



SOCIAL REINVESTMENT WA
Healthy Families | Smart Justice | Safe Communities

Submission to the Age of Criminal Responsibility
Working Group

Council of Attorneys-General

Social Reinvestment WA

February 2020

This submission is jointly endorsed by our member organisations:



EXECUTIVE SUMMARY:

Social Reinvestment WA (SRWA) is a Western Australian coalition of 25 non-government organisations. Our purpose is to end the overrepresentation of Aboriginal and Torres Strait Islander people in the justice system in Western Australia. Our collective vision is that Western Australia achieves Healthy Families, Safe Communities and Smart Justice for all people, through a Social Reinvestment approach.

Australia needs to recognise and prioritise the wellbeing of children, in addition to the safety of communities, at the centre of its approach to youth justice. To efficiently forge safe communities for all Australians we need to address the underlying causes of offending for young people, which are predominantly linked to experiences of disadvantage and trauma, through early intervention and prevention. Best practise solutions respond to the root causes of crime and are evidence based, and data informed; For any solutions to be effective, they need to be holistic and implemented system wide in partnership with communities, providers and policy makers. If we refocus our efforts to supporting at risk children and families early, before they reach the tertiary “crisis” end of the justice pipeline, we can keep young people out of the justice system, reduce costs, and reduce crime.

In response to the requests for submissions on raising the age of criminal responsibility by the Council of Attorney-generals, SRWA makes the following key recommendations:

Raising the age of criminal responsibility specifics;

- The age of criminal responsibility should be raised from 10 years to 14 years, for all types of offenses, in all circumstances.
- If the age of criminal responsibility is raised to 14, *doli incapax* ceases to be relevant.
- Detention for people under the age of 18 should be an option of absolute last resort; and put into effect only when the safety of the wider community is demonstrably at risk.

Alternatives, Programs, And Best Practise Responses For Young People At Risk Of Entering The Criminal Justice System If The Age Is Raised;

- In partnership with community services, governments should develop and implement a state wide Justice Reinvestment Strategy in all states and territories which shifts the emphasis and funding of youth justice from punishment and detention to early intervention, prevention, and rehabilitation.
- Responses to support young people in crisis should be integrated across sectors and silos, collaborative, and holistic.
- Place based, community co-designed responses should be implemented nationally.
- Cultural, social, and emotional wellbeing in our responses must be prioritized.
- Commit to support for Aboriginal Community Controlled organisations, Aboriginal led solutions, and Cultural Security throughout the whole justice system to reduce the over-representation of Aboriginal and Torres Strait Islander people

In Western Australia specifically;

- Mandatory Sentencing of young people must be repealed;
- WA Police need to act to prevent the over-policing and under cautioning of Aboriginal and Torres Strait Islander young people;
- Banksia Hill Detention Centre must be urgently reformed.



RAISING THE AGE OF CRIMINAL RESPONSIBILITY

1. Currently across Australia, the age of criminal responsibility is 10 years of age. Should the age of criminal responsibility be maintained, increased, or increased in certain circumstances only?
2. If you consider that the age of criminal responsibility should be increased from 10 years of age, what age do you consider it should be raised to (for example to 12 or higher)? Should the age be raised for all types of offences?
3. If the age of criminal responsibility is increased should the presumption of *doli incapax* be retained? Does the operation of *doli incapax* differ across jurisdictions and, if so, how might this affect prosecutions? Could the principle of *doli incapax* be applied more effectively in practice?
4. Should there be a separate minimum age of detention? If the minimum age of criminal responsibility is raised (eg to 12) should a higher minimum age of detention be introduced (eg to 14)?

The age of criminal responsibility should be raised from 10 years to 14 years, for all types of offenses, in all circumstances.

International precedent

Australia's criminal age of responsibility is below the minimum standard set by a growing number of countries. Globally, the current median minimum age of criminal responsibility is 14 years old, and the average 13.5 years. A study of 90 countries worldwide found that 68% had a minimum age of criminal responsibility of 12 or higher¹, two years older than Western Australian standards. The current age of criminal responsibility in Canada and the Netherlands is 12; In Austria, Germany, Italy, Japan and Spain it is 14; Denmark, Finland, Iceland, Norway and Sweden it is 15; Portugal, Belgium 16; And Luxembourg, 18.

Critically, this demonstrates that countries with similarities to Australia have managed to feasibly raise the age of criminal responsibility without necessarily negating efforts to address youth crime. In fact Germany and Norway, where the age of criminal responsibility was increased in combination with strong investment in early intervention and diversion programs for young people, have demonstrated lower rates of youth offending, incarceration and recidivism than Australia.²³

Current neurological science

Neurobiological evidence suggests that the adolescent brain does not fully mature until at least into the early twenties.⁴ Children under 14 are thus considered developmentally 'neurologically immature' resulting in a lack of impulse control, poor organisational and planning skills, and heightened susceptibility to peer pressure and risk-taking behaviours.⁵ The consensus of medical professional's

¹ University of Salford. Hazel, N (2008). *Cross-National Comparison of Youth Justice*. Retrieved from https://dera.ioe.ac.uk/7996/1/Cross_national_final.pdf

² Jesuit Social Services (2017). *#JusticeSolutions Tour: Expanding the Conversation*. Retrieved from <https://jss.org.au/wp-content/uploads/2017/08/SUB-170623-Solutions-Tour-Long-Report-v.15.pdf>

³ ABC News (2017). *Youth Detention: Three Lessons Australia can Learn from Europe and the US*. Retrieved from <https://www.abc.net.au/news/2017-11-02/youth-detention-lessons-australia-can-learn-from-other-countries/9104844>

⁴ Cunneen, C, (2017) Arguments for Raising the Minimum Age of Criminal Responsibility, Research Report, Comparative Youth Penalty Project, University of New South Wales, Sydney

⁵ Ibid; The Royal Australasian College of Physicians, 'Doctors, lawyers, experts unite in call to raise age of criminal responsibility', accessed: <https://www.racp.edu.au/news-and-events/media-releases/doctors-lawyers-experts-unite-in-call-to-raise-age-of-criminal-responsibility>



states that the ‘significant growth and development’⁶ children are undergoing up until the age of 14, suggests they do not have the required capacity to be held criminally responsible. This is supported by the Australian Medical Association who also argue that children forced into contact with the criminal justice system are less likely to complete their education⁷, further reducing their neurological advancement.

Common sense tells us kids are kids.

Australia, particularly WA, continues to hold children as young as ten criminally responsible. At ten and eleven years old, children are still in years 5 and 6 in primary school. Regardless of whether a child engages in criminal offending at this age, a reasonable society cannot hold them responsible for such choices. If a child is engaging in serious criminal behaviour at an age where Toyworld’s suggested games include Unicorn Glitter Art sets and Beyblades- we need to consider how responsible adults and support systems have failed to protect this young person from negative life circumstances causing the offending behaviour.

If the age of criminal responsibility is raised to 14, *doli incapax* ceases to be relevant.

Doli incapax in section 29 of the Criminal Code (WA) states: ‘A person under the age of 14 years is not criminally responsible for an act or omission, unless it is proved that at the time of doing the act or making the omission he had capacity to know that he ought not to do the act or make the omission.’ Our members tell us this test is inconsistently applied and is not an appropriate safe guard for vulnerable children. Further, children can be detained in custody or given strict bail conditions waiting for a hearing, only to be acquitted on account of not having capacity.

If for the reasons stated above the age of criminal responsibility is raised to 14, it can be assumed that any child younger is not responsible for acts or omission.

SRWA recommends that detention for people under the age of 18 be an option of absolute last resort; and put into effect only when the safety of the wider community is demonstrably at risk.

Detention harms children, violates human rights, and high recidivism rates demonstrate its ineffectiveness at effectively rehabilitating young people, whilst costing significantly more than community based rehabilitative programs and supervision.

Preserving human rights and preventing harm

The United Nations Office of the High Commissioner for Human Rights recommends that ‘no child [under 18] be deprived of liberty’, except only as a measure of last resort and for the shortest appropriate period of time. Furthermore UNHCHR specifically notes children with neuro-developmental disorders (such as Foetal Alcohol Spectrum Disorder) should not be in the justice system at all, regardless of age of criminal responsibility.

The Australian Institute of Health and Wellbeing found that children who have earlier contact with the justice system have significantly increased likelihood of negative broader life outcomes⁸ including educational disadvantage, problems with gaining employment in adulthood and increased

⁶ AMA & Law Council of Australia, Minimum Age of Criminal Responsibility Policy Statement

⁷ Australian Medical Association, ‘AMA calls for age of criminal responsibility to be raised to 14 years of age’, 25 March 2019, accessed: <https://ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>

⁸ Australian Institute of Health and Welfare (2013). Young people aged 10-14 in the youth justice system 2011-12. Retrieved from <https://www.aihw.gov.au/getmedia/3782934c-9bfa-4367-acb4-f92def5a8ebe/15758.pdf.aspx?inline=true>



risk of depression, self-harm, suicide and other health issues⁹, detention specifically is demonstrated to exacerbate these consequences.

Detention fails to rehabilitate young people

Imprisonment does not make our communities safer in the long term, as it fails to effectively prevent recidivism. 45% of people released from prison, return to prison within two years. The rate at which Aboriginal people return to prison is far worse –The recidivism rate for Aboriginal adult males is 70% and for Aboriginal adult females it is 55%. Of the 86 sentenced children in detention in Western Australia on 31 December 2015, 51 (60%) had previously been sentenced to detention the past five years (36 of these children had been sentenced to detention more than once in the prior five-year period). A review undertaken by the Office of the Inspector of Custodial Services found that ‘the three factors most strongly linked to recidivism are age, prior prison admissions and problematic substance abuse’. Subsequently, harsh criminal penalties like detention imposed on low-risk offenders can adversely cause an increased likelihood of the very issues they intend to prevent; Antisocial behaviour and/or recidivism as well as a multitude of other issues⁹.

Detention is the most expensive form of Youth Justice

A meta-analysis on 30 years of empirical evidence exhibited that our current model of youth justice and detention is ineffective at reducing recidivism and rehabilitating offenders, but furthermore is the costliest means of dealing with youth offending¹⁰. In Australia, the total average cost per day for each young person in detention in 2018-2019 was \$1579, compared to \$187 for community-based supervision and/or diversion methods¹¹. By comparison, youth-work-based programs have been proven to reduce youth recidivism by half, with an annual cost of \$1,680 per person¹².

⁹ The University of Cincinnati. Lowenkamp, C. Latessa, E. *Understanding the Risk Principle: How and Why Correctional Interventions Can Harm Low-Risk Offenders*. Retrieved from

<https://www.correctiveservices.justice.nsw.gov.au/Documents/Risk-principal--accessible-442577.pdf>

¹⁰ Noetic Solutions Pty Limited (2010). *Review of Effective Practice in Juvenile Justice*.

<http://www.juvenile.justice.nsw.gov.au/Documents/Juvenile%20Justice%20Effective%20Practice%20Review%20FINAL.pdf>

¹¹ Productivity Commission (2020). *Report on Government Services 2020 Chapter 17 – Youth Justice Services*. Retrieved from <https://www.pc.gov.au/research/ongoing/report-on-government-services/2020/community-services/youth-justice/rogs-2020-partf-section17.pdf>

¹² Armytage, P. & Ogloff, J. (2018). *Meeting needs and reducing reoffending*. Produced for the Victorian Department of Justice. Retrieved from: <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>.



ALTERNATIVES, PROGRAMS, AND BEST PRACTISE RESPONSES FOR YOUNG PEOPLE AT RISK OF ENTERING THE CRIMINAL JUSTICE SYSTEM

5. *What programs and frameworks may be required if the age of criminal responsibility is raised? What agencies or organisations should be involved in their delivery?*
6. *Are there current programs or approaches that you consider effective in supporting young people under the age of 10 years, or young people over that age who are not charged by police who may be engaging in anti-social or potentially criminal behaviour or are at risk of entering the criminal justice system in the future? Do these approaches include mechanisms to ensure that children take responsibility for their actions?*
7. *If the age of criminal responsibility is raised, what strategies may be required for children who fall below the higher age threshold and who may then no longer access services through the youth justice system?*
8. *If the age of criminal responsibility is raised, what might be the best practice for protecting the community from anti-social or criminal behaviours committed by children who fall under the minimum age threshold?*

We fully support raising the age of criminal responsibility to 14, but must emphasise that if we do, is critical that early intervention and prevention is prioritised and resourced adequately, and that Australia divests funds from the criminalisation and detention of children under 14, to prevention, early intervention, and diversionary responses linked to culturally-safe and trauma-responsive services. We don't want to set young people up to fail simply waiting until they're 14 to "slap the handcuffs on", and ultimately need to focus on the wellbeing of children and long term safety of communities.

In partnership with community services, develop and implement a statewide Justice Reinvestment Strategy in all states and territories which shifts the emphasis and funding of youth justice from punishment to rehabilitation and prevention

This involves redirecting expenditure to focus on supporting families early to address the underlying causes of offending; Diversion of people in contact with the criminal justice system into support programs that will rehabilitate or prevent future crime; Assisting people to reintegrate into the community. This spending may come from funds previously allocated to the tertiary end of the justice system. Future savings and contributions are projected to occur across multiple areas.

Justice Reinvestment originated in the U.S. as a means for states with unsustainable prison populations to reduce their rate of incarceration and associated economic burdens, by diverting resources from the tertiary end of the criminal justice system upstream, where costs are significantly cheaper, to early intervention, prevention, diversion and rehabilitation. Texas saved \$443 million over 2008/2009, and in 2012 closed a prison for the first time.¹³ In Australia, JR has developed further. The town of Bourke, NSW has achieved recognition as the first place based, Aboriginal community led JR site, through the Maranguka JR Project in partnership with JustReinvest NSW. Maranguka Bourke is credited with cutting major offences by 18% and domestic violence and drug offences by 40% between 2015 and 2017¹⁴. Justice Reinvestment was last year adopted as policy by

¹³ Alison Lawrence, 2017, Justice Reinvestment Texas, National Conference of State Legislatures. Retrieved from <<https://www.ncsl.org/research/civil-and-criminal-justice/justice-reinvestment-in-texas.aspx>>

¹⁴ Lorena Allam, 2018, The Guardian <<https://www.theguardian.com/australia-news/2018/oct/09/unique-community-policing-sees-rates-plunge-in-bourke>>



the ACT Government.

We need integrated, collaborative, holistic responses to support young people in crisis

Data sharing and Collaboration between government agencies, the NGO services sector, researchers, and place-based service providers will develop more accurate understandings of the experiences of disadvantage across WA. Once communities and/or individuals in need are identified, *in conjunction with community led design*, these understandings can subsequently inform more effective, targeted, and holistic solutions to social issues.

The Youth Partnership Project (YPP) – Armadale, Western Australia:

The YPP is a youth intervention framework that aims to engage State Government agencies and the community sector to work better together to improve outcomes for at-risk young people. As part of this the Armadale Youth Intervention Partnership (AYIP) has developed an early intervention model that aims to reduce the demand on the youth justice service system. It seeks to get the right supports to the right young people, at the right time. Working with young people at risk of transitioning from the youth to adult justice system, AYIP achieved a 50% reduction in reoffending for those who completed the program.

Implementing place based, community co-designed responses

In addition to law reform and system wide preventative responses, place based models should be prioritized where the planning, design and implementation of prevention, early intervention and diversionary responses should be community-led.

Community Development principles should be at the heart of leading Community co designed, place-based solutions. This ensures solutions address the causal factors *unique* to individual communities; Are owned and driven by an empowered community to ensure longevity and responsibility; And Self-determination is fostered and upheld for Aboriginal peoples.



The Olabud Doogethu Justice Reinvestment Project - Halls Creek, Western Australia:

Initiated based upon the principles of Asset Based Community Development, Justice Reinvestment, and Collective Impact; The Shire of Halls Creek Dept. of Community and Youth Development led an 18 month long community co-design process with each community, which resulted in a shire wide Outcomes Framework, and Individual Community Plans (signed by relevant Elders and leaders), which are owned and recognised by Kija and Jaru leaders and community. Olabud Doogethu is an Aboriginal community designed place based solution to reduce incarceration, and provide better outcomes for the young people of Halls Creek and surrounding communities. Co-Design, Data Mapping, Justice Circuit breaking for high risk young people, and transitioning to responding to underlying causes of offending with parents have been undertaken or commenced. It provides culturally secure end to end support for at risk individuals and families. Through a collective impact approach, expanding to more partners, and further collaboration across all levels of government and agencies we can overcome silos that prevent effective change. It is the most advanced Justice Reinvestment project in WA

One of the first initiatives; The establishment of the Youth Engagement Night Officers (YENO's), has demonstrated great success **"Since the inception of the Halls Creek Shire Youth Engagement Night Officers there has been a 46% reduction in Burglary offences and a 12% reduction in Stealing offences within the Halls Creek townsite.** I believe their role is a significant contributor to this reduction. [Additionally] when the YENO team are not working my officers report the street presence and anti-social behaviour of the youth increases notably" - Halls Creek Senior Sergeant Dean Bailey, Jan. 2020.

Additionally the project includes:

Establishment of program by the Shire to provide a guaranteed 12 month paid traineeship for every high school graduate in the Halls Creek region, of which 11 have begun, to combat extremely high drop out rates; The employment of Learning on Country Coordinators (LOCC's) in 3 remote communities to lead development of culturally secure youth rehabilitation and alternative education models; Providing free entry into the Halls Creek Swimming Pool to improve community health outcomes; Olabud Doogethu Intensive Case Management Team, delivering end to end case management and clinical social work support to the most at risk young people; The employment of Aboriginal Parent Support Team Workers to do outreach support to struggling families identified through OD; Early Childhood Intervention Initiative; Establishing Halls Creek Youth Hub a youth centre open from 3pm-8pm to engage young people in recreational activities after school hours.

Prioritising cultural, social, and emotional wellbeing in our responses

Healing trauma and building healthy, strong families and individuals is critical to overcoming many of the social causes of crime. Mental health and AOD issues are prevalent among persons in the justice system, and resolving these issues must be prioritised. Culture plays a critical role in forging strong identities and healing symptoms of intergenerational trauma for Aboriginal people impacted by the Stolen Generations and Colonisation. Invest in and support Aboriginal-controlled programs and services and ensure ongoing cultural competency throughout the justice system.



The Healing Foundation:

Their initiatives are an example of a successful holistic, community-based approach which emphasises the self-determination of Aboriginal and Torres Strait Islander people. The Foundation encourages Aboriginal and Torres Strait Islander communities to be the leading force behind collective healing, supporting the embodiment of Aboriginal cultural themes into the healing process, through healing camps, field trips to culturally significant sites and reconnecting people to lost family members.

Support for Aboriginal Community Controlled organisations, Aboriginal led solutions, and Cultural Security throughout the whole justice system to reduce the over-representation of Aboriginal and Torres Strait Islander people

Given that 39% of adults and 76% of children incarcerated in Western Australia in 2018/2019 were Aboriginal or Torres Strait Islander¹⁵, despite being just 3% of the population, there should be a far larger proportion of programs and services within the justice system that are specifically designed by and for Aboriginal people. The Office of Inspector of Custodial Services has observed that ‘improvements in program availability [within prisons] have not been equitably distributed. In 2013 the gap between treatment needs and program delivery was markedly different between metropolitan and regional ‘Aboriginal’ prisons (those where the proportion of Aboriginal people in prison is 75 per cent or more). Prisoners released from ‘Aboriginal’ prisons were far more likely to have treatment needs unaddressed due to programs being unavailable’.¹⁶ In 2014 the President of the Children’s Court stated that there ‘has been an almost complete absence of rehabilitation programs for Aboriginal children for many years despite the ongoing urgent need for them’.¹⁷

However, it remains the case that less than 10 per cent of the Youth Justices Services budget is notionally available to non-government organisations for the delivery of prevention, diversion and rehabilitation services and it remains to be seen how many contracts will go to Aboriginal community controlled organisations. Social Reinvestment WA contends that there must be a long term commitment by government to provide sustainable funding and ongoing support for Aboriginal designed and led strategies both in the adult and youth justice contexts as well as in other areas such as housing; sport and recreation; disability services; education, employment and training; and physical and mental health.

It is imperative that everyone involved in the justice system (eg, police, lawyers, community corrections officers, judiciary and other justice staff) have effective and ongoing cultural competency training. Despite past recommendations in relation to cultural competency training, deficiencies remain. A failure to understand cultural issues may have dire consequences for the way in which an Aboriginal person is dealt with. As one example, if a community corrections officer who is writing a pre-sentence report is not sensitive to cultural issues, the report may be negative as a consequence of a failure to communicate effectively with the Aboriginal person and properly understand their circumstances. This will, in turn, impact on the sentencing outcome. Amnesty International heard concerns, in particular in Geraldton, about the absence of a community policing ethos and a lack of

¹⁵ 2019, WA Department of Justice, Annual Report 2018/2019. Retrieved from

<https://department.justice.wa.gov.au/_files/annual-reports/DoJ-Annual-Report-2018-2019.pdf>

¹⁶ Office of the Inspector of Custodial Services, Recidivism Rates and the Impact of Treatment Programs (September 2014)

¹⁷ Judge Dennis Reynolds, *Youth Justice in Western Australia – Contemporary Issues and its future direction*, (University of Notre Dame, 13 May 2014)



Aboriginal community engagement by police. This is a barrier to crime prevention initiatives. Amnesty International heard that cultural competency training is provided at the Police Academy when recruits first join the police force but that there is little follow up by way of cultural training in the local context once the police have taken up their posts. Familiarisation with the local cultural context through discussions with local Aboriginal organisations or Elders is done only in an ad hoc way.¹⁸

Social Reinvestment WA recommends that local cultural security training, delivered by Aboriginal Community Controlled Organisations, should be funded and rolled out nationally to improve community policing and relationships between police and Aboriginal communities. Furthermore, ACCO's organisations should be funded to provide local cultural security training to all those working in the justice system.

The Yiriman Project – The Kimberley, Western Australia:

The Yiriman Project Diversion Program is a community-based youth diversionary program run by the Kimberly Aboriginal Law and Culture Centre. The Yiriman Project in Fitzroy Crossing takes young people at risk of offending on country and supports them to undertake culturally based activities. It has demonstrated evidence in both improving the health outcomes of Aboriginal young people with FASD¹ as well as helping to prevent their involvement in the juvenile justice system¹.

WA SPECIFIC ISSUES

10. *Are there issues specific to states or territories (eg operational issues) that are relevant to considerations of raising the age of criminal responsibility?*

Mandatory Sentencing of young people must be repealed

Western Australian currently enforces mandatory sentencing laws that apply to children. There is no evidence that mandatory sentencing contributes to ongoing community safety. Mandatory sentencing adds to the overall high cost of imprisonment without any long-term discernible benefits to community safety. Mandatory sentences of imprisonment are highly unlikely to deter young people without the capacity for consequential thinking, or people suffering from mental impairment, alcohol or drug dependency, or extreme social and economical disadvantage¹⁹. It is well accepted that a large proportion of prisoners and detainees are suffering these problems.

As the previous WA President of the Children's Court, Judge Dennis Reynolds, has stated in relation to the potential impact of expanded mandatory sentencing for children:

'if a large number of more hardened, angry and disconnected young offenders are returned to the community... then they will have a wide sphere of influence on other disconnected children, including children even younger than them. That will create an ongoing multiplier effect, which over time, will sustain and increase serious offending and its human and financial cost to the community'

Measures that are designed to address the underlying causes of offending behaviour are more likely to reduce the true incidence of offences subject to mandatory sentencing. Recent changes to

¹⁸ Amnesty International, *There is always a brighter future: Keeping Indigenous kids in the community and out of detention in Western Australia* (2015) 23.

¹⁹ New South Wales Law Reform Commission, *Sentencing*, Report No. 139 (2013) 31-32.



mandatory sentencing are likely to cost Western Australian taxpayers \$43 million (to accommodate an estimated additional 60 juvenile detention places and 206 adult prisoners).

WA Police need to act to prevent the over-policing and under cautioning of Aboriginal and Torres Strait Islander young people

Statistics show that Aboriginal children who are found by WA Police to be breaking the law are more likely to end up in court than non-Aboriginal children, who are more often given cautions and other diversionary options.²⁰ WA Police Commissioner, Chris Dawson, commented in June 2019 that the ‘vast volume’ of Aboriginal children who are charged with a criminal offence in this State could be dealt with through community justice arrangements and not end up in custody.

The House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs stated in 2011 found concerning “evidence suggesting that over-policing of Indigenous communities continues to be an issue affecting not only relations between Indigenous people and the police, but also the rate at which Indigenous people come into contact with the criminal justice system.”²¹

The Aboriginal Legal Service of WA positions that over-policing of Aboriginal and Torres Strait Islander peoples is a key contributing factor to incarceration rates, and that decisions to charge people with low level offending will have repercussions for future involvement in the justice system. They cited several cases as part of their submission to that Inquiry²² including: A 12-year-old Aboriginal boy with no criminal convictions was charged with receiving a stolen freddo frog worth 70 cents. The boy was later arrested by police and detained in antiquated police cells because he failed to answer his bail after missing his court date. Other examples included a 15-year-old boy from a regional area being charged with attempting to steal an ice-cream who subsequently spent 10 days in custody in Perth before the charge was eventually dismissed; a 16-year-old boy who attempted to commit suicide by throwing himself in front of a car was charged with damaging the vehicle; and an 11-year-old with no prior contact with the justice system was charged with threats to harm following an incident at her primary school where she allegedly threatened teachers with plastic scissors.²³

²⁰ The Guardian, ‘WA police says ‘vast volume’ of Indigenous children shouldn’t be in custody’, 3 June 2019, accessed:

<https://www.theguardian.com/australia-news/2019/jun/03/wa-police-says-vast-volume-of-indigenous-children-shouldnt-be-in-custody>

²¹ House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing Time —Time for Doing: Indigenous youth in the criminal justice system* (2011) [7.22].

²² ALSWA, Submission to the Parliament of Australia, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Inquiry into the High Level of Involvement of Indigenous Juveniles and Young Adults in the Criminal Justice System* (December 2009).

²³



Reform of Banksia Hill Detention Centre

Conditions at Banksia Hill Juvenile Detention Centre give rise for concern, and it has been cycling through crisis and recovery for a long period of time. It's lack of rehabilitative function is clearly demonstrated through recidivism figures showing half of sentenced young people reoffended within 12 months.

The Office of the Inspector of Custodial Services has consistently called through reviews for changes to the centre, most of which have not been implemented. Young people inside are receiving an inadequate education, with 28 young people (about a quarter of the incarcerated population) not receiving access to education while detained in the facility in 2017/2018. That same year Two children attempted suicide and a minor self-harm incident was recorded, on average, every two days (174 in total)²⁴. Amnesty allegations of human rights abuses, including long periods of isolation for young people in Banksia's Intensive Support Unit has further cemented the demand that something needs to change. We must do better; Banksia Hill is ineffective, costly, and increases the likelihood of harm to vulnerable and traumatised young people.

QUESTIONS SRWA DOES NOT HAVE A POSITION ON AT THIS TIME

9. *Is there a need for any new criminal offences in Australian jurisdictions for persons who exploit or incite children who fall under the minimum age of criminal responsibility (or may be considered doli incapax) to participate in activities or behaviours which may otherwise attract a criminal offence?*
N/A

11. *Are there any additional matters you wish to raise?*
N/A

²⁴ Productivity Commission's Report on Government Services, 2019