

10 October 2024

Committee Secretary
Legal and Constitutional Affairs Committee

Dear Committee,

Inquiry into Australia's youth justice and incarceration system

We thank you for the opportunity to make a submission to this Inquiry into Australia's youth justice and incarceration system. We are pleased to see this on the Committee's agenda.

We put forward a joint submission, authored by Jumbunna Institute for Indigenous Education and Research and the National Justice Project. Our partnership is driven by our alignment to a social justice agenda, specifically First Nations justice for Aboriginal and Torres Strait Islander Peoples. The National Justice Project acknowledges the expertise Jumbunna brings to this submission as leaders in quality work on First Nations legal and policy issues.

The National Justice Project is a not-for-profit human rights legal service delivering strategic legal action, social justice education, advocacy and collaborative projects. Our mission is to fight for justice, fairness and inclusivity by eradicating systemic discrimination. Together with our clients and partners, we work to create systemic change and amplify the voices of communities harmed by government inaction and discrimination in healthcare, immigration detention, prisons and juvenile detention, and policing.

We deeply support and recognise the importance of this Inquiry in addressing the historic and ongoing mistreatment of incarcerated young people, particularly First Nations youth in Australia. This mistreatment, rooted in systemic failures, has had devastating impacts not only on the young people detained but also on their families, communities, and future prospects. The overrepresentation of First Nations youth in detention is a clear issue, where the harm caused extends far beyond incarceration, perpetuating cycles of trauma and disadvantage across generations.

Our submission focuses on the critical issues surrounding youth incarceration in Australia, highlighting the urgent need for reform. We address the terms of reference by drawing upon recent cases, including young people's experiences at Banksia Hill Detention Centre (Banksia Hill), to underscore the systemic failures impacting incarcerated youth, particularly First Nations youth. We welcome any questions the Committee may have.

1. General comments

The current state of the youth justice system in Australia raises significant concerns. We are witnessing prisons becoming the ad hoc response to youth in desperate need of more appropriate care and support. When we advocate for a transformative approach to youth justice, this must first and foremost be that community are the first response to young people's needs and behaviour. We centre community as the first response to youth offending and that there should be adequate support for this. Incarceration of young peoples should not be seen as a last resort but as one we actively resist altogether when responding to the behavioural needs of young people. The system disproportionately affects First Nations youth and there is a pressing need for a transformative approach that prioritises the wellbeing and development of young people over punitive measures.

2. Case Study - Banksia Hill

We will refer to Banksia Hill, as it stands as a prominent example of the systemic issues within Australia's youth justice system. It has been extensively scrutinised for the mistreatment and inadequate conditions experienced by incarcerated youth, particularly First Nations youth.

Banksia Hill, in Western Australia, has long been criticised for its inadequate treatment of detained young people, particularly First Nations young people. Multiple reports have documented severe issues, including overcrowding, frequent use of solitary confinement, lack of physical and mental health support, and deteriorating facilities. The centre's reliance on Unit 18, a separate facility at Casuarina Prison for high-risk detainees, has further highlighted issues of young people held in environments intended for adults.

2.1 Issue #1: Non-compliance (Terms of Reference)

- 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;
- d) the Commonwealth's international obligations in regards to youth justice including the rights of the child, freedom from torture and civil rights;
- f) justice consistent with our international obligations

Youth detention centres, at present, are not fit for purpose and undermine young people's social, cultural and educative development. Banksia Hill reveals a consistent pattern of mistreatment and systemic failure that affect all areas of detained young people's lives.

Addressing these failures requires a focus on how they intersect to compound harm, particularly for First Nations young people. Any genuine reform must centre on these intersections and incorporate the resilience and cultural importance of First Nations communities. By examining key areas—such as access to education, health services, cultural connection, and social and economic support—it becomes clear how the current system is failing to provide young detainees with the best chance for success and failing to provide any comprehensive solution aimed at addressing these interconnected issues.

2.1.1 Access to Education

There is a constant failure in providing adequate education to incarcerated youth, especially those with complex needs. Nationally, a significant proportion of detained young people have neurodevelopmental impairments or disabilities¹, yet detention facilities often lack the specialised staff required to meet these needs.

For example, at Banksia Hill, nearly 90% of young people were found to have one domain of severe impairments, but there were no Education Assistants and a critical shortage of Aboriginal Education Officers.² This lack of educational resources and culturally relevant content further limits young people's potential to develop the skills necessary for their future.

Education programs in detention centres must be better resourced, with modern learning technologies and personalised support to give these young people a genuine chance at success upon release.

2.1.2 Access to Health Services

Health services, particularly mental health care, are inadequate across Australian youth detention centres. At Banksia Hill, a significant increase in self-harm and suicide attempts over recent years reflects the broader mental health crisis within youth detention.

Nationally, detention facilities are often understaffed and ill-equipped to provide the necessary mental health screenings and psychiatric support young people require.³ For First Nations young people, the absence of culturally competent mental health care further exacerbates trauma. The lack of comprehensive health services across the youth justice system leads to preventable harm, making reform in this area critical.

Additionally, the broader healthcare in prisons falls short of the 'equivalence of care' principle⁴, which guarantees healthcare standards in custody should mirror those available in the community.

First Nations youth, particularly those living with cognitive and/or psychosocial disabilities, are disproportionately affected by this lack of equitable healthcare.⁵

¹ Office of the Inspector of Custodial Services, *Banksia Hill Detention Centre and Unit 18 at Casuarina Prison Inspection Report* (2023), <https://www.oics.wa.gov.au/wp-content/uploads/2023/05/00.2-Clean-Copy-Inspection-Report-148-Banksia-Hill-Detention-Centre-and-Unit-18-at-Casuarina-Prison.pdf>.

² Ibid.

³ Community and Public Sector Union, Submission No 105 to the Australian Human Rights Commission, *Youth Justice and Child Wellbeing Reform Project* (3 July 2023) 8–10.

⁴ United Nations, *A/RES/37/194 - Principle of Medical Ethics* (1982), Geneva (CHE): UN.

⁵ Aboriginal Legal Service of Western Australia, *Submission to the Council of Attorneys-General, Review of the Age of Criminal Responsibility* (2020).

2.1.3 Cultural Connection

For First Nations young people, cultural connection is a fundamental part of identity and wellbeing. Yet across Australia, detention centres fail to provide consistent opportunities for these young people to engage with culture.

Although some centres have introduced First Nations content into the curriculum and facilitated visits from First Nations service providers, these efforts are often under-resourced and inconsistent. Given the overrepresentation of First Nations youth in detention - who make up around 63% of the detained population nationwide⁶—the lack of regular cultural programming is a serious issue.

True reform must ensure that cultural connection is embedded in the daily lives of young people in detention, providing them with a sense of belonging and community that can aid in their personal growth.

2.1.4 Cycle of Despair and Recurring Riots

Youth detainees across Australia are often trapped in a cycle of despair, where systemic neglect, poor conditions, and a lack of support can lead to frustration, unrest, and riots.

For example, Banksia Hill recorded over 400 critical incidents by the end of 2022 (plus another 132 critical incidents at Unit 18 alone),⁷ with many young people repeatedly involved in violent outbursts.

This pattern is not unique to one facility—it reflects a broader failure across the youth justice system to provide environments that nurture young people’s wellbeing and development. The isolation, punitive measures, and lack of support push these young people further into crisis, potentially fuelling further incidents of unrest.

Breaking this cycle requires addressing the root causes of despair, such as trauma, mental health issues, and a lack of community connection, rather than resorting to punitive measures.

⁶ Australian Institute of Health and Welfare, Youth detention population in Australia 2023, <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/first-nations-young-people>.

⁷ Office of the Inspector of Custodial Services, *Banksia Hill Detention Centre and Unit 18 at Casuarina Prison Inspection Report* (2023), <https://www.oics.wa.gov.au/wp-content/uploads/2023/05/00.2-Clean-Copy-Inspection-Report-148-Banksia-Hill-Detention-Centre-and-Unit-18-at-Casuarina-Prison.pdf>.

2.1.5 Impacts of Isolation

The use of isolation and high-security units, such as Unit 18 at Banksia Hill, subject young people to prolonged isolation in conditions that violate international human rights standards, such as the Mandela Rules.⁸ In some cases, young people have been unlawfully confined for up to 24 hours a day, over a span of multiple weeks.⁹ The psychological impact of such isolation is profound, leading to deteriorating mental health, increased feelings of hopelessness, and heightened risks of self-harm or suicide.

Unit 18 is not an isolated case; many Australian detention centres rely on similar high-security units for managing so-called ‘high-risk’ detainees. Reform must focus on eliminating the use of isolation and developing therapeutic, community-based responses that address the underlying needs of these young people.

2.2 Issue #2: Community-Focussed Preventative Measures (Terms of Reference)

While ensuring centres comply with legal and human rights standards is critical, true reform must go beyond detention facility on-site improvements. Focus must shift to community-led, preventative measures, especially for First Nations young people. By investing in early intervention, mental health services, and culturally appropriate community care, we can address the root causes of young people offending and reduce the need for detention altogether. Prisons are to be held to a standard; however, young people’s needs are best met in community by community-led solutions.

2.2.1 Early Intervention and Diversion Programs

Research consistently shows that early intervention programs¹⁰, particularly those that are community-led, have the potential to drastically reduce youth offending and subsequent detention. Community-based early intervention programs that address factors such as family instability, substance abuse, and educational disengagement have been shown to reduce the likelihood of young people entering the justice system.

Programs like the Maranguka Justice Reinvestment Project in Bourke, NSW, which uses a community-led approach to reduce crime, provide a strong example of the potential impact of early intervention. The project has led to a 38% reduction in juvenile charges and a 14% decrease in bail breaches.¹¹ Investing in similar initiatives can disrupt the cycle of offending before it leads to incarceration.

⁸ Office of the Inspector of Custodial Services, *Inspection of Banksia Hill Detention Centre ISU* (2022), <https://www.oics.wa.gov.au/wp-content/uploads/2022/04/Inspection-of-Banksia-Hill-Detention-Centre-ISU-CORRECTED.pdf>.

⁹ Keane Bourke, *Banksia Hill teen who assaulted Unit 18 jail staff was failed by system, judge says* (2024), <https://www.abc.net.au/news/2024-02-08/unit-18-teen-failed-by-system-judge-says/103433084>.

¹⁰ Indigenous Justice Clearinghouse, *Prevention and Early Intervention: Supporting the Development of Children and Young People* (2022), <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/publications/files/prevention-early-intervention-6-7-22.pdf>.

¹¹ Indigenous Justice Clearinghouse, *Maranguka Justice Reinvestment Project* (2021), <https://www.indigenousjustice.gov.au/wp-content/uploads/2021/10/3.-Maranguka.pdf>.

2.2.2 Mental Health Services and Support Networks

The mental health crisis among detained young people, particularly in First Nations communities, cannot be ignored. National data shows that young people involved in the criminal justice system have a higher prevalence of psychiatric disorders, with 45%-73% diagnosed with at least one psychiatric disorder.¹² This figure is higher for First Nations young people.

Culturally appropriate, trauma-informed mental health services delivered within communities rather than through the justice system are essential to preventing further harm. First Nations community-led organisations are best placed to deliver these services, as they understand the unique social, cultural, and emotional needs of First Nations young people.

Programs like the Koori Youth Council in Victoria focus on mental health, cultural connection, and leadership development, helping to reduce recidivism by addressing the underlying trauma and disconnection that often leads to offending.

2.2.3 Culturally Appropriate Community Care and Family Care

First Nations-led solutions are critical in addressing the overrepresentation of First Nations youth in detention. Young First Nations people's needs are best met within community, where culturally relevant care supports identity and connection to Country.

Organisations like Aboriginal Legal Services and the Waalitj Foundation have demonstrated the effectiveness of culturally informed approaches, providing legal support, mentorship, and cultural programs that reduce contact with the justice system.

Strong family and community ties are also essential in preventing youth offending, yet First Nations young people are often detained far from their communities, exacerbating isolation and hopelessness.

Community-led family support programs, such as Family Group Conferencing in New Zealand¹³, have successfully reduced youth offending by fostering collaboration between families, community leaders, and young people. Implementing similar approaches in Australia, particularly in First Nations communities, is vital to supporting young people in detention.

¹² Beaudry G, Yu R, Långström N, et al., *An updated systematic review and meta-regression analysis: mental disorders among adolescents in juvenile detention and correctional facilities*, cited in NCBI, *Mental health disorders in juvenile justice: a systematic review* (2024), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC11021745/>.

¹³ Restorative Justice Aotearoa, *Restorative Justice in New Zealand: Best Practice* (2016), http://www.antoniocasella.eu/restorative/RJNZ_2016.pdf.

2.2.4 Economic and Social Investment

The cost of detaining a young person is significant—around \$2827 per day, or over \$1 million per year.¹⁴ Rather than continuing to invest in detention facilities, this funding could be redirected towards community-based services that address the social and economic factors contributing to youth crime. Investments in education, housing, and employment opportunities are proven to reduce offending. Research from the Telethon Kids Institute found that young people who receive support with education and housing post-release are over 60% less likely to reoffend.¹⁵

Youth diversion programs, such as Bail Support Programs, provide young people with an alternative to detention, offering access to stable accommodation, educational opportunities, and mentorship. These programs reduce recidivism and provide young people with the tools needed to succeed in the long term. This is a national crisis that demands a comprehensive response, grounded in community-led solutions, mental health care, and early intervention programs.

Thank you for the opportunity to comment. We welcome any questions you may have for further information. This submission has been co-authored by Senior Researchers of the Jumbunna Institute and Dean Moutopoulos of the National Justice Project.



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¹⁴ Australian Productivity Commission Report on Government Services 2024, Part F, Section 17
<https://www.pc.gov.au/ongoing/report-on-government-services/2024/community-services/youth-justice>.

¹⁵ Justice Reform Initiative, *Submission to the Australian Human Rights Commission* (2023),
https://humanrights.gov.au/sites/default/files/justice_reform_initiative_submission_redacted_0.pdf.