have access to appropriate, comprehensive mental health assessment, referral and treatment services; and a dedicated forensic mental health unit should be established.²³
- Development of a whole of government collaborative approach in relation to youth justice, incorporating a strategic framework or blueprint and implementation plan.

¹⁶ Commissioner for Children and Young People 2012, *Youth Justice*, Policy Brief March 2012,

¹⁷ Blagg H 2009, *Youth Justice in Western Australia*, Commissioner for Children and Young People WA, p.6.

¹⁸ Commissioner for Children and Young People 2010, *Annual Report 2009-2010*, Commissioner for Children and Young People, pp.16 and 44

¹⁹ Commissioner for Children and Young People 2010, *Submission to the Department of the Attorney General's review of the Bail Act 1982: Issues Paper and Questions*, Commissioner for Children and Young People, pp.30-32

²⁰ Letter, Commissioner for Children and Young People to Attorney General, 22 October 2008

²¹ Commissioner for Children and Young People 2009, *Submission to the Economic Audit Committee*

²² Blagg H 2009, *Youth Justice in Western Australia*, Commissioner for Children and Young People, p.8

²³ Commissioner for Children and Young People 2011, *Report of the Inquiry into the mental health and wellbeing of children and young people in Western Australia*, Commissioner for Children and Young People 2011, pp.80-83

Why new approaches are needed

The Commissioner acknowledges that there are some people for whom detention is the only option, due to the direct risk they present to themselves, their families and the community. For these young people, detention is appropriate.

In addressing justice issues, there must be acknowledgement of the role that chaotic lifestyles and disengagement have on young people. There are underlying social determinants that make it far more likely that a child or young person will come into regular contact with the criminal justice system. For these young people, justice and welfare issues are inextricably linked. These risk factors include dysfunction at home and in the community, alcohol and drugs, violence, disadvantage and poverty, disengagement from the education system and social exclusion.²⁴

When former Chief Judge the Honourable Antoinette Kennedy retired in 2010, she spoke on radio about her views on the justice system:

*The first thing I frequently have young lawyers say to me is, 'It was inevitable that my client would end up in the criminal justice system. And when you look at the life and the childhood of that person, you know that that's right...If we know it's inevitable, why aren't we doing more about it?'*²⁵

Until recently, WA had two juvenile detention facilities: Banksia Hill, which housed sentenced male detainees; and Rangeview, which housed all remandees and female detainees. In September 2012 Rangeview was closed as a juvenile facility to allow the development of the Wandoo Reintegration Facility for men aged 18-24, and all detainees are now housed in an expanded Banksia Hill, now the single largest youth detention centre in Australia. Although the Commissioner considers the establishment of Wandoo to be a positive development in justice for young men, there remain concerns that the Department of Corrective Services has missed an opportunity to undertake significant reform in youth justice.

In many respects, the views of the Australian Children's Commissioners and Guardians expressed in their submission to the Inquiry into the high levels of involvement of Indigenous juveniles and young adults are relevant to this inquiry.²⁶ Many of the matters raised in that submission, including the need for early childhood education and care; provision of family support; a focus on health and social responses; and strategies tailored to the needs of the individual user, mirror the approaches required to sustain a justice reinvestment approach.

²⁴ National Crime Prevention 1999, *Pathways to prevention: Development and early intervention approaches to crime in Australia*, National Crime Prevention, Attorney General's Department, Canberra, especially pp.7-10

²⁵ 'Trailblazer Antoinette Kennedy retires in WA', *The Law Report*, ABC National radio broadcast 20/04/2010, accessed 01/09/2010 <<http://www.abc.net.au/rn/lawreport/stories/2010/2876282.htm>>

²⁶ Australian Children's Commissioners and Guardians 2010, *Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander affairs: Inquiry into the high levels of involvement of Indigenous juveniles and young adults in the justice system*, Australian Children's Commissioners and Guardians, http://www.aph.gov.au/Parliamentary_Business/Committees/House_of_Representatives_Committees?url=atsia/sentencing/subs/sub059.pdf

What Works

The report *Building Blocks: Best practice programs that improve the wellbeing of children and young people: Edition one* is a survey of programs and initiatives which address aspects of wellbeing for children and young people. This report, released in February 2012 by the Commissioner, examined programs and services for children and young people in the context of their wellbeing needs in eight domains.²⁷

The Regional Youth Justice Services in WA were developed to improve delivery of justice services to young people in regional areas. The initial phase of the project saw the development of a supervised bail service in two regional areas, Geraldton and Kalgoorlie-Boulder, along with increased outreach facilities and youth justice workers for each centre. The Regional Youth Justice Services have since been extended to a number of other centres in regional WA. As a result, the number of young people eligible for bail transported to Perth (the only juvenile detention facility) has decreased considerably, and the longer-established Services (Geraldton and Kalgoorlie) report better community relationships.

Another initiative in place in WA involves the Midnight Basketball program. Available in three metropolitan and one regional centre in WA, the Midnight Basketball program provides young people with a safe place and activities on a Saturday evening. However, it also goes beyond this, with volunteer members endeavouring to build relationships with the young people and ensuring their wellbeing.²⁸

The key to both these initiatives is that they are locally focussed and deal with young people's issues at the local level, engaged with the communities in which they operate. In addition, they are embedded in the notion of diversionary strategies, where children and young people are encouraged towards alternatives to offending.

Another important initiative in WA is the Northbridge Project. Northbridge is one of the main entertainment districts of Perth, located adjacent to the CBD and the main train station for Perth. The purpose of the initiative is to identify and engage with young people who in the Northbridge area who are vulnerable and potentially at risk of harm and make efforts to ensure their safety. Agencies involved include WA Police through their Juvenile Aid Group (JAG); Department of Child Protection; the Nyoongar Patrol; Department of Education; Department of Corrective Services; Mission Australia; and the Public Transport Authority. These agencies and non-government organisations provide services for young people who are found in Northbridge during the curfew period, through referrals made by the outreach workers and others. The project also includes initiatives in outer suburbs at the ends of the main train lines to provide young people with activities and discourage them from travelling into Northbridge during curfew periods.²⁹

It is noted that measuring achievement in any area requires the establishment of a baseline and effective targets to ensure progress is measurable. In 2011 the

²⁷ Commissioner for Children and Young People 2012, *Building Blocks: Best practice programs for children and young people*, Commissioner for Children and Young People.

²⁸ Longley G 2012, "Give youth options to cut curse of party riots", *The West Australian*, 28 September 2012

²⁹ Department for Child Protection 2011, *Young People in Northbridge Project*, <http://www.dcp.wa.gov.au/Documents/YoungPeopleInNorthbridgeProject.pdf>

Commissioner called for the integration of criminal justice targets into the Council of Australian Governments' (COAG) Closing the Gap agenda. It is essential in aiming for targets in health, early childhood, education and employment that the rate of Aboriginal over-representation is addressed as part of the effort to close the gap on Aboriginal disadvantage.³⁰

The early years of a child's life have profound influence on their lifelong wellbeing, and giving children and young people the best possible start in life can only be of benefit to them. Investing effectively in prevention and early intervention strategies for infants and children provides the best supports to enable children to grow up healthy and be active participants in their society.

Thank you again for the opportunity to make a submission to this important inquiry. Should you have any further questions or wish to discuss any matters raised, please contact the Commissioner's office using the details supplied above.

Yours sincerely

MICHELLE SCOTT

Commissioner for Children and Young People WA

13 March 2013

³⁰ Commissioner for Children and Young People 2011, *Call to move quickly on criminal justice targets to close the gap on Aboriginal disadvantage*, Media release.