

# **Submission to the Victorian Parliamentary Standing Committee on Legal and Social Issues Inquiry into Youth Justice Centres in Victoria**

February 2017

Written by Liz Dearn for cohealth

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## recommendations

### **Recommendation 1:**

The Victorian Government should ensure that Victoria's new strategic policy framework for youth justice framework is based on Victoria's local and international human rights obligations and that the treatment of young people in youth justice centres is consistent with this approach.

### **Recommendation 2:**

The Victorian Government should advocate through the Council of Australian Governments for a reduction in the incarceration of Aboriginal children and young people to be included in 'Close the Gap' targets.

### **Recommendation 3:**

The Victorian Government should ensure that Victoria's new strategic policy framework for youth justice acknowledges and responds to the vulnerability of the juvenile justice population. In particular, the framework should give consideration to:

- the rates of people with mental illness and cognitive disability in juvenile detention centres;
- the high prevalence of trauma resulting from the experience of out of home care in the juvenile justice population;
- addressing the causes of crime by Sudanese and Maori and Pasifika young people, including the impact of racism and trauma; and
- the impact of trauma and disadvantage on Aboriginal children and young people in the juvenile detention.

### **Recommendation 4:**

The Victorian Government's juvenile justice framework should reflect article 37(b) of the *Convention on the Rights of the Child*. That is: 'the detention of a child be only used as a measure of last resort and for the shortest appropriate period of time.'

### **Recommendation 5:**

The Victorian Government's new juvenile justice framework should ensure that juvenile justice policy is compliant with article 37(c) of the *Convention on the Rights of the Child*. That is: 'every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.'

**Recommendation 6:**

The Victorian Government should ensure that no children and young people are placed in adult detention.

**Recommendation 7:**

The Victorian Government should ensure the practice that policies and practices in juvenile detention centres are consistent with the *United Nations Convention on the Rights of the Child* and the *United Nations Optional Protocol on the Convention against Torture*.

**Recommendation 8:**

The Victorian Government should develop and implement a Justice Reinvestment framework for working with young people in the juvenile justice system.

**Recommendation 9:**

The Victorian Government should invest more in children, youth and family services in areas that have high rates of young people involved in the juvenile justice system.

**Recommendation 10:**

The Victorian Government should invest in programs that address racism and promote connection build safe, healthy and cohesive communities.

**Recommendation 11:**

The Victorian police implement a statewide rollout of 'stop and search receipting', introduce police stop data collection and train all Victoria Police members in anti-bias training in addition to the continued implementation of the three year action plan 'Equality is not the same – the next steps'.

**Recommendation 12:**

The Victorian Government should invest in health promotion programs that strengthen the resilience of communities in the areas of mental illness, drug and alcohol use, trauma and family violence.

**Recommendation 13:**

That the Victorian Government should implement the recommendations from the 'Inquiry into Services Provided to Aboriginal Children and Young People in Out of Home Care in Victoria' by the Commission for Children and Young People with attention to recommendation 6.23

**Recommendation 14:**

The Victorian Government should invest in intensive, trauma informed support for young people while they are in secure residential settings in child protection and 12 months before they exit these settings.

**Recommendation 15:**

The Victorian Government should invest in programs that support families involved with child protection.

**Recommendation 16:**

The Victorian Government should invest in programs that support families and communities to maintain connection with young people and children involved in the justice system.

**Recommendation 17:**

The Victorian Government should ensure the provision of health care to young people in juvenile justice centres consistent with section 26.2 of the *United Nations Standard for Minimum Rules for the Administration of Youth Justice*. That is: 'juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical, that they may require.'

**Recommendation 18:**

The Victorian Government should ensure a full screening of children and young people in youth detention for physical, psychiatric and alcohol and drug concerns be undertaken on admission.

**Recommendation 19:**

The Victorian Government should invest in trauma-informed approaches in out of home care and across the youth justice sector, police and court services.

**Recommendation 20:**

That the Victorian Government should legislate for minimum staff qualifications for juvenile justice centre staff.

**Recommendation 21:**

That the Victorian Government should ensure that exit planning policy for young people in juvenile justice is undertaken in a holistic model including primary health and social care needs.

**Recommendation 22:**

The Victorian Government should invest in intensive support for children and young people on dual orders with child protection and justice supervision orders.

**Recommendation 23:**

The Victorian Government should strengthen pathways to early community treatment and support as well as establishing early exit pathways from juvenile detention for people with mental illness and cognitive disabilities.

**Recommendation 24:**

The Victorian Government should invest in a state-wide diversion scheme for young people that is legislated for, trauma-informed and provides culturally appropriate diversionary options which are accessible and suited to the needs of young people in out-of-home care.

**Recommendation 25:**

The Victorian Government should expand court programs that address the causes of offending like the Neighbourhood Justice Centre, Koori Court and Court Integrated Services Programs for young people, with particular consideration of geographic regions with highest demand.

**Recommendation 26:**

The Victorian Government should expand restorative justice programs like the Youth Justice Group Conferencing program.

**Recommendation 27:**

The Victorian Government should amend legislation to raise the age of criminal responsibility to 12 years of age.

**Recommendation 28:**

That the Victorian Government maintain legislative provision that allows for a dual track system for vulnerable young people.

**Recommendation 29:**

The Parliamentary Committee should make a recommendation to the Victorian Government for a dedicated Independent Prison Inspectorate.

## acknowledgements

Thanks to all the people who contributed to this submission including

Gordon Conochie

Gayle Rasmussen

Jo Southwell

Moses Abbatangelo

Bill McKay

Jay Jaggard

Trevor Whitton

Anne Dillon

Soloman Salew

Joe Motley

Liss Gabb

'YP1' - Program participant

## 1. cohealth

cohealth is a not-for-profit community health service operating in 40 locations across 14 local government areas (LGAs) in the north and western metropolitan regions of Melbourne. cohealth provides integrated medical, dental, allied health, mental health and community support services, and delivers primary health programs to promote community health and wellbeing. Over 110,000 people a year use cohealth services.

Advocacy, health promotion, education, participation and inclusion activities directly with individuals and the community are at the core of cohealth's service model. Our mission is to improve health and wellbeing for everyone through access to high quality health care and by addressing health inequalities.

cohealth operates from a social model of health perspective which recognises that health is influenced by people's circumstances and their environment. Factors such as where we live, income, education level, relationship with friends, family and community and the state of the environment all have a significant impact on health. Health inequalities can also result from stigma, discrimination and political and social decisions that affect social and economic equality.

Of the LGA's cohealth's operates within, four of 27 postcode areas are identified by Jesuit Social Services 'dropping off the edge' data (2015) as showing the highest ranking disadvantage on 22 indicators.<sup>1</sup> Social and economic indicators of disadvantage in these areas, which make up 3% of Victoria's postcodes, include unemployment, criminal convictions, disability, psychiatric admissions, low education, child neglect and abuse and family violence. People living in these postcodes are twice as likely to have criminal convictions and over a quarter of children with youth justice orders came from these 3% of postcode areas in 2015.<sup>2</sup>

cohealth prioritises services to people who face significant health disadvantage and ongoing or complex needs including people who are homeless or at risk of homelessness, Aboriginal and Torres Strait Islander peoples, refugees and asylum seekers, recently arrived migrants, older people living in public housing, people with mental illness and people who use alcohol and other drugs.

An important part of cohealth's work is systemic advocacy. That is, speaking out about health care provision and on key issues that impact on health including social inequalities and human rights. We work with clients and communities to be an active advocate with and for people whose voice is often missing from community and political debate.

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<sup>1</sup> Jesuit Social Services (2015) 'Dropping off the Edge' report <https://dote.org.au/findings/victoria/>

<sup>2</sup> Jesuit Social Services (2013) 'Thinking Outside: alternatives to remand for children' [http://jss.org.au/wp-content/uploads/2015/10/Thinking\\_Outside\\_Research\\_Report\\_Final\\_amend\\_15052013.pdf](http://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_Final_amend_15052013.pdf)

## 2. cohealth's approach to this submission

Footage of the human rights abuses of children and young people in the Northern Territory, aired by ABC's four corners in July 2016, was shocking to watch. To see children and young people in the care of the state victimised by the institutions who have a duty of care for them was disturbing.

However, the Northern Territory situation is not unique. Across Australia, there are reports of cultural problems in juvenile detention facilities including the excessive use of force, the use of restraint, isolation and lockdowns as punishment and the mental, verbal and emotional abuse of children and young people.

In Victoria, successive Ombudsman's reports have illustrated problems in Victoria's prisons including health care gaps, serious risk of injury and harm and human rights abuses of prisoners, including in juvenile detention.<sup>3</sup> In 2013, the Ombudsman reported her concerns about the transfer of children to adult prisons and the inconsistency of their placement in an adult prison environment with their rights under the *Victorian Charter of Human Rights and Responsibilities 2006* (the Charter).<sup>4</sup>

cohealth was amongst many advocates in December last year who responded to the removal of children and young people from Parkville juvenile justice facility to the Grevillea unit at Barwon maximum security prison, expressing grave concerns for their health and wellbeing.

The Victorian Ombudsman's 6 February 2017 report substantiates concerns about placing young people in adult prisons, illustrating a system that is unable to provide a safe and appropriate service for children that meets their mental health, psychological and therapeutic needs, consistent with Victoria's obligations under the Charter and the *Children, Youth and Families Act 2005*.<sup>5</sup>

Young people in detention have a right to have treatment appropriate to their age and circumstances. In the recent reporting in the media about the disturbances in Parkville detention centre, it seems to have been forgotten that the precursors for most young people in juvenile detention are in structural disadvantage, manifested in poverty, experience in out of home care, unemployment, intergenerational trauma, mental illness, drug and alcohol misuse, poverty and homelessness.

As a human rights-based health service, we have a responsibility to advocate for solutions that address the underlying causes of offending behaviour and well as the impact of detention on

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<sup>3</sup> Victorian Ombudsman (2011) 'Investigation into prisoner access to health care'; Victorian Ombudsman (2014) 'Investigation into deaths and harm in custody'; Victorian Ombudsman (2015) 'Investigation into the rehabilitation and reintegration of prisoners in Victoria'.

<sup>4</sup> Victorian Ombudsman (2013) 'Investigation into children transferred from the youth justice system to the adult prison system'.

<sup>5</sup> Victorian Ombudsman (2017) 'Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville'.

children and young people. Many of the social determinants of health are similarly, determinants of offending behaviour – issues such as education, employment, housing, social connectedness, drug and alcohol misuse, untreated mental illness and structural racism and other discrimination.

### 3. human rights

There are at least four human rights instruments applicable to the treatment of young people in juvenile detention to which Australia is a signatory or has committed to ratify.<sup>6</sup>

The Charter states that:

*'A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.'* (s23(1))

The *United Nations Standard Minimum Rules for the Administration of Youth Justice* state that:

*"The juvenile justice system shall emphasize the well-being of the juvenile and shall ensure that any reaction to juvenile offenders shall always be in proportion to the circumstances of both the offenders and the offence."* (s5.1)<sup>7</sup>

The *United Nations Convention on the Rights of the Child* outlines a number of rights relevant to young offenders. These include diversion from judicial proceedings, an emphasis on rehabilitation, and the use of detention as a last resort and for minimal time.<sup>8</sup>

The *United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment* (OPCAT)<sup>9</sup> pertains to all people in detention or closed environments and the Australian Government has made a commitment to ratify it 2017. The aim of the OPCAT is to prevent mistreatment of people in detention rights around treatment whilst in detention and once ratified, it will require the establishment of an independent inspection mechanism in places of detention including juvenile justice centres.<sup>10</sup>

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<sup>6</sup> The United Nations Convention on the Rights of the Child; the United Nations Standard Minimum Rules for the Administration of Youth Justice; the United Nations Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) and the *Victorian Charter of Human Rights and Responsibilities 2006*.

<sup>7</sup> Adopted by General Assembly resolution 40/33 of 29 November 1985.

<sup>8</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989 entry into force 2 September 1990

<sup>9</sup> Adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984 entry into force 26 June 1987.

<sup>10</sup> Australian Human Rights Commission <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/optional-protocol-convention-against-torture-opcat>

Human rights instruments provide a framework for the treatment of young people when detained and are basic civil and political rights, seen as inviolable and sacrosanct. The treatment of young people in Victoria's juvenile justice system, at minimum, should uphold human rights.

**Recommendation 1:**

The Victorian Government should ensure that Victoria's new strategic policy framework for youth justice framework is based on Victoria's local and international human rights obligations and that the treatment of young people in youth justice centres is consistent with this approach.

## 4. response to the terms of reference

Implications of incarcerating young people who have significant exposure to trauma, alcohol and/or other drug misuse and/or the child protection system, or who have issues associated with mental health or intellectual functioning (TOR 4)

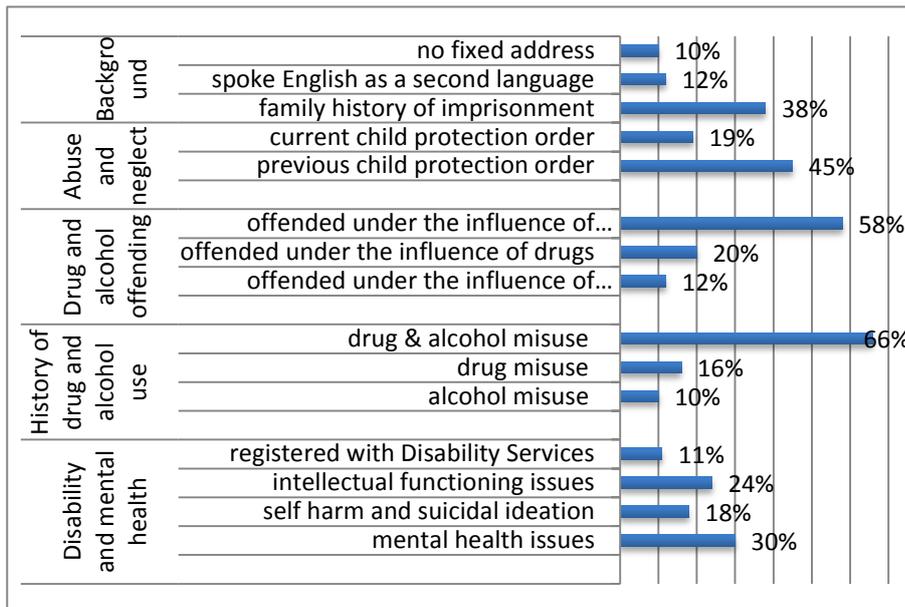
### *Vulnerability of the juvenile justice population*

cohealth is concerned that the approach to juvenile justice being taken in Victoria is symbolic of a punitive approach to youth offending that disregards the vulnerability of the juvenile justice population and the impact of incarceration on them.

Research into the characteristics of young people in the juvenile justice system illustrate complex backgrounds of trauma, poverty, illness and marginalisation. A snapshot of characteristics of young people detained on sentence and remand in October 2015 reported in the 2015-16 Parole Board Annual Report graphically illustrates the complexity of the characteristics of this population, showing a history of abuse and neglect, disability and mental health issues, history of family imprisonment and high rates of drug and alcohol use including high rates of alcohol and drug related offending.<sup>11</sup>

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<sup>11</sup> Victorian Government Department of Health and Human Services (2015) Youth Parole Board Annual Report 2015-16 <http://www.dhs.vic.gov.au/about-the-department/documents-and-resources/reports-publications/youth-parole-board-annual-report>>



**Figure 1. Snapshot of young people in custody Oct 2015: data source Youth Parole Board 2015-2016 (N=167 males and 9 females).**

Young people in the criminal justice system are a highly vulnerable group of young people, many of whom have experienced a trajectory from disadvantage, trauma, disability and out of home care and poverty into the prison system.

*“Profiles of young people in detention show that a high proportion of detainees have been victims of abuse, trauma, and neglect, with high rates of drug and alcohol abuse, child protection involvement and school exclusion. Mental health issues and intellectual disability are also prominent.”<sup>12</sup>*

### Disability and mental illness

cohealth is disturbed that while there is mounting evidence in Australia and internationally about the relationship between disability and imprisonment, that high rates of disability in juvenile detention continue to be observed, with many young people locked early into a criminal justice trajectory instead of a therapeutic pathway. Victoria’s profile of young people in contact with the criminal justice system shows high rates of poor cognitive functioning (11%) and mental health issues (30%), self harm and suicidal ideation (18%) (see table 1).

<sup>12</sup> Jesuit Social Services (2013) Op.cit.

An Australian Research Council Linkage study undertaken by Baldry and colleagues between 2007 and 2010 investigated criminal and human services life histories for 2,731 people with mental illness and cognitive disability who had been in prison between 2000 and 2008. The study points to:

“widespread over-representation of these persons in police work, the courts and juvenile and adult prisoner populations, both as victims and offenders”.<sup>13</sup>

The research found that between 40% and 60% of adult prisoners with complex cognitive disability had been clients of juvenile justice. People with cognitive disability and complex needs had earlier and ongoing contact with the police and prison than people without a cognitive disability. They concluded that people with complex comorbidity and dual diagnosis:

“are significantly more likely to have earlier contact with police, more police episodes, be more likely to have been clients of juvenile justice, have more police episodes through life and more prison episodes than people with single, or no diagnosis and for this high and ongoing contact with the criminal justice system to lock them into the CJS very early rather than assist in rehabilitation. Their offences are almost all in the lowest 10% of seriousness.”<sup>14</sup>

cohealth operates three mental health residential rehabilitation settings and two Prevention and Recovery Units. Our experience in the operation of these services is that a therapeutic justice model and a recovery model are effective in working with people with mental illness with behavioural concerns. Criminalising behaviours that stem from an interaction between the young person’s environment and their mental illness is counter therapeutic and can lock the young person into a criminal pathway.

### *Out of home care*

High rates of young people who have experienced out of home care in the criminal justice system are indicative of a system that is not meeting the needs of vulnerable young people. Primary data analysis undertaken by Jesuit Social Services found that 100% of 27 people who had experienced remand between 10 and 12 years of age had experience of out of home care.<sup>15</sup>

These rates suggest that child protection is failing the most vulnerable children. One of the gaps that cohealth sees in this area is young people with complex needs who have exited out of home care and entered mental health youth residential settings. Lack of a secure 24 hour care model for young people exiting care means that they present in other parts of the system, that are ill equipped to meet their needs. The combination of trauma, complex behaviours and cognitive development issues, can result in criminal justice intervention.

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<sup>13</sup> Baldry E, Dowse L and Clarence M (2011) ‘People with mental and cognitive disabilities: pathways into prison’. Background paper for the National Legal Aid Conference Darwin.

<sup>14</sup> *ibid* p16.

<sup>15</sup> Jesuit Social Services (2013) Thinking Outside: Alternatives to remand for children (Research Report) Richmond, Jesuit Social Services. p40 [http://jss.org.au/wp-content/uploads/2015/10/Thinking\\_Outside\\_Research\\_Report\\_-\\_Final\\_amend\\_15052013.pdf](http://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_-_Final_amend_15052013.pdf)

A comprehensive three year investigation of the relationship between people leaving out of home care and youth justice in Victoria reported that 49% of children and young people on custodial youth justice orders had current or previous child protection involvement.<sup>16</sup> While rates of out of home care are high, it is the mediating factor of exposure to trauma that makes this population both susceptible to developing behaviours that bring them into contact with the criminal justice system as well as vulnerable in a prison setting.

Complex trauma is defined as repetitive or prolonged harm or neglect by caregivers which occurs at developmentally sensitive times and impacts on behaviour, cognition, affect and attachment.<sup>17</sup> Mendes's study concludes that the high frequency of offending behaviour seen in children from out of home care backgrounds is an outcome of trauma.<sup>18</sup>

Out of home care experience is a systemic issue for Aboriginal children due to the history of the Stolen Generation as well as current high rates of out of home care. Rates of out of home care are one in eleven for Aboriginal children in Victoria compared to one in 164 for non-Aboriginal children.<sup>19</sup> These high rates can be explained by:

*"intergenerational trauma driven by past government policies of child removal; prior parental involvement with child protection and the justice system; sexual abuse; mental health; incarceration; poor housing and transience."*<sup>20</sup>

Case study 1, on the page over, from cohealth's youth mental health residential rehabilitation services shows the impact of the recovery model on a young person from out of home care who had experience of trauma and involvement with the criminal justice system.

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<sup>16</sup> Mendes, P, Baidawi, S & Snow P (2014) 'Good Practice in Reducing the Over-Representation of Care Leavers in the Youth Justice System'. Leaving Care and Youth Justice – Phase Three Report. Melbourne: Monash University.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> Australian Productivity Commission (2012) Table 15A.17 Report of Government Services.

<sup>20</sup> Jackomos A 2015 'Linking out past with our future: how cultural rights can help shape identity and build resilience in Koori Kids'. First published in the Indigenous Law Bulletin March/April 2015, Vol 8, No. 17.

## Case study 1

**Impact of the recovery model on a young person from out of home care with criminal justice involvement**

A young woman (JT) joined the cohealth Youth Residential Program at age 19. Child Protection had been involved in her life since before ten years of age. She was removed from her family home by Child Protection in her early teens and also had a short stay at DHHS secure residential services. From her mid teens, JT was placed in numerous DHHS residential and foster care arrangements before entering into homelessness at age 18. Directly prior to engaging with cohealth Youth Residential Rehabilitation services, JT was living in emergency accommodation.

JT has a history of childhood sexual and physical abuse, mental illness, suicidal behaviours, self-harm and high risk behaviours that led to criminal offences and a lengthy involvement with police. She has had multiple psychiatric admissions and had received a psychiatric diagnosis and a diagnosis of PTSD. Unmanaged trauma and mental health issues have led JT to self-medicate with drugs and alcohol and self-harming as a means of coping. JT has a history of refusing support from adults due to fear and mistrust.

When JT first joined the cohealth YRR, she took some time to develop a trusting relationship with staff. Her lack of trust in others and diminished hope for recovery, significantly impacted on her ability to engage in support whilst residing in the YRR program. However, with clear boundaries, consistency and persistence, she was able to begin to trust staff.

With the use of the Collaborative Recovery Model, a care team approach and a co-design model, JT was able to lead her recovery and utilise her strengths to better her situation. She developed a great working relationship with her clinical mental health clinician and together began to develop insight into her mental health and she made a significant shift in the way her triggers and stressors were managed.

Support-seeking and reflection became an important part of JT's recovery and her ability to self-manage increased considerably. Psychiatric admissions reduced significantly and she developed an awareness around her mental health and developed effective coping strategies to avoid deterioration in her mental state.

JT successfully resumed attendance at school throughout the duration of her YRR stay and this commitment provided positive emotions, meaning and reduction in her problematic behaviours. She has subsequently completed her studies upon leaving the YRR and has since gone on to further studies.

## *Sudanese and Māori and Pasifika children and young people*

A report by the Centre for Multicultural Young people (CMY) found that in general, young people from migrant background are slightly underrepresented in crime statistics when compared to Victoria's overseas born populations. However, people from Sudanese and Maori and Pasifika backgrounds are overrepresented.<sup>21 22</sup>

The report finds that young people from Sudanese backgrounds are 6.8 times more likely to be processed by Victorian police than other young people<sup>23</sup> and over nine times more likely to be in the youth justice system than other young people.<sup>24</sup> Young people born in New Zealand were almost two times more likely to be processed by police and nearly five times more likely to enter the youth justice system.<sup>25</sup> Youth Parole Board data indicates that 11% of young people sentenced to detention were Maori and Pasifika backgrounds.<sup>26</sup>

cohealth supports a social determinants of health perspective that takes education, housing, racism, social networks and connections, employment, law enforcement and the legal and justice system to be determinants of health.<sup>27</sup> cohealth view is that disadvantage, structural racism, trauma, law enforcement approaches, language and cultural barriers, cultural disconnectedness, family breakdown, disengagement from education, barriers to employment, community disharmony and cultural stereotyping by the media all contribute to the overrepresentation of Sudanese, Maori and Pasifika young people in the justice system.

Racist reporting of crime by Sudanese and Maori and Pasifika young people overestimates the extent of their involvement in crime. A recent fact checking report by ABC News aiming to correct the misrepresentation, looked at on the crime categories of home invasion, car theft and aggravated robbery. The report indicates that while Sudanese and Maori and Pasifika born young people are overrepresented in crime statistics, most convictions for home invasions, car thefts and aggravated robberies are committed by people born in Australia.<sup>28</sup>

As well as being the subject of media interest, Sudanese and Maori and Pasifika young people experience a disproportionate amount of attention from police including racial profiling.<sup>29</sup> This issue is raised by participants in cohealth programs on a regular basis. One cohealth worker

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<sup>21</sup> Centre for Multicultural Youth (2014) 'Fair and accurate? Migrant and Refugee Young People, Crime and the Media'. CMY. Melbourne.

<sup>22</sup> Pasifika is the term used to describe peoples who have familial lineage to islands across the Pacific to the north of New Zealand. Maori refers to the Indigenous people of New Zealand and people of Maori heritage born in Australia.

<sup>23</sup> Jesuit Social Services, cited by CMY Op.cit.

<sup>24</sup> Department of Health and Human Services, cited by CMY Op.cit.

<sup>25</sup> *ibid.*

<sup>26</sup> Victorian Parole Board, cited by CMY Op.cit

<sup>27</sup> Department of Health and Ageing (2011) 'Submission to the House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs investigation into young Aboriginal and Torres Strait Islander people in the criminal justice system, p3.

<sup>28</sup> The Age Newspaper (2016) 'Victoria youth crime: Statistics raise questions about calls to deport youth offenders', 6 December <http://www.abc.net.au/news/2016-12-04/statistics-raise-questions-about-calls-to-deport-youth-offenders/8087410>

<sup>29</sup> Racist profiling is the targeting by law enforcement agencies of minorities, which plays out by young people being disproportionately targeted by police. See the Federation of Community Legal Centres independent investigation of complaints coming out of the Flemington Kensington Legal Centre for more detail [http://www.policeaccountability.org.au/wp-content/uploads/2015/11/CLCpaper\\_final.pdf](http://www.policeaccountability.org.au/wp-content/uploads/2015/11/CLCpaper_final.pdf)

from an African background is said to leave an extra half hour to get to appointments to allow time for being stopped by police.

This impacts on the health and wellbeing and the sense of belonging of young people who are targeted. It also increases the likelihood of the targeted young people getting in trouble with the law. The impact of racial profiling is illustrated by young Sudanese people that contributed to a submission for Youth Substance Abuse Service:

*“The Police talk to youth in a language that doesn't make you feel comfortable as a person and makes you feel rage towards police” - young African Australian, Noble Park<sup>30</sup>*

A whole of community approach to build social cohesion through the eradication of racism is needed to support young people to develop resilience and overcome trauma.

### *Aboriginal children and young people*

The overrepresentation of Aboriginal and Torres Strait young people in prison system is a national disgrace. Nationally the rate of juvenile supervision is 15 times that of non-Indigenous young people. In Victoria, the rate of young Indigenous people detained in secure detention facilities is 12 times the non-Indigenous rate. This equates to 180 Indigenous young people per 10,000 people compared to 12 non-Indigenous per 10,000 people.<sup>31 32</sup>

A comprehensive survey of the health of young prisoners undertaken by NSW justice health found that the social determinants that lead to social exclusion and incarceration including history of out of home care, drug and alcohol abuse, early school leaving, health problems and high risk behaviours were significantly worse for Aboriginal young people in custody.<sup>33</sup> In addition, Aboriginal people had experienced more previous detention and 65% of Aboriginal young people had parents who had been in prison.

The manifestation of trauma for Aboriginal children and young people who have experienced out of home care can be behaviours that lead to criminal justice involvement. Case study 2 on the page over shows how a trauma informed recovery model can help to break the nexus between out of home care and the criminal justice system.

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<sup>30</sup> African Communities Foundation Australia & Youth Support & Advocacy Service. (2013) 'Submission to the Victorian Police Inquiry 2013', p20.

<sup>31</sup> AIHW 2016 Bulletin 133, April 'Youth Justice in Australia' 2014-15

<sup>32</sup> A total of 44 Aboriginal young people received youth justice centre orders in 2015-16 compared to 240 non-Aboriginal young people according to the Victorian Parole Board Annual Report 2015-16, p14.

<sup>33</sup> Indig 2011 Op.cit. p15

## **Impact of the recovery model on a young person from out of home care with criminal justice involvement**

### Case study 2

A young Aboriginal woman (TD) entered the cohealth mental health youth residential rehabilitation (YRR) program at age 18 years of age. She had been placed in both Kinship and Foster care and had ended up in a violent relationship. TD was first referred for psychiatric treatment in her early teens and had been self-medicating with cannabis and alcohol, which led to a drug induced psychosis. A formal mental health diagnosis was made by her mid teens. During this time, TD was charged with assault on numerous occasions due to being unable to manage her anger and emotions

TD entered YRR with low self-esteem, no social connections, limited living skills or ability to manage her mental health and held little hope that things could be different.

During her time in YRR, TD effectively used the Collaborative Recovery Model (positive psychology and coaching) to identify and tap into her values and strengths, which she said she had never recognised for herself, and to experience the positive emotions of striving towards meaningful goals and accomplishing them.

### **Recovery model goal**

TD held a value of being a good planner. She felt when she planned well, everything fell into place and she was better able to manage unexpected stressors. TD connected a target goal to this value of being well planned, and through this was able to manage her poor sleep habits. With regular coaching sessions and use of the Collaborative Recovery Model achieved her target goal and was able to maintain a regular sleeping pattern which in turn meant she was meeting her responsibilities and living true to her value of being a good planner.

Whilst in YRR, TD engaged in positive relationships with her peers and staff and developed a strong desire to make a contribution and to advocate for others. She joined a peer support group at cohealth and reported that the group gave her a sense of purpose and shared vision with peers.

TD gained insight into her mental health and an awareness of how to best manage it; developed a good relationship with clinical mental health supports, which had been fractured prior to entry; abstained from self-medicating via cannabis use and self-harming as a form of coping; disengaged from criminal behaviour; secured private rental and a job trial upon exit from the program and successfully transitioned out of the program without a decline in her mental health.

When asked, TD said that she was very proud to share her story and thankful for the help YRR gave her in developing the skills and confidence she needed to be more independent. She says that she has a better sense of herself, has made some friends and has developed a sense of hope for her future.

Structural issues are at the heart of high incarceration rates. These include the history of the stolen generations, dispossession of land and genocide. Aboriginal young people experience justice issues including over policing, they are more likely to be referred to court than cautioned, less likely to be given a diversion and they experience negative contact with the police and experience more factors that influence recidivism (e.g. lack of culturally appropriate post release accommodation and support options).<sup>34</sup>

The 2016 inquiry into services provided to Aboriginal children and young people in out-of-home care in Victoria by the Commission for children and young people found that 28 children of 980 on child protection orders were dual clients of child protection and youth justice. The investigation by the Commissioner into an individual case into the circumstances of a vulnerable young person who was on dual orders found 'systemic failings and the need for reflective practice and systemic reform'.<sup>35</sup>

The social and economic issues experienced by young Aboriginal people include intergenerational trauma, family breakdown, overrepresentation in out of home care, alcohol and drug problems, disconnection from education and unemployment. High rates of cognitive impairment and mental illness and physical health issues are also seen in the Aboriginal youth justice population.<sup>36</sup> It means that:

*"Koori children and young people are progressing from the out-of-home care system to the youth justice system at alarming rates, further disconnecting them from their cultural ties and identity."<sup>37</sup>*

The experience of racism, trauma and disadvantage make prisons a culturally unsafe environment for Aboriginal young people, where the risk of suicide and self harm have been potent concerns since the Royal Commission into Aboriginal Deaths in Custody. The argument for ensuring the cultural safety of Aboriginal children in prison was strengthened earlier this year when the state government agreed not to transfer 15 Aboriginal children to a high security adult prison following a challenge by the Aboriginal Legal Service.

## **Recommendation 2:**

The Victorian Government should advocate through the Council of Australian Governments for a reduction in the incarceration of Aboriginal children and young people to be included in 'Close the Gap' targets.

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<sup>34</sup> Parliament of Australia (2012) 'Doing time – time for doing', Investigation for the Standing committee into Aboriginal youth Justice.

<sup>35</sup> Commission for Children and Young People (2016) 'Always was, always will be Koori children': Systemic inquiry into services provided to Aboriginal children and young people in out-ofhome care in Victoria, p97.

<sup>36</sup> Baldry (2011) Op.cit.

<sup>37</sup> Jackomos A (2015) 'Linking our past with our future: how cultural rights can help shape identity and build resilience in Koori kids'. First published in the Indigenous Law Bulletin March/April 2015, Vol 8, No. 17.

**Recommendation 3:**

The Victorian Government should ensure that Victoria's new strategic policy framework for youth justice acknowledges and responds to the vulnerability of the juvenile justice population. In particular, the framework should give consideration to:

- the rates of people with mental illness and cognitive disability in juvenile detention centres;
- the high prevalence of trauma resulting from the experience of out of home care in the juvenile justice population;
- addressing the causes of crime by Sudanese and Maori and Pasifika young people, including the impact of racism and trauma; and
- the impact of trauma and disadvantage on Aboriginal children and young people in the juvenile detention.

### Impact of incarceration of vulnerable YP on the likelihood of reoffending (TOR 4a)

A key policy issue in the area of juvenile crime is how to support and facilitate young people to stop committing crimes. Numerous research findings demonstrate an association between higher rates of recidivism resulting from more punitive levels of intervention within the youth justice system.<sup>38</sup> Imprisonment has not been found to act as a deterrent for reoffending but has the contrary effect of higher rates of reoffending compared to non custodial or community based options.<sup>39</sup>

A report by the Sentencing Advisory Council cited by Smart Justice 2014 found that 'imprisonment has either no effect upon reoffending or a criminogenic effect'. Prisons create an environment where prisoners can learn from each other as well as stigmatising prisoners and creating a criminal identify. Tony Vinson from Jesuit Social Services said, imprisonment can 'help to sustain limited education, unemployment, poverty, homelessness, and associated social difficulties'.<sup>40</sup>

Research supports the concept of a criminogenic effect, showing how prison fosters further criminal behaviour and increases the likelihood of offending, due to the influence of other prisoners and learning further criminal behaviour.<sup>41</sup>

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<sup>38</sup> Richards, K (2011) 'What makes juvenile offenders different from adult offenders?' Trends and Issues in Crime and Criminal Justice, no. 409, Australian Institute of Criminology, Canberra.

<sup>39</sup> Ombudsman (2015) Op.cit.

<sup>40</sup> Cited by Smart Justice (2014) 'More prisons are not the answer to reducing crime'. [http://www.smartjustice.org.au/cb\\_pages/more\\_prisons\\_are\\_not\\_the\\_answer\\_to\\_reducing\\_crime.php](http://www.smartjustice.org.au/cb_pages/more_prisons_are_not_the_answer_to_reducing_crime.php)

<sup>41</sup> Richards (2011) Op.cit.

A young Sudanese man, YP1, interviewed for this submission, now in his early twenties, has experience of detention in the Melbourne Remand Centre, Melbourne Assessment Prison and in Juvenile centres multiple times since he was 16. He came from a war-torn country and experienced trauma as a refugee from a young age. But he says that the fear you experience in prison changes your behaviour:

*“You get smarter getting locked up, treacherous...when you're scared, you're forced to adapt. It becomes the only thing you know” (YP1)*

Criminalisation of the young person's behaviour can result in a 'labelling effect' where the individual takes on the characteristics of the identity they have adopted, due to being labelled as criminal during a time of identity formation.<sup>42</sup> This can change your view of yourself:

*“As soon as the fear goes away, you like it. It's an illusion. You feel powerful. It has to do with masculinity. Especially when you come out. Everyone fears you and you remember what it felt like” (YP1)*

On the other hand, prison is stigmatising and so coming out and reintegrating into the community can be difficult:

*“even if you try, the thoughts come in you're not good enough. Society doesn't accept you.” (YP1)*

Prison has a big impact on your psyche. Talking about when he was locked up at 18 in the shared cells awaiting trial, YP1 reports on the fear of being locked up with a large group of older men and not knowing what crime they had committed and whether they were going to kill him.

*“They tell you horrific stories but you have to act cool. And the cooler you act, the more comfortable you get.” (YP1)*

Violence and bullying are endemic in the prison environment. YP1 makes an analogy between the bullying that occurs in school and the bullying behaviour that you have to adapt to in prison:

*“its like peer pressure with bullies and you try and stop them but instead you end up joining them...then you become the star and get drunk on it. And its too late to chill with the good kids. In prison its 50 times as intense. Instead of getting bashed, you're getting killed.” (YP1)*

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<sup>42</sup> Jesuit Social Services (2013) Op.cit.

One of the problems is that prisons fail to treat the underlying causes of criminal behaviour.<sup>43</sup> Problems like complex trauma, alcohol and drug dependencies, cognitive and mental health concerns, disengagement from education and training are not addressed. People with compound issues that impact on social, emotional and physical development can become locked early into detention rotating around in a 'liminal, marginalised community/criminal justice space'.<sup>44</sup>

*"They do not fall through cracks, they are directed into the criminal justice conveyor belt".<sup>45</sup>*

There is an incompatibility between the needs of children and young people to process their trauma and treatment in the detention environment, which lacks therapeutic intervention. A former youth worker interviewed for this submission described the level of trauma he saw working as a musician with young people in a Melbourne juvenile justice centre and the untreated impact of that on their recidivism:

*"They all had experiences of trauma. Wow! They weren't validated in there and had no sense of self-worth. They had no one to talk to. They weren't seen as real people. Amongst the staff there was a sense that 'these kids would never become a normal person in society'. Once the young people are released from juvie they have no tools for survival and don't feel safe so they come back to a place of familiarity. They're getting bullied by the guards but at least they are 'protected' by the guards. They have no-where else."*

While research points to the negative impact of prison on the development, behaviours and responses of children and young people with backgrounds of trauma, we continue to take the same approach to juvenile justice.

#### **Recommendation 4:**

The Victorian Government's juvenile justice framework should reflect article 37(b) of the *Convention on the Rights of the Child*. That is: 'the detention of a child be only used as a measure of last resort and for the shortest appropriate period of time.'

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<sup>43</sup> Victorian Ombudsman (2015) Op.cit.

<sup>44</sup> Baldry (2011), p16.

<sup>45</sup> Baldry (2011), p16.

## Impact of Incarceration of Vulnerable Young People & the Implications of Separating Young People from their Communities and Cultures (TOR 4b)

The *United Nations Convention on the Rights of the Child* which Australia has ratified states that

*“The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time”<sup>46</sup>*

The impact of separating young people from their communities includes stigma, isolation, further family breakdown, re-traumatisation, shame and a reduction in community reintegration options on release. A UK report cited by the Ombudsman found that offenders' family are the most effective resettlement agency.<sup>47</sup> Secure detention at home rather than prison is a preferable path for a young person than removal from family and community. This is one of the principles on which Australia's youth justice systems are based and it is found in all state and territory legislation and human rights law.<sup>48</sup>

Most young people in juvenile detention come from backgrounds of entrenched and intergenerational trauma and disadvantage. By the time they are in contact with the juvenile justice system, they may have experienced family breakdown and child protection involvement or be of no fixed address. There may be no suitable supervision option for them in the community.

Imprisonment of a young person can have a significant emotional impact on family, children and community. Isolation away from family can impair relationships and can impact on the young person's reintegration on leaving prison. The perception of some young people in prison is that nobody wants them or cares about them.

The Victorian Ombudsman reported in 2015 that maintaining a relationship with the young person through their detention, pre and post release is often made difficult by families not being given information about transfer and release times. If the location of the detention is far from the families place of residence, then families experiencing poverty and transport disadvantage can find it difficult to maintain regular visits.<sup>49</sup>

A significant number of young people detained on sentence and on remand in Victoria are parents (12% in 2015).<sup>50</sup> As many 38% had parents and siblings who have been in prison. Parental imprisonment has social, emotional and economic impacts on a child that can lead to a cycle of child protection involvement and associated trauma and imprisonment. Greater support to families is needed to enhance strength based connections between young people, their children and families in prison.

<sup>46</sup> Op.cit, article 37. Note that in Australia, 16% (900) people aged 10-17 under supervision orders were supervised in detention. 4,800 (85%) were supervised in the community.

<sup>47</sup> Victorian Ombudsman (2015), Op.cit.

<sup>48</sup> Australian Institute of Health and Welfare (2016) 'Youth Justice in Australia'. Bulletin 133.

<sup>49</sup> Victorian Ombudsman (2015), Op.cit.

<sup>50</sup> Parole Board Annual Report 2015-16, Op.cit.

Separation from family for young people from refugee backgrounds who have lived in war torn countries and experienced separation from family can also be traumatic. Separation from community can be traumatic for young Aboriginal people because of the history of the stolen generations and Aboriginal deaths in custody.

Social determinants perspective sees cultural identity and connection as a protective factor in the lives of young people. Expression of cultural identity is a human right in the Victorian charter of human rights. Yet in the prison environment children from non-dominant cultures are separated from families and community, limiting the expression of that identity cultural relationships.

For Koorie children, 'cultural meaning stem from connections, relationships and socialisation with other Koorie children and role models who will inspire and support the child as their life unfolds'.<sup>51</sup> When children are locked into out of home care and the justice system, this creates disconnection from culture.

### **Recommendation 5:**

The Victorian Government's new juvenile justice framework should ensure that juvenile justice policy is compliant with article 37(c) of the *Convention on the Rights of the Child*. That is: 'every child deprived of liberty shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances.'

## The Culture, Policies, Practices and Reporting of Management at Centres (TOR 6)

cohealth is conscious that there are several concurrent reviews occurring including the Department of Health and Human Services review of the juvenile justice framework and the inquiry into the use of isolation, separation and lockdown by the Commission for Children and Young People. Many issues relating to culture, policies and practices will be addressed in these reviews, so we will only briefly addressing this issue, noting that most of these comments are directed at concerns about practices in adult prisons and the current situation in the Grevillea unit at Barwon Maximum Security prison.

cohealth is concerned as many others in the community about the impact on human rights of the transfer of children and young people to adult prison following the riots at Parkville. The Court's initial ruling that the transfer was unlawful because it breached the children's rights to be free from cruelty, inhuman and degrading treatment and to be treated with dignity when deprived of liberty gave a strong message about the implications of housing children in adult prison environments.

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<sup>51</sup> Jackomos A (2015), Op.cit.

The Victorian Ombudsman's report, tabled on 6 February, which contains evidence from visits to the Grevillea Unit by the Commission for Child and Family and the Ombudsman, has exposed the poor treatment and conditions experienced by children and young people in the Barwon maximum security prison.

We have seen that across the country, there are cultural problems in juvenile detention facilities manifesting in the use of excessive use of force, restraint, isolation and the mental, verbal and emotional abuse of young people. As a health service provider working with vulnerable children and families, cohealth is seriously concerned about the impact of this treatment of children and young people in detention.

The Ombudsman's reporting of the over-containment of young people in the Grevillea unit, including the use of isolation and seclusion and young people being kept in lock down for 23.5 hours a day, raise serious human rights concerns. The recent reports of two young people being hospitalised, one for suspected head injury and one for self-harm and other children being on suicide watch following heavy handed treatment by adult prison guards constitute an abuse of power.<sup>52</sup> These practices pose serious risks for the mental health and wellbeing of young people and should not be used:

*"In cases involving children with indicators of self-harm, mental-illness or related vulnerabilities, isolation should never be used for disciplinary purposes."*

The Victorian Human Rights and Equal Opportunity Commission undertook a review of Corrections policies in relation to children in 2013. The Commission reported that:

*"The use of solitary confinement for long periods of time has been found to be degrading treatment. This is even stronger for children, so that it may not be necessary for the young person to be in solitary confinement for long periods to breach this right. As a principle, solitary confinement should never be used for prisoners under 18 years."<sup>53</sup>*

Behavioural management practices that use punishment and control are not appropriate for children who have experienced trauma. They can be re-traumatising and lead to extreme behaviours including suicidal ideation, self harm and result in a cycle of violence. The impact of isolation was reported by YP1, interviewed for this submission:

*"A high security facility is like fighting fire with fire. The more personal it becomes, the more you hate them. You have fits and they lock you in a room and it makes you psycho and you feel hopeless. That hopeless feeling makes you strike out and step on a guard's head. You've got to get your stress out."(YP1)*

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<sup>52</sup> Human Rights Law Centre (2017) 'Disturbing reports of prison guards punching restrained boys held at Victoria's Barwon maximum security adult prison', press release, 17 Feb. <https://www.hrlc.org.au/news/2017/2/17/disturbing-reports-of-prison-guards-punching-restrained-boys-held-at-victorias-barwon-maximum-security-adult-prison>

<sup>53</sup> Victorian Human Rights and Equal Opportunity Commission, cited by Victorian Ombudsman 2013, p27.

Following an Ombudsman's investigation into the transfer of children and young people to adult prisons in 2012, the Victorian Ombudsman George Brower following said:

*"I am of the view that there are no circumstances that justify the placement of a child in the adult prison system" <sup>54</sup>*

This is a perspective being echoed by advocates across Victoria and which cohealth supports. We want to ensure that children and young people in detention are treated in accordance with human rights. That is, with respect and dignity and in an age appropriate way. This is not possible in an adult prison environment.

*"locking children up around older criminals. It's common sense. Its a bad idea" (YP1)*

#### **Recommendation 6:**

- The Victorian Government should ensure that no children and young people are placed in adult detention.

#### **Recommendation 7:**

- The Victorian Government should ensure the practice that policies and practices in juvenile detention centres are consistent with the *United Nations Convention on the Rights of the Child* and the *United Nations Optional Protocol on the Convention against Torture*.

## Options for Keeping Young People out of Youth Justice Centres (TOR 5)

cohealth supports a welfare and a restorative justice approach to managing children and young people in the justice system.<sup>55</sup> The data on the characteristics of the vulnerability of young people in the criminal justice system, strong evidence on the negative impact of the justice system on mental, physical and emotional health and research on the ineffectiveness of detention in reducing offending behaviour makes a restorative justice approach consistent with a social determinants of health and health inequalities perspective.

cohealth is a health service working within a human rights framework to strengthen health and wellbeing outcomes for children, young people, families and communities. As such, we are in a position to respond early and throughout the life-course to provide the kind of services and intense support needed to increase community resilience and to address the factors that lead to the involvement of children and young people in the justice system and on exit from the justice system.

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<sup>54</sup> <http://www.theage.com.au/victoria/forty-teenage-juvenile-prisoners-to-be-sent-to-adult-jail-20161115-gspctx.html>

<sup>55</sup> The welfare approach suggests that juvenile behaviour that leads to crime is the 'product of social or environmental factors for which the young person cannot be held individually responsible'; In A restorative justice approach, government and the community together with the individual and family to address behaviours that lead to juvenile crime.

The need for governments to be seen to be acting 'tough on crime' deflects attention from the vulnerability of the juvenile justice population and what evidence says works to improve justice outcomes for this population. While the legislative and policy context in Victoria currently supports both a justice<sup>56</sup> and a welfare approach, cohealth is concerned that Victoria is moving in the direction of a neo-correctional model and an associated focus on controlling crime rather than reducing the factors that lead to crime or produce recidivism.

Recent developments in Victoria to dismantle the dual track system,<sup>57</sup> increases in police numbers, announcements by the government to increase detention periods, the placement of children and young people in adult prisons, the building of a 'high security' prison for young people and announcements about the transfer of juvenile justice from the Department of Health and Human Services to the Department of Justice and Regulation, suggest that Victoria is on the cusp of moving towards a punishment and control approach to youth crime.

Regardless of the crimes committed by any young person held in detention, they are entitled to have their human rights upheld and to be treated humanely and with decency. As a community, we cannot expect to break cycles of poor health, disadvantage and poverty if we do not act in a way that is consistent with human rights.

### *Justice reinvestment approach*

cohealth supports a justice reinvestment approach, which draws on early intervention, a whole of community response and shifting funding from the crisis end of crime to intervening early in the life of children, families and communities to prevent crime happening in the first place.

The New Zealand model demonstrates an alternative model of working with young people based on an approach that acknowledges the needs and vulnerability of young offenders and diverts children away from the criminal justice system. The approach is for the justice system to partner with communities; to work closely with children, youth and family services; to deal with crime outside the justice system and to exit young people as early as possible from detention. Components of the model include family and group conferencing, youth courts, youth offending teams and alternatives to remand.<sup>58</sup>

### **Recommendation 8:**

The Victorian Government should develop and implement a Justice Reinvestment framework for working with young people in the juvenile justice system.

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<sup>56</sup> In a justice model, the young person is seen as responsible for their behaviour and a determination about appropriate punishment ensues. The focus is on what they have done rather than on their welfare needs.

<sup>57</sup> The dual track system allows for people aged under 21 years to be detained in youth justice facilities if they are considered to be vulnerable in an adult prison environment.

<sup>58</sup> New Zealand Ministry of Justice (2013) Youth Crime Action Plan 2013-2023. [www.justice.govt.nz/policy/crime-prevention/youth-justice](http://www.justice.govt.nz/policy/crime-prevention/youth-justice)

### *Holistic support early in life*

Increased investment is needed to reduce the factors that contribute to offending behaviour including more support for child protection, support for youth and family programs, investment in education, employment, mental health, disability and alcohol and drug programs.

cohealth's Child, Family & Aboriginal and Torres Strait Islander Health services undertake work to support vulnerable families through programs like pre school allied health programs that support children with developmental delay; social workers who support vulnerable families at home with involvement by child protection; outreach and connections workers who provide support for Aboriginal families and out of home care clinics that provide healthcare for Aboriginal children. The approach is integrated family intervention based on a strengths approach.<sup>59</sup>

#### **Recommendation 9:**

The Victorian Government should invest more in children, youth and family services in areas that have high rates of young people involved in the juvenile justice system.

### *Safe, healthy and cohesive communities*

Addressing racism and disconnection are integral to providing safe, healthy and cohesive communities. cohealth does this directly through programs in schools that teach children to speak out against racism. cohealth provides a culturally safe spaces and programs for people to find a sense of belonging. Examples are the work of the Arts Generator, Benchmark music program, the Billabong BBQ and the Wellness Dreaming project.<sup>60</sup> This approach to outreach and engagement is cohealth an integral part of building healthy and resilient communities.

#### **Recommendation 10:**

The Victorian Government should invest in programs that address racism and promote connection build safe, healthy and cohesive communities.

#### **Recommendation 11**

The Victorian police implement a statewide rollout of 'stop and search receipting', introduce police stop data collection and train all Victoria Police members in anti-bias training in addition to the continued implementation of the three year action plan 'Equality is not the same – the next steps'.

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<sup>59</sup> See cohealth annual report 2015-16, p15.

<sup>60</sup> See cohealth website for information on the 'Wellness Dreaming' project <https://www.cohealth.org.au/health-promotion/wellness-dreaming/> promoting strengths of Aboriginal communities.

### *Health promotion*

Improving health literacy through health promotion activities in populations with the poorest health outcomes is needed to increase community knowledge and resilience. Communities need to be supported to strengthen their resilience around health issues like mental illness, drug and alcohol use, trauma and family violence, issues that communities may be reluctant to talk about because of stigma and shame.<sup>61</sup>

cohealth's Children, Youth and Family Services offer forums about harmful use of drug and alcohol and mental illness to provide opportunities for sharing of information and discussion. It is important that health promotion programs are culturally specific. For example, cohealth's 'Be a Brother' campaign aims to reduce harmful alcohol use by young African men in Melbourne's Western region.<sup>62</sup>

#### **Recommendation 12:**

The Victorian Government should invest in health promotion programs that strengthen the resilience of communities in the areas of mental illness, drug and alcohol use, trauma and family violence.

### *Aboriginal children and young people*

The Commission for Children and Young people has undertaken an intensive inquiry into services provided to Aboriginal children and young people in out of home care in Victoria.<sup>63</sup> cohealth supports the implementation of these recommendations as the foundation for addressing the nexus between out of home care and involvement of Aboriginal children and young people in the criminal justice system.

#### **Recommendation 13:**

That the Victorian Government should implement the recommendations from the 'Inquiry into Services Provided to Aboriginal Children and Young People in Out of Home Care in Victoria' by the Commission for Children and Young People with attention to recommendation 6.23 below:

DHHS to work in partnership with the Aboriginal Children's Forum on developing a strategy to divert Aboriginal children in out-of-home care from entering or progressing in the youth justice system. This strategy should include building the capacity of Aboriginal Community Controlled Organisations to develop and implement intensive diversionary strategies along the justice continuum as well as ensuring there are adequate resources and workers in the Koori Youth Justice program and the Koori Youth Justice Intensive Bail Support program (Recommendation 6.23)<sup>64</sup>

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<sup>61</sup> See cohealth website for information on our approach to alcohol and drug work <https://www.cohealth.org.au/health-services/drugs-and-alcohol/>

<sup>62</sup> See cohealth annual report 2015-16, p11.

<sup>63</sup> Commission for Children and Young People (2015), Op.cit.

<sup>64</sup> Commission for Children and Young People (2015), Op.cit.

### *Children in out of home care and children leaving out of home care*

Intensive, trauma informed care is needed to address high prevalence issues like harmful drug and alcohol use, developmental delay, risk taking behaviours and trauma. Intensive trauma support is needed in out of home care before young people exit.

Better support is also needed for parents with child protection involvement to help break the nexus between out of home care and imprisonment.

#### **Recommendation 14:**

The Victorian Government should invest in intensive, trauma informed support for young people while they are in secure residential settings in child protection and 12 months before they exit these settings.

#### **Recommendation 15:**

The Victorian Government should invest in programs that support families involved with child protection.

### *Families with young people in the criminal justice system*

Involving families in the support of children and young people in the justice system is integral to their future reintegration back into the community. Families have a key role in preventing further offending and rehabilitation. As such, responses to children who offend should be embedded in support for family and local community. As an example of a sector using that principle, the code of ethical practice for the Victorian youth sector includes keeping connection with families and communities.

Family support needs to be strengthened to enable families to re-engage with young people where it is safe for the young person to do so.

#### **Recommendation 16:**

The Victorian Government should invest in programs that support families and communities to maintain connection with young people and children involved in the justice system.

### *Health of children and young people in juvenile detention*

Holistic assessment, planning and support are needed to address the poor health status of young people in juvenile justice centres. Research suggests that this is across all indicators including harmful drug and alcohol use, mental health, cognitive impairment, chronic disease, engagement in health risk behaviours, communicable disease, dental health, high rates of injury and high risk of homelessness on discharge. Poor health and wellbeing and trauma contribute to recidivism.

#### **Recommendation 17:**

The Victorian Government should ensure the provision of health care to young people in juvenile justice centres consistent with section 26.2 of the *United Nations Standard for Minimum Rules for the Administration of Youth Justice*. That is: 'juveniles in institutions shall receive care, protection and all necessary assistance – social, educational, vocational, psychological, medical and physical, that they may require.'

#### **Recommendation 18:**

The Victorian Government should ensure a full screening of children and young people in youth detention for physical, psychiatric and alcohol and drug concerns be undertaken on admission.

### *Trauma informed approach to working with young people in contact with the justice system*

Trauma informed approaches seek to minimise re-traumatisation as well as to promote opportunities for healing and integration of the young person as a whole. Approaches that lack an understanding of the impact of trauma on young people's behaviour and how to work with these behaviours, risk re-traumatisation of the young person and poor reintegration outcomes. . We need to do better than the current no minimum required qualification for juvenile justice staff.

cohealth's work in integrated family intervention works with families from a trauma informed perspective. Training and support to deliver trauma-informed services across the youth justice sector, police and court services and in out of home care services is needed.

#### **Recommendation 19:**

The Victorian Government should invest in trauma-informed approaches in out of home care and across the youth justice sector, police and court services.

#### **Recommendation 20:**

That the Victorian Government should legislate for minimum staff qualifications for juvenile justice centre staff.

### *Holistic planning for children and young people on discharge from juvenile detention*

Poor exit planning for young people contributes to poor health and wellbeing outcomes and contributes to recidivism. Possibilities for community reintegration are marred by poor mental and physical health, harmful alcohol and drug use, disengagement from education, employment and lack of housing. This needs a whole of service response. Facilitating effective connection with primary care service providers pre and post-release is key to developing health literacy and ensuring targeted and timely referral to appropriate service systems. It also enhances the probability of advocacy where needed, a key consideration in populations accustomed to discrimination.

#### **Recommendation 21:**

That the Victorian Government should ensure that exit planning policy for young people in juvenile justice is undertaken in a holistic model including primary health and social care needs.

### *Children and young people with dual supervision orders*

Children on dual orders present with very complex needs and need an intensive whole of service response to break the cycle of criminalisation of their behaviours.

#### **Recommendation 22:**

The Victorian Government should invest in intensive support for children and young people on dual orders with child protection and justice supervision orders.

### *Children and young people with mental illness and cognitive disabilities*

Children and young people with mental illness and cognitive disabilities need an alternative pathway to the criminalisation of their behaviours.

#### **Recommendation 23:**

The Victorian Government should strengthen pathways to early community treatment and support as well as establishing early exit pathways from juvenile detention for people with mental illness and cognitive disabilities.

### *Alternatives to prison - diversion*

Research supports the idea that outcomes for young people improve away from institutional settings where they are provided with rehabilitation and support to address their behaviour. Opportunities for education and to enhance living and employment skills are also key. Diversionary activities offer young people a positive alternative path to the criminal justice system and are cost effective.

**Recommendation 24:**

The Victorian Government should invest in a state-wide diversion scheme for young people that is legislated for, trauma-informed and provides culturally appropriate diversionary options which are accessible and suited to the needs of young people in out-of-home care.

*Alternatives to prison – courts and tribunals*

Courts that take a therapeutic jurisprudence approach are shown to be effective in settings where offenders have complex needs. Specialty courts like the Neighbourhood Justice Centre, the Court Integrated Services Program and the Koori Court are alternatives to mainstream courts.

**Recommendation 25:**

The Victorian Government should expand court programs that address the causes of offending like the Neighbourhood Justice Centre, Koori Court and Court Integrated Services Programs for young people, with particular consideration of geographic regions with highest demand.

*Alternatives to prison – restorative justice*

Restorative justice approaches incorporate both a welfare and a justice approach and are found to have good outcomes with young people. Victoria's Youth Justice Group Conference program increases the young person's understanding of the impact of their offending on the victim, their family and others in the community. cohealth supports victims of crime in this program.<sup>65</sup>

**Recommendation 26:**

The Victorian Government should expand restorative justice programs like the Youth Justice Group Conferencing program.

*Legislative change – age of criminal responsibility*

cohealth believes the age at which children are able to be charged with a criminal offence is too young and that the age of criminal responsibility should be raised to 12 years.

**Recommendation 27:**

The Victorian Government should amend legislation to raise the age of criminal responsibility to 12 years of age.

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<sup>65</sup> See cohealth website for information on victims of crime approach <https://www.cohealth.org.au/health-services/victims-assistance-program/> including video.

*Legislative change – dual track system*

cohealth believes the dual track system, which provides a sentencing option for young people aged 18 to 21 years of age who would be vulnerable in an adult prison, should be maintained.

**Recommendation 28:**

That the Victorian Government maintain legislative provision that allows for a dual track system for vulnerable young people.

## Any Other Issues the Committee Consider Relevant (TOR 8)

Independent oversight in Victoria's juvenile justice centres is necessary to ensure their compliance with human rights and standards put in place to care for people who are detained. As a society, we need to ensure that the treatment and care of children and young people is consistent with the highest standards and that prisons do not become a place of punishment and control.

The oversight provided by the Victorian Ombudsman and the Commission for Children and Young People during the time that children from Parkville Centre were being moved to Barwon Maximum Security Prison shows that Victoria has some robust independent monitoring mechanisms in place and that the treatment in youth detention needs very close monitoring.

Calls for an Independent Prison Inspectorate by the then Deputy Ombudsman John Taylor in 2010 were based on observations that Victoria does not have a specific investigatory body for closed environments like some jurisdictions (United Kingdom and Western Australia for example). Taylor argued that bodies like the Ombudsman were generalist bodies and that a specialist body with the sole responsibility of prison monitoring and a mandate to report to Parliament was needed.<sup>66</sup> Victoria currently has a Prison Visitors Scheme where volunteers visit adult prisons, however visitors operate within Corrections and are not required to report to Parliament.

Victoria's system of juvenile justice centres is going through a period of crisis and change. It is important in this context to ensure that standards and human rights are monitored closely. The more generalist roles of the Ombudsman and the Commission for Children and Youth may not have the capacity or resources to maintain their current level of monitoring. A recommendation by the Committee for a single oversight body with the powers, expertise and capacity to undertake this critical monitoring role could be the most important recommendation to come out of this inquiry.

### **Recommendation 29:**

The Parliamentary Committee should make a recommendation to the Victorian Government for a dedicated Independent Prison Inspectorate.

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<sup>66</sup> Taylor J (2010) 'Why Closed Environments Need External Scrutiny – the role of the Victorian Ombudsman in dealing with human rights issues'. Presentation for Australian Research Council roundtable on human rights in closed environments, 29 November. <https://www.ombudsman.vic.gov.au/getattachment/2288aa52-067b-49c9-8d31-67eb4090cfd>