AUSTRALIA'S YOUTH JUSTICE AND INCARCERATION SYSTEM

SUBMISSION

INTRODUCTION

Orygen welcomes the opportunity to make a submission to the Senate Legal and Constitutional Affairs References Committee's inquiry into Australia's youth justice and incarceration system. The submission focuses on the necessity to provide comprehensive, integrated mental health services for justice involved young people.

RESPONSE TO SELECTED TERMS OF REFERENCE

THE OUTCOMES AND IMPACTS OF YOUTH INCARCERATION IN JURISDICTIONS ACROSS AUSTRALIA

The prevalence of mental ill-health is higher among justice involved young people system compared with peers who are not involved. Estimates of the prevalence of mental ill-health among young people involved at various intercepts with the justice system range widely (e.g., between 50 and 75 percent (1)), however, the figure is up to 95 percent for young people in detention.(2) Data collection on the mental health of justice involved young people in Australia is limited. A nationally coordinated approach is required, something the Australian Institute of Health and Welfare has previously considered in a Youth Justice Health Data Collection Feasibility Study.

A recent systematic review of the impact of juvenile incarceration, published in 2024, is highly relevant for the Committee's inquiry.(4) The reviewers concluded that being incarcerated shaped 'long-term trajectories often marked by diminished opportunities for positive development and an increase in adverse outcomes.' The unique stressors experienced in incarceration, and the youth justice system more broadly 'exacerbate the psychological challenges' young people face. Furthermore, incarceration 'disrupts the normal developmental trajectories of youth, often leading to heightened levels of stress, trauma, and social isolation during a formative period.' The potential for this environment to contribute to the onset of mental ill-health or exacerbate symptoms requires the provision on specialist forensic youth mental health services.

In its Mental Health inquiry report, the Productivity Commission described the mental health and justice systems as 'intertwined'; highlighting the need for mental healthcare reforms at all intercept points with the justice system.(5) The report recommended that the Australian Government should consider how 'the forensic mental health component of the National Mental Health Service Planning Framework … [be] used by governments to inform planning and funding.

THE BENEFITS AND NEED FOR ENFORCEABLE NATIONAL MINIMUM STANDARDS FOR YOUTH JUSTICE CONSISTENT WITH OUR INTERNATIONAL OBLIGATIONS

The United Nations *Standard Minimum Rules for the Administration of Juvenile Justice* (also known as "The Beijing Rules") includes specific reference to the psychological needs of young people in detention.(6) The Beijing Rules were adopted by the United Nations General Assembly in 1985 making all UN member states, including Australia a signatory.

The Beijing Rules stipulate that while in custody (clause 13.5) or an institution (26.2) a young person:

> *shall receive care, protection and all necessary individual assistance-social, educational, vocational, **psychological**, medical and physical-that they may require in view of their age, sex and personality.*

The United Nations *Standard Minimum Rules for Non-custodial Measures* (also known as "The Tokyo Rules") promote the use of non-custodial measures and minimum safeguards, including specific reference to providing psychological assistance to people subject to community supervision.(7) The Tokyo Rules were adopted by the United Nations General Assembly in 1990 making Australia a signatory.

The Tokyo Rules stipulate (clause 10.4) that a person under supervision:

> *should, when needed, be provided with **psychological**, social and material assistance and with opportunities to strengthen links with the community and facilitate their reintegration into society.*

Federal leadership and coordination of national minimum standards for youth justice consistent with our international obligations are required. Establishing national minimum standards requires an initial equalisation across jurisdictions followed by an ongoing cycle of review and improvement benchmarked by international best practice. The best practices at a state or territory level should be the initial setting for these minimum standards. International benchmarking should inform a biennial review of standards. These national minimum standards should include the provision of specialist forensic youth mental health services.

EVIDENCE OF EFFECTIVE ALTERNATIVE APPROACHES TO INCARCERATION FOR YOUNG PEOPLE, INCLUDING DIVERSIONARY PROGRAMS

There are many alternative approaches to incarceration at intercepts with the justice system. This includes police and court-based diversions and alternatives to incarceration. Dedicated forensic youth mental health services integrated with the youth justice system are required to deliver specialised, appropriate mental health services in the community and detention. We highlight two alternatives to incarceration for the Committee's consideration: small-scale secure community housing, and bed-based forensic mental health services. These examples reflect the move, in many jurisdictions, from custodial to recovery-oriented models of care.(8)

There is an identified need to increase implementation research in forensic settings.(13) Research in forensic settings faces challenges as service demands to respond to criminogenic and mental health factors can result in a 'practice of blending divergent models'.(14) The combination of approaches grounded in risk management and control with therapeutic, recovery-oriented care can lack integration and possibly working at cross purposes. This challenge points to the need for including clinical research within specialist forensic youth mental health services.

Community-based services

For most young people their interactions with the youth justice system and forensic mental health services occurs within the community. Dedicated forensic youth mental health services are required to support young people through transitions between intercept points in the youth justice system to maintain access to mental health services. Community-based services provide the structure for continuous care that can respond to young people's mental health support needs.(9) This continuum of care includes services at court, in the community and detention. For young people who are sentenced to detention, community-based services also have a role in supporting their return to the community. Community-based forensic youth mental health services are central to policies, services and programs aimed at improving support options for justice involved young people, including reducing the number of young people in custody and providing service continuity for those sentenced to detention.

Bed-based forensic mental health service
Bed-based forensic youth mental health services are under-resourced in most jurisdictions, across long-term, short-stay and step-down models of care. Establishing a national minimum standard would provide a clear mechanism to guide investment and ensure the adequate provision of these services for young people.

Small-scale secure community housing
Small-scale secure community housing enables young people to remain connected with the community, including participation in education, employment and training and access to mental health services. Implemented in the Netherlands, the model addresses both criminogenic and protective factors.(10) Evaluation of the model provides guidance on facilitating factors for adapting the model to an Australian context. The piloting of small-scale secure community housing would require the coordination of roles and responsibilities across a range of public and community stakeholders.

Scotland has closed its institutional incarceration centres and moved to a smaller-scale secure residential model. These secure care places are operated by independent non-government organisations. The *Secure Care Pathway and Standards Scotland* document provides the Committee with a reference for informing recommendations for improving Australia's youth justice and incarceration system.(11) It is important that this service option is trauma-informed and responsive to adolescent developmental needs.(12)

ABOUT ORYGEN

Orygen is the world's leading research and knowledge translation organisation focusing on mental ill-health in young people. At Orygen, our leadership and staff work to deliver cutting-edge research, policy development, innovative clinical services, and evidence-based training and education to ensure that there is continuous improvement in the treatments and care provided to young people experiencing mental ill-health.

Orygen conducts clinical research, runs clinical services (five headspace centres), supports the professional development of the youth mental health workforce and provides policy advice relating to young people's mental health. Our current research strengths include early psychosis, mood disorders, personality disorders, functional recovery, suicide prevention, online interventions, neurobiology and health economics.

Orygen Specialist Services designed and delivered specialist forensic youth mental health care in community and custodial settings. Recent changes in service delivery have seen these transferred to the Primary Youth Mental Health and Wellbeing Services.

CONTACT DETAILS
For further information, please contact:
David Baker
Senior Manager, Policy

This submission was written on the lands of the Wurundjeri people of the Kulin Nation. Orygen acknowledges the Traditional Owners of the lands we are on and pays respect to their Elders past and present. Orygen recognises and respects their cultural heritage, beliefs and relationships to Country, which continue to be important to the First Nations people living today.

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