

**Submission to Australia's Youth Justice and Incarceration System Inquiry  
Senate Legal and Constitutional Affairs References Committee.**



**Care and Kindness: Wings of Inclusion**

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We present our views on the terms of reference of the Inquiry within the context of the West Australian Government's Juvenile Justice Policy and Implementation, and our engagement with it.

30 September 2024

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<p>a) the outcomes and impacts of youth incarceration in jurisdictions across Australia;</p>	<p>'These matters (<i>deaths in custody</i>) are taken seriously by the WA Government.</p> <p>'I can advise that the Department of Justice has been providing additional resources on-site at Banksia Hill and bereavement support to the young person's family, staff, and the young people. These supports include welfare providers and Aboriginal Elders and mentors where appropriate.</p> <p>'The State Government acknowledges that the death of a young person in detention is never acceptable. We are committed to continue delivering improvements in youth detention, with work continuing to increase staffing, support, and services to young people in detention.</p> <p>'As the matter will now be subject to a coronial investigation, it is not appropriate to comment on the specific circumstances surrounding the incident at this time, or circumstances of the ongoing Coronial Inquest into the death of young person in October 2023. The Government is closely monitoring the proceedings of the Inquest to learn from the evidence being brought forward. An internal review by the Department of Justice and an investigation by</p>	<p>Political leadership on this issue is essential. What we have in WA is defensiveness.</p> <p>Two deaths in custody are totally unacceptable. These are the first in our history of Juvenile Justice (JJ) in WA.</p> <p>One death in Unit 18 – Cleveland Dodd – and the most recent in Banksia Hill Detention Centre (BHDC), a 17-year-old yet to be publicly named. The Government has admitted that it was abusing young people in detention through its failed emergency policies in BHDC and Unit 18.</p> <p>The Cleveland Dodd Inquest has heard evidence that senior Department of Justice (DOJ) staff had lied to the Minister concerning the situation in Unit 18 and its (the Department) readiness and capacity to care appropriately and safely for young people held in strict custody. In Unit 18 young people were confined up to 23 hours per day.</p> <p>The Department has advised it had developed and implemented a new trauma informed model of care at BHDC. It is designed to ensure that children receive appropriate care and support and education to ensure their rehabilitation.</p> <p>Unit 18 is a separated wing of the adult Casuarina Prison created in mid-2022 to house youths who were described by the WA government as the state's most "complex" and "difficult" juvenile</p>

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	<p>the Corruption and Crime Commission have been completed and publicly provided.</p> <p>'Due to the nature of offending, the courts determined that these highly complex, challenging young people are required to be housed in youth detention for the safety of the community. The Cook Government has committed to improve conditions across youth justice, and it is important to note that since we enacted a plan announced by Premier Cook in June 2023, detainees at Banksia Hill are spending vastly more time out of cell and better accessing education and programs that will prepare them for life back in the community. Banksia Hill is a much-improved place for the young people residing there.</p> <p>'Out of cell hours and provision of education programs have also continued to improve at Unit 18 due to increased staffing and the further provision of targeted therapeutic programs.</p> <p>Additional staff and enhanced training continue to be implemented, along with an established Aboriginal Services Unit which works across the youth estate. Aboriginal Elders and Leaders are also regularly visiting both facilities to spend one-on-one time supporting</p>	<p>detainees. It followed a series of violent riots in Banksia. The then Premier Mark McGowan referred to these young people as terrorists.</p> <p>There has been no external public inquiry as to the antecedents or causes of these riots. All responsibility and blame for the riots have been sheeted home to the youth involved. It has now emerged that these youth had been subjected to long periods of solitary confinement, restrictions of movement and institutional abuse. It is understood that the Department had a staffing shortfall, which contributed to the issue. The previous Justice Minister failed to do any 'due diligence' on the information provided by the Department to better understand the causes of the riots and the subsequent advice that led to opening Unit 18. Much of this 'due diligence' was and continues to be available in the community sector where there are organisations and individuals highly experienced and competent in the juvenile justice domain. The sector experiences difficulty and tardiness in response from Govt. to requests for access.</p> <p>WA is the only Jurisdiction in Australia where Youth Justice is managed by Adult Corrections. The WA Government made this decision based on budgetary management grounds. There was no consideration given to the long-term impacts of this organisational alignment.</p>

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	<p>and mentoring young people, connecting them to culture, country, family and community.</p> <p>NO FASD Australia is delivering specific training to all staff to continue improving the understanding of disability and to assist in administering behaviour management, and Telethon Kids Institute are facilitating screening, assessment and intervention for detainees with neurodevelopmental disabilities, and conducting research that will further support the validation of assessment processes.</p> <p>Child and Adolescent Forensic Services are also providing psychiatry, neuropsychology, speech pathology, paediatric and clinical specialists, and dedicated Child Protection and Family Support staff have been implemented to support the young people.</p> <p>Suicide and Self Harm Prevention programs continue to be instructed, and Mental Health First Aid (Youth) training is better equipping staff to identify and assist young people experiencing mental health issues.</p> <p>The Government has also committed to construct a new facility for the State's most challenging, often violent young offenders, with a business case</p>	<p>There has been no address to cultural impact of such an arrangement. Adult Corrections policy and operational guidelines clearly indicate a system designed on a punishment ethos. This contradicts the stated approach for Youth Justice which prioritises care, education and rehabilitation. The riots and subsequent suicides suggest that the punishment model prevails, if not formally then informally.</p> <p>Just the language alone that Govt. uses to refer to young people in the juvenile justice system reflects this attitude.</p> <p>Additional staff with the wrong ethos will exacerbate the problem. This issue is further compounded by the Government's political link to the Prison Officer's Union. This link and secret/closed internal DOJ inquiries create a conflict of interest and an inherent bias in the Government's approach to juvenile detention.</p> <p>The issues require external oversight and a systemic review of the whole system of JJ in WA.</p> <p>While the Government lists changes that are being made and claims they are making a difference, it is extremely difficult to obtain specific outcomes data to verify the claims.</p> <p>In particular, despite the Government's claims, we have heard, anecdotally, that young people continue to be confined to their cells for inhumane lengths of time.</p>

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	<p>developed for a new purpose-built, high security and therapeutic-based centre. This facility will increase the therapeutic care provided to this challenging cohort with complex needs, whilst improving safety to staff and the community.</p>	<p>A new facility designed and constructed while a punitive approach is in place will embed it in the infrastructure for generations.</p>
<p>b) the over-incarceration of First Nations children.</p>	<p>The State Government has also enacted major leadership changes in the Department of Justice. In October 2023 appointing Brad Royce APM as the Commissioner for Corrective Services, whilst also creating a new dedicated Deputy Commissioner position for juvenile detention, with Deputy Commissioner Rick Curtis having commenced in the role in July 2024. A new Director General of the Department, Ms Kylie Maj, was also announced in May 2024.'</p>	<p>b) The WA Labor Party Platform 2022 acknowledges this over representation. Currently, 68% of all young people incarcerated in WA are Indigenous. The Labor Platform also identifies poverty as a significant driver of youth crime.</p> <p><i>'WA Labor acknowledges that there are high levels of economic and social disadvantage in Indigenous communities that lead to disproportionately high level of contact with the criminal justice system, particularly amongst First Nations young people. WA Labor recognises that some of the primary obstacles to breaking the cycle of offending and reducing recidivism stem from intergenerational issues, institutionalised and systemic discrimination.'</i></p> <p>Poverty in this context means inadequate financial resources and other essentials for a minimum standard of living, including insufficient food, shelter and clothing. These community residents often endure inadequate, overcrowded and poorly maintained housing, substandard water and</p>

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		<p>electricity supply and inadequate sewerage treatment.</p> <p>It is our experience that 100% of children incarcerated from regional WA are Indigenous.</p> <p>Regional and remote Indigenous communities also endure upwards of 61% unemployment.</p> <p>The WA Government has limited strategies to address poverty, and intergeneration trauma particularly in these remote communities. There is no address to this key driver of youth crime in their stated position to us.</p> <p>The various WA Government agencies responsible for providing services and support to at risk youth and in particular Indigenous youth espouse their efforts in service coordination to these youth and their families. The reality in practice is that these government agencies at the local level criticise and bemoan the efforts of the others resulting in lots of talk but little joint action in addressing the needs and therefore the drivers of youth crime in communities.</p> <p>Coordination of services is therefore haphazard or non-existent, usually discontinuous, and without legislative changes this will not change.</p> <p>The Kimberley Youth Justice Strategy is hailed as a significant development in coordination in JJ in WA. What is most interesting in this</p>

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		<p>strategy is the resources breakdown: \$109m for increased policing (in the Kimberley alone) and \$26.7m for service initiatives, none of which tackle poverty in remote Aboriginal communities. Much of the funding is aimed at increased services geared towards alternatives to incarceration. For example, the Marlamanu diversionary program. The WA government has allocated \$18.2 million towards this three-year pilot station program subject to approval of the final infrastructure cost plan. We applaud this initiative, but it will do little to change the direction and trajectory of JJ in WA.</p> <p>Imagine if the 30 to 40 chronic youth offenders and their families and communities in the Kimberley received material and direct support to the tune of \$26m to address their poverty and intergenerational trauma. What could be achieved?</p> <p>During the Covid crisis in 2020 social security recipients received Job seeker funding, an additional \$1100 per fortnight. What we observed through WA youth bail services across the regions was a dramatic decrease in placement demand. It was our view that young offenders and their families, particularly in the regions, had more adequate financial resources during this period to meet their basic needs and therefore young people were engaging in less crime like stealing food and clothing.</p> <p>All recent reviews and inquiries into JJ nationally recognised that the</p>

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		<p>young people who find themselves in contact with youth justice systems are a vulnerable population, often with multiple and complex needs and these issues are often exacerbated by the detrimental impacts of detention.</p> <p>Detention therefore should only be used as a last resort and only used when proven rehabilitation measures in place have failed. This will also assist in addressing the continued over-representation of Indigenous youth in JJ. Other ways of addressing this over-representation include raising the age of criminal responsibility, increasing the use of diversion and reducing the remand population.</p> <p>Despite the principle that detention should be used as a last resort there is growing public noise for this principle to be dropped. Minister Papalia stated in February 2024 that young offenders should be given longer sentences behind bars to give them a better chance of rehabilitation. All research and evidence contradict his position. The Government is singing its song to an imagined audience – voters – rather than targeting the needs of young people in the justice system.</p> <p>While we accept that there will always be a need for detention centres for a small number of young people, we emphasise how important it is to maximise the rehabilitative benefits of detention centres by providing appropriate programs and services for all young</p>



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		<p>people in detention and in aftercare—including education programs, programs to address their complex needs and reoffending behaviour, as well as culturally responsive programs for Indigenous young people in custody.</p> <p>Adequately trained and supervised staff in detention centres are a necessity.</p> <p>One city-centred JJ prison in WA (i.e. BHDC) defies all sense and logic. At the very least there should be purpose-built community based rehabilitative centres in Perth, the Kimberley, the Pilbara, the Murchison and the Goldfields, managed by a specialist JJ department.</p> <p>Having a shared philosophy across the JJ system is a significant challenge, not least because there is considerable national debate as to whether young people entering the youth justice system should primarily be treated as offenders who should be punished versus victims who need care, support and guidance.</p> <p>Unfortunately, the tough on crime focus dominates the political landscape and consequently the focus now is on punishment.</p>
<p>c) the degree of compliance and non-compliance by state, territory and federal prisons and detention centres with the human rights of children and young people in detention.</p>		<p>c) The WA Children's Court President and the Children's and Young People's Commissioner have challenged the standard of Care in both BHDC and Unit 18. Justice Quail stated that, in relation to one young 15-year-old appearing before</p>

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		<p>him, "The conditions of detention have not met the minimum standards the law requires."</p> <p>The two recent suicides indicate that the management and operation of Unit 18 and BHDC have not been fixed and these centres are not fit for purpose.</p> <p>The Judiciary in WA's Supreme Court has also stated that the Government has repeatedly "failed" in its detention regime.</p> <p>The system of Juvenile Justice in WA is in crisis, failing youth, families, communities and a moral standard for our society. The WA Government's new measures fall far short of the systemic reform that the crisis requires.</p> <p>In our view, the WA JJ system fails our country's international human rights obligations by a) failing to raise the age of criminal responsibility; b) confining young people to their cells (effectively solitary confinement) for excessive periods of time daily; c) focusing on a punitive approach and failing to adequately provide rehabilitative services and outcomes; and d) failing to adequately provide for the voices of young people in the system to be engaged, heard and responded to.</p> <p>Reforms to WA JJ must address the systemic and cultural issues that currently prevail:</p> <ul style="list-style-type: none"> <li>● The prevailing negative, punitive, and discordant approach to young offenders.</li> <li>● Disruption and violence in secure care, creating unsafe work and care environments.</li> <li>● Exclusion of broad community</li> </ul>

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		<p>input into the development of system reforms and review.</p> <ul style="list-style-type: none"> <li>• Failure of a whole-of-government approach to adequately address poverty and layers of disadvantage in communities that contribute to youth offending.</li> <li>• Lack of transparency about outcomes of the system, particularly outcomes of incarceration and hours confined to cells.</li> </ul> <ol style="list-style-type: none"> <li>1. The first step in system reform is a commitment to the principle and language that young offenders must be treated with care and kindness, with attention to their health, healing, and personal development.</li> <li>2. A 'root and branch' approach to Legislative Reform is essential, including raising the minimum age of criminal responsibility from 10 years to 14 years.</li> </ol> <ul style="list-style-type: none"> <li>• This must include amendment legislation to each major Act impacting repeat young offenders and their families that guarantees effective service and support coordination.</li> <li>• No child under the age of 14 is sentenced to a youth detention/custodial centre.</li> <li>• All planned support including adequate basic material resources and care for chronic youth offenders (6 or more convictions) must be</li> </ul>

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		<p>sanctioned and reviewed by a court.</p> <ol style="list-style-type: none"> <li>3. Legislative reform must precede expansion of infrastructure. There should be no expansion of infrastructure until there is a cultural shift from punitive to a rehabilitative focus. If new infrastructure is going to be fit-for-purpose, that purpose should be defined in the amended legislation. Infrastructure design reflects and expresses the service culture.</li> <li>4. Cultural Awareness and Healing with connection to 'country and mob' for Aboriginal Youth must be central to all interventions, led by Aboriginal Communities across the state, with long term secure funding for sustainability, effectiveness, and ongoing development.</li> <li>5. Custodial (community and residential) care of young offenders must be localised to allow community connection and visitation, must separate children into aged cohorts that minimises contamination and undue influence by older youth on younger youth. Custodial care: <ul style="list-style-type: none"> <li>• To be independent from the management of the adult system.</li> <li>• To be community-based programs (example the Station Program).</li> <li>• Located in regions including: the Kimberley, Pilbara,</li> </ul> </li> </ol>

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		<p>Murchison, and the Goldfields.</p> <ul style="list-style-type: none"> <li>• Include transition programs that ensure young people in community care programs have access to work experience, community, education, and cultural programs.</li> <li>• Ensures each young person has a discharge plan prior to release that includes and involves family contact, cultural mentor(s) and support services.</li> </ul> <p>6. Safe Houses to be provided in main regional towns where young people engaging in at-risk behaviours on the street can be brought to a safe environment either overnight, or until they can be placed in the care of a responsible adult. Aboriginal Community Controlled Organisations to be invited to put in expressions of interest to operate these safe houses with a sustainable long-term funding commitment.</p>
<p>d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights</p>		<p>d) The WA Government, in our opinion, is in breach of Australia's Human Rights obligations, particularly by i) failing to raise the age of criminal responsibility; ii) confining young people to their cells (effectively solitary confinement) for excessive periods of time daily; iii) focusing on a punitive approach and failing to adequately provide rehabilitative services and outcomes; and iv) failing to adequately provide for the voices of young people in the system to be</p>

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		<p>engaged, heard and responded to.</p> <p>The Government's response to date is to rationalise, obfuscate, avoid and placate, hoping the problem will just go away. In the meantime, incarcerated Young People in WA are enduring inhumane care and inappropriate supervision.</p>
<p>e) the benefits and need for enforceable national minimum standards for youth</p>		<p>e) The Commonwealth has an important lever for reform: tied grants requiring commitments to agreed standards for youth.</p> <p>We need SMART agreed JJ outcomes and progress towards these reported nationally on an annual basis.</p> <p>These outcomes must relate to Closing the Gap measures and targets.</p>
<p>f) justice consistent with our international obligations.</p>		<p>f) The WA Government must address its failure to comply with our international obligations, especially in human rights by i) raising the age of criminal responsibility; ii) end effective solitary confinement; iii) shift focus from a punitive approach to rehabilitation and measurable, transparent outcomes for young people; and iv) providing for the voices of young people in the system to be engaged, heard and responded to.</p> <p>The Federal Government could use its position and funding agreements</p>

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		<p>to 1) introduce consistent national standards and outcome measures for JJ; 2) develop a mechanism for transparency in reporting against outcome measures; and 3) target poverty as the key driver of youth crime.</p>
<p>g) any related matters.</p>		<p>g) JJ policy and service direction need active involvement by the whole community.</p> <p>Without community understanding and buy-in, all persuasions of Government will be caught in the crossfire when crises occur. The current WA Government has taken a 'trust us we have it in hand' approach with little communication and no meaningful consultation or codesign or evidence of positive outcomes. Its strong political majority, now, has reinforced this situation and this does not bode well for the future of JJ and the subsequent treatment of young offenders in WA.</p> <p>Our concern is real.</p>