



**Catholic Social Services
Victoria**

...building a more just and compassionate society

Yoorrook Justice Commission Submission

Recommendations towards a more just Youth Justice System

**Submission on
Systemic Injustice
in the Criminal
Justice System**

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Introductory Note

Catholic Social Services Victoria (CSSV) over many years has decried the over-incarceration of Aboriginal young people in Victorian jails, and advocated for youth justice system reform, alongside systemic changes that reduce the overt racial discrimination directed towards Aboriginal young people (and their parents) in everyday life, alongside better social and community supports that can build on the evident strength and resilience and immense capacity of Aboriginal young people.

We lament the treatment of First Peoples since the creation of Australia first took possession of lands that have been occupied by Aboriginal and Torres Strait Islander Peoples for thousands of years. We acknowledge the deep pain that has been inflicted over many generations, including racist government policies and public attitudes, and corresponding loss and disruption of culture and connection with land, stolen generations and genocidal acts. We acknowledge our own place within this horrific past — the 5th Plenary Council of Australia’s statement *Reconciliation: Healing Wounds, Receiving Gifts* accepts that “The Catholic Church in Australia has been caught up in this history of dispossession, Stolen Generations, racism, and the undermining of language and culture”.¹

We believe that recognition of the past and ongoing listening are essential in taking meaningful steps towards real reconciliation that can lead to healing and renewed way of relating to each other and the country we all now share. We believe truth telling processes will be challenging but bring great enrichment and benefit for all who live in Australia – be it newly arrived migrants, Aboriginal and Torres Strait Islander peoples, or those who have been born in Australia since colonisation.

CSSV sees great value in the work of the Yoorrook Justice Commission and is grateful for the opportunity to make this submission to assist the Commission in its works to shine a light on systemic injustice in the youth justice system and their causes, alongside examples of good practice that could be adopted or expanded to address systemic injustice here in Victoria, with the hope that these make definite movements towards justice and reconciliation.

This submission highlights some recommendations previously made to the Victorian Government and relevant parliamentary inquiries, and notes the published and consulted views of a number of our member organisations who work in the youth and youth justice space, who also accompany and serve Aboriginal young people and their families.

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¹ <https://plenarycouncil.catholic.org.au/wp-content/uploads/2022/07/FINAL-Decree-1-Reconciliation-Healing-Wounds-Receiving-Gifts.pdf>

SUMMARY OF RECOMMENDATIONS

1. Raise the Age of Criminal Responsibility to at least 14 years old.
2. All young people at all points of contact with the criminal justice system should be eligible for diversion.
3. Repurpose the Youth Justice System towards a restorative justice, relational and values-based approach, rather than a containment or warehousing approach.
4. Develop, in consultation with Aboriginal leaders, families and young people, small, home-like facilities for children and young people, close to community, with adequate transitional facilities to prepare young people for release and reintegration.
5. Increase and promote access to restorative justice at all points of the system.

INTRODUCTION

I. Submission Scope

This submission will draw attention to some examples of good practice that could be adopted or expanded to address systemic injustice and identify some critical recommendations which have not been accepted or properly implemented in Victoria, which would go some to address the issues in its youth justice system.

These recommendations have either come from consultation for this submission, or have been made known to the Victorian Government in previous submissions – including to the recent Inquiry into the Criminal Justice System in Victoria – or by direct communication with the Minister for Youth Justice by either CSSV, our member organisations, or colleagues working in the sector.

II. Catholic Social Services Victoria

Catholic Social Service Victoria (CSSV) is the peak body for 42 social and community service member organisations that work throughout Victoria. The work of our members as they support over 200,000 Victorians each year means that we hold deep concern for issues of Justice in our state and country. The experiences of our members and those our members work to serve, as well as the principles of Catholic Social Teachings, lead us to a firm commitment to being an active part of a country and society that seeks Reconciliation. These Catholic Social Teachings form part of the overall teaching of the Catholic Church. They are based on gospel values and the collective reflection and experience over time of the application of those values in working with the poor, the disadvantaged and the marginalised. Our members continue in this tradition in applying these principles to contemporary issues.

A list of our member organisations is provided in Appendix A. Some of our members lead, or partner with other organisations to contribute to, programs which connect with justice-involved Aboriginal young people, be it in youth work, education, spiritual and pastoral care, education, or out of home care.

CONTEXT

Numbers of Victorian children in detention are rising. In 2019/2020, there were 623 children in prison, compared to 560 in 2018-19; despite Covid-19 impacts and a decline nationally over the

same time period.²

Victoria has many children and youth on remand, averaging about 60% of those in youth detention. The Sentencing Advisory Council's (SAC) *Children Held in Remand in Victoria* Report (2020) states that un-sentenced Victorian children on remand on an average day more than doubled from 2010 to 2019, from 48 to 99.

Further, Australia-wide in 2019-20, 602 children in detention aged from 10-17 were un-sentenced, of these, 29 were aged 10-13.³ Many on remand are Aboriginal and/or Torres Strait Islander young people. This is unacceptable.

Most children are on remand for non-violent offences and so two-thirds did not eventually receive a custodial sentence.⁴ But unnecessarily putting a young or vulnerable person in custody for considerable time, even when some lawyers routinely suggest it, often interrupts work, housing arrangements, education or other supports necessary to their development and avoiding offending. Sentencing Advisory Committee Reports show that each contact of a child, even short contact, with the youth justice system, exacerbates risk of future contact and offending, trapping children in a revolving door.⁵

Children refused bail get exposed to and familiarised with a custodial environment. This increases risk of stigmatisation and increases chances of physical and mental damage or trauma.⁶ They can experience restrictive practices, e.g. strip searches and use of force. These factors increase for Aboriginal and Torres Strait Islander children⁷.

The current use of incarceration adds to the current and long term increase in the numbers of adults and children incarcerated in Victoria. In addition to this, it is also impossible to disassociate youth offending with disadvantage. In Jesuit Social Services 2013 report, *Thinking Outside: Alternatives to remand for children*⁸, they found that vulnerable and disadvantaged young people are highly overrepresented among those who are locked up on remand. The 2015 Youth Parole Board annual report shows that of those detained on remand, 43 per cent had a previous Child Protection Order, 62 per cent were victims of abuse, trauma or neglect, and 33 per cent presented with mental health issues.⁹

Aboriginal young people often live in over-policed communities, contributing to their greater criminalisation and incarceration. Service data shows that Aboriginal and CALD young people, are over-represented in Victorian police contacts. Further, discrimination through police lack of exercising cultural discretionary powers like cautioning, draws them at higher rates into the courts and criminal justice systems. The recent parliamentary inquiry into the Criminal Justice

² Australian Institute of Health and Welfare, *Youth Justice in Australia 2019-2020*, Australian Government, data table s80b; cf Australian Institute of Health and Welfare, *Youth justice in Australia 2018-2019*, Australian Government, data table s80

³ *Youth justice in Australia 2019-20* Australian Institute of Health and Welfare: 2019-20 <https://www.aihw.gov.au/reports-data/health-welfare-services/youth-justice/overview>

⁴ See https://www.sentencingcouncil.vic.gov.au/sites/default/files/2020-09/Children_Held_on_Remand_in_Victoria.pdf

⁵ Prof. Ari Freiberg, addressing the Criminal Justice Inquiry Committee, 24/8/21.

⁶ M. Ericson and T. Vinson, *Young people on remand in Victoria: balancing individual and community interests*, Jesuit Social Services, Richmond, 2010, 18–20.

⁷ Commission for Children and Young People, *Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system* (June 2021), 455.

⁸ <https://catalogue.nla.gov.au/Record/6292810>

⁹ <https://jss.org.au/articles/to-address-youth-offending-we-must-look-to-the-evidence-of-what-works/>

System found “Overpolicing of Aboriginal and culturally and linguistically diverse communities by Victoria Police remains an issue, despite its ongoing commitment to address these matters.”¹⁰

Likewise children in out-of-home care, and transitioning from it, are vulnerable to criminalisation. They statistically have unnecessary police contact, which too often leads to arrests and charges, not cautions, which lends itself to a cycle of being criminalised. Young people are often stopped and charged by police because of perceived age, colour, race or because they come from a family familiar to police, rather than due to bad behaviour or justifiable suspicion by police¹¹.

Of particular concern has been the apparent discriminatory treatment of Aboriginal and Torres Strait Islander youth found to be less likely than non-Indigenous young people to be cautioned or referred to diversionary processes. In these cases instead of the default or first response being to caution it seems to be an afterthought. An increase in consistency at State and especially regional levels is needed as well as a requirement to complete reporting and recording of police stops of young people and a ‘notice of failure to caution’, especially in cases of over-represented groups.¹² In relation to children and youth, early involvement with police whether from problems at school leading to suspension or expulsion is correlated with later criminal offences.

REFORM

I. Raise the Age of Criminal Responsibility

Along with many of our member organisations and other experts we believe that the age of criminal responsibility should be raised to at least 14. Australia was widely condemned at the United Nations in 2020 for not raising the age of incarceration.¹³ While recent indications have been promising by the Andrews Government¹⁴, CSSV remains deeply disappointed that there has not been a commitment to raising of the age of criminal responsibility and detention in Victoria.

If we were to focus on the needs and developmental neurological stage of the child, we reduce the likelihood of further harm to others and we stop a cycle of justice involvement before it starts. Calls for a bare minimum age standard of 14 years as recommended by legal (Law Council), medical (AMA) and Indigenous experts is necessary and urgent. The ACT alone to date has taken expert advice, committing to raising the age to 14.

Raising the age requires system reform, but there are effective interventions for children of this age that can give them the best chance of a bright future, and which also makes economic sense and keeps communities safe in the present and longer term. Principles and roadmap for reform can be found in Jesuit Social Services’ paper *Raising the Age of Criminal Responsibility: There is a better way*, released in 2019.¹⁵ This states “Our paper shows that we can hold children more

¹⁰ <https://new.parliament.vic.gov.au/4ae181/contentassets/6961bccea1ac41dd812811ab0312170d/lclsic-59-10-vic-criminal-justice-system.pdf> p197

¹¹ See <https://youthlaw.asn.au/campaigns-advocacy/police-power/>

¹² Anoushka Jeronimus of SJ4YP Coalition, Justice Inquiry Parliamentary Hearing, 6/9/21.

¹³ www.theguardian.com/australia-news/2021/jan/19/un-countries-challenge-australias-indigenous-in

¹⁴ Andrews prepared to raise age of criminal responsibility to maintain ‘most progressive’ status, December 2022, <https://www.theage.com.au/politics/victoria/andrews-prepared-to-raise-the-age-of-criminal-responsibility-to-maintain-victoria-s-most-progressive-status-20221220-p5c7nw.html>

¹⁵ See https://cdn.iss.org.au/wp-content/uploads/2020/03/06055821/JSS0102_Raising_the_Age_There_is_a_better_way_v.5.1.pdf

effectively to account for their actions, prevent further antisocial behaviour, and better protect the wider community. It is based on extensive Australian and international psychological, social and criminological research. The message is clear: our current approach makes us less safe and hurts vulnerable children. A different approach would be both more just and more effective.”¹⁶

II. Maintain Community and Care – Prevention, Intervention and Diversion

CSSV has previously recommended to Government that young people at all points of contact with the criminal justice system should be eligible for diversion. Given that the needs of first time offenders and chronic offenders are generally very different, effective diversion programs will require different modes of work for the different groups. We recommend this knowing that diversionary approaches, which aim to help people address the underlying issues behind their offending, are more effective in reducing re-offending among young people than the use of custody and prison sentences.

Prof Joe Graffam of Deakin University recently highlighted the importance of place-based or eco-system approaches based on intra-personal (family), inter-personal (neighbourhood care, support and service providers [e.g. CSSV members]) and impersonal (socio-economic health, criminal justice and government institutions) — not criminal justice alone in addressing the complex environment that leads to criminal activity. To reduce recidivism rates Graffam advocates a repurposing of the Criminal Justice System to a positive corrections approach rather than containment or warehousing approach.

The latter merely reinforces disadvantaged communities instead of whole of government and community preparatory support for prisoners returning to their communities. The community into which people released from incarceration go back to doesn't go away. It is important to note that prison experience is also often multi-generational: the children of prisoners are six times more likely to be imprisoned than their peers¹⁷.

Some of our members emphasised for this submission that more support for families experiencing difficulties with their young people is needed especially when authorities make first contact with family about the child's behavior or actions, and affirmed that there is a need for strong cultural connections for children at risk of offending. They noted the importance of culturally appropriate gatherings that connect families to each other and the wider Aboriginal community and support services and the importance of cultural exposure and participation in programs that strengthen families, particularly those that are struggling with a young person's behavior.

These kinds of programs should be maintained for young people who are detained - there should be strong cultural programs for youth in detention around culture, respect, families and supports within the communities that are available to them.

These interventions are particularly important for young people, who are developing culturally, socially, biologically and morally. This kind of work can be focused and can be cost effective. People involved in the Justice System are primarily from 6% of Victorian postcodes¹⁸ which

¹⁶ <https://jss.org.au/articles/raising-the-age-of-criminal-responsibility-there-is-a-better-way/>

¹⁷ See <https://www.theage.com.au/national/victoria/ombudsman-clarifies-figures-for-suburbs-represented-in-jail-population-20150918-gjpsi8.html>

¹⁸ On a national level see former Federal Treasurer, now ALP President Wayne Swan's 2005 book *Postcode: The Splintering of a Nation* (2005).

supply 50% of state prisoners¹⁹. This can be further narrowed: 2% of postcodes supply 25% of prisoners.

III. Strengthen Connection and Protective Factors within the Justice System

The importance of keeping children connected to country, culture and family and all those positive things that are so important and meaningful to their physical, psychological and spiritual health has been recognised by social services providers amongst others for many years.

A recent and powerful acknowledgment is by the Victorian Government in the *Wirikara Kulpa*²⁰ strategy, released early 2022, through its commitment to “explore on-country alternatives to remand and custody to keep Aboriginal children and young people close to their families and communities.”²¹ While the sentiment is encouraging, the disappointing part of this statement in the strategy is the word ‘explore’, when there has been substantial exploratory work done by many to provide practice models, frameworks and facility design.

For example our member Jesuit Social Services Victoria have travelled internationally twice on ‘Justice Solutions’ tours and put together two substantial reports on their findings in the past decade.

Their most recent trip in 2019 included a close look at New Zealand youth justice models, which had a significant focus on embedding cultural elements into formal processes to create better outcomes and experiences for all involved.

In their report they note the New Zealand departmental framework that has given rise to a values base and organisational culture committed to a broader and culturally attuned understanding of justice.

In New Zealand “the Child, Youth and Family agency was replaced by the Ministry for Children, Oranga Tamariki. Oranga Tamariki takes a preventative approach to child safety and family welfare. It encompasses both child protection and youth justice. Oranga Tamariki explicitly outlines that the ‘Youth Justice service addresses the underlying factors that contribute to offending. The inclusion of youth justice within a child welfare agency recognises that deeds are symptomatic of needs, that children and young people who offend need support rather than punishment, and that community safety is best achieved when these needs are met. In delivering youth justice and child welfare through the same agency, New Zealand recognises that youth offending is best understood in terms of its relationship to the welfare needs of children and families, rather than a lens of regulation, control and punishment.”²²

Values and organisational culture is key to a sensitive and rehabilitative justice system. “In many of the sites we visited, the values upheld in the organisation were on display, and were part of the everyday vocabulary of the staff. In courts, youth justice centres and prisons, staff spoke comfortably about compassion, humanity, love, and people’s purpose, spirit and character. This approach is integral to rehabilitation. In New Zealand, we saw an appreciation of the whole

¹⁹ See <https://www.theage.com.au/national/victoria/ombudsman-clarifies-figures-for-suburbs-represented-in-jail-population-20150918-gjpsi8.html>

²⁰ See: <https://www.aboriginaljustice.vic.gov.au/wirikara-kulpa-aboriginal-youth-justice-strategy-2022-2032>

²¹ <https://www.aboriginaljustice.vic.gov.au/wirikara-kulpa-aboriginal-youth-justice-strategy-2022-2023/our-outcomes-and-actions/domain-2>

²² <https://cdn.iss.org.au/wp-content/uploads/2022/12/19160851/JesuitSocialServicesNewZealandTourReport.pdf> p17-18

person and attention to the interconnectedness and web of relationships that bind people together. This was a common thread throughout the organisations we visited and facilities we saw.”²³

The report notes the juxtaposition between New Zealand and the direction Victoria has taken in recent years in terms of Government department restructuring and priority: “The object of the Oranga Tamariki Act 1989 is to promote the well-being of children, young persons and their families and family groups. Sections of the Act setting out the objectives for youth justice state that where children and young people offend they are to be ‘held accountable, and encouraged to accept responsibility, for their behaviour’, and ‘dealt with in a way that acknowledges their needs and that will give them the opportunity to develop in responsible, beneficial and socially acceptable ways’. The general principles of the Act provide that, wherever possible, family and whanau should be involved in decisions affecting the child or young person, and that those relationships should be maintained and strengthened. Victoria has taken the opposite route. The Government recently moved youth justice to the Department of Justice and Community Safety. This is part of a trend that has been underway in Victoria for some years, which has seen the culture of youth justice adopt a more correctional approach in its treatment of young people.”²⁴

We urge the Commission to look at the entire report which highlights some strong and promising features of New Zealand’s justice system as an example of what is possible: “the use of restorative justice, a relational and values-based approach, the foregrounding of Māori culture and cultural responsiveness. This is underpinned by a foundation of spirituality and values, championed by leaders who share a vision for a better justice system. New Zealand faces challenges similar to our own, but is adopting evidence-based strategies for reform.”²⁵

These approaches are key learnings from the New Zealand context that could be adapted for our own youth justice system.

IV. Best Practice, Evidenced-based Small Scale Youth Justice Facilities

To keep young people connected with protective factors such as family, friendship, education, community and community service offerings, which give them the best chance to be equipped to flourish and not re-offend upon exiting incarceration while they are detained will take a shift in our justice approach to young people.

Jesuit Social Services stated that their “visit to youth justice centres in New Zealand reaffirmed our findings from our 2017 Justice Solutions tour: small, home-like facilities that are close to communities best support young people. Well-trained, qualified staff who build relationships with young people in their care create secure environments promoting safety inside facilities and in the community in the long term.”²⁶

²³ <https://cdn.jss.org.au/wp-content/uploads/2022/12/19160851/JesuitSocialServicesNewZealandTourReport.pdf> p16

²⁴ Ibid, p18

²⁵ Ibid, p22

²⁶ <https://cdn.jss.org.au/wp-content/uploads/2022/12/19160851/JesuitSocialServicesNewZealandTourReport.pdf> p20

Likewise Victorian-based 'Local Time' collaboration, after winning the inaugural Victorian Design Challenge²⁷ for their work in producing an evidence-based framework for small scale youth justice facilities embedded in community and tailored for local Victorian conditions, have also done substantial travel and recently produced both a design guide for youth justice²⁸, as well as authoring an overview of facility best practise and evidence drawing from various models around the globe that demonstrate "a series of key characteristics emerge that define a best-practice, theoretical facility model: small-scale, locally sited, and integrated with the surrounding community, designed to promote relational and differentiated security, and comprising therapeutic design characteristics."²⁹

Both of these publications are recommended for the Commission's review for principles that, although are appropriate to broader reform of the youth justice system contain principles which could address particular issues of systemic injustice experienced by Aboriginal young people involved with the youth justice system.

The physical environment of a facility greatly impacts procedures in a youth justice environment, relationships between staff and young people, and ultimately a young person's prospects of rehabilitation and community safety. A small scale, local facility could keep young Aboriginal people connected to family, country, community and their culture, while serving a custodial sentence. After further consultation with Aboriginal families, communities and elders, these kinds of facilities could begin to be rolled out in close proximity to young people's existing communities.

The Key Principles outlined in the Design guidelines for evidence-based, best-practice Youth Justice facilities in Victoria includes:

- **Small Scale:** Approximately 8-beds in size, allowing staff to develop meaningful relationships with young people, to understand the individual motivations, risks, needs, skills and strengths of each young person, and to modify their role and behaviour based on this knowledge.
- **Differentiated and Relational Security:** Promoting approaches that encourage a therapeutic relationship between staff and young people, with measures that are adaptable to individual dynamic risks and needs, and goals, with a preference for semi-open settings.
- **Local:** Close proximity to the young person's community to support accessibility and allow the strengthening of protective factors, including school, family, and pro-social connections.
- **Therapeutic:** A healthy and home-like environment, designed to reduce stress, aggressive and harmful behaviours, and promote overall wellbeing and mental health.

The authors assert that all four of these elements work collectively to make-up a 'best-practice' facility and are interrelated — the characteristics of small size, local siting, and differentiated security measures, look to collectively influence the establishment of a tailored and relational approach within youth custodial facilities. And likewise the researchers observed a reciprocal

²⁷ <https://www.ngv.vic.gov.au/victorian-design-challenge-2018/>

²⁸ See https://localtime264843868.files.wordpress.com/2019/11/localtime_designguide_v1-2.pdf for the design guide in full

²⁹ https://link.springer.com/chapter/10.1007/978-3-031-11972-9_13

relationship between relational security and the ability to create a home-like environment that provides for known therapeutic design characteristics.

It is worth noting that the newly built 'Cherry Creek' youth justice facility in Victoria is self-described on the website: "The facility has been designed to improve rehabilitation outcomes for young people while keeping staff and the community safe. In line with outcomes from expert reviews of the youth justice system, the facility will prioritise mental and physical health and wellbeing, rehabilitation, and daily engagement in programs and activities."

While there is some language in this description of Cherry creek which should be cause for hope, and there was some meaningful redesign of the facility – including downsizing from the initial plan of "224 beds for remand and sentenced clients, a 12 bed mental health unit and an intensive supervision unit of at least eight beds"³⁰ to a completed building with "140 beds, including mental health and intensive intervention units"³¹, it is clear that a number of its design elements, including scale and location, puts it at odds with the existing evidence base required for a best practise facility that will deliver the kind of environment that can put systemic injustice behind us.

CONCLUSION

There is much work to do to address systemic injustice in the youth justice system, and this submission points to a number of models and principles that if adopted in conjunction with other core reforms, can go some way to addressing the youth justice issues faced in Victoria. In the words from one consultation in preparation for this submission: "We are the most incarcerated people on the planet, something for us all to be ashamed of!!! Our youth need to be our hope for the future, please can we change the future for our precious kids." Understanding what Aboriginal young people experience in the youth justice system, and then addressing the systemic injustice in our youth justice system, are core to a future where reconciliation can occur and all flourish in Victoria.

Appendix A: Catholic Social Services Victoria Member Organisations

³⁰ https://www.planning.vic.gov.au/_data/assets/pdf_file/0030/109866/Youth-Justice-Centre-Appendix-C-Project-Summary-Business-Case.pdf

³¹ <https://csba.vic.gov.au/our-projects/cherry-creek-youth-justice-centre>

Aboriginal Catholic Ministry Victoria
Assisi Centre
Australian Catholic Religious Against Trafficking in
Humans (ACRATH)
Brigidine Asylum Seeker Project
Cabrini Outreach
CatholicCare Victoria
Catholic Women's League Victoria and Wagga Wagga
Corazon
Corpus Christi Community
Don Bosco Youth Centre & Hostel Inc.
Edmund Rice Camps (Amberley)
Edmund Rice Refugee and Community Services
Edmund Rice Services – Mt Atkinson
Good Samaritan Inn
Good Shepherd Australia New Zealand
House of Welcome Ballarat
Jesuit Social Services
JoCare
John Pierce Centre for Deaf Ministry
Kewn Kreestha (Family Care Sisters)

Keysborough Learning Centre
LinCoN
MacKillop Family Services
Mary Aikenhead Ministries
Missionary Sisters of Service
Nazareth House – Sisters of Nazareth
Order of Malta (Vic)
Pregnancy Assistance Frankston
Rosie's Oblate Youth Ministry
Sacred Heart Mission
St Vincent de Paul Society Victoria
St John of God ACCORD
St Joseph's Flexible Learning Centre
St Joseph's Home for the Aged - Little Sisters of the
Poor
St Joseph's Corner
St Mary's House of Welcome Ltd
Vietnamese Catholic Family Mutual Assistance
Network
Villa Maria Catholic Homes
VincentCare Victoria
Wellsprings for Women