



Issues Paper

September 2019

Youth Justice

"Kids need more support. Lots of people want to change their life, but it's really hard, you know?"^a 16 year-old ¹

The majority of Western Australia's (WA) children and young people are leading productive lives and contributing positively to our community. Around 96 per cent of children and young people in WA have little or no contact with the justice system. There is however, a small cohort of children and young people who experience significant challenges and disadvantage, which can lead them into regular or ongoing contact with the justice system. Ensuring the wellbeing and rehabilitation of this group of young people is vital; only through coordinated early intervention to divert young people away from the justice system and the delivery of therapeutic programs and supports to address the underlying causes of offending will this be achieved.

Youth justice in WA

Demographics

- WA is home to 593,643 children aged 0 to 17 years, which is 10.8 per cent of the national population of children and young people and 23 per cent of WA's total population.²
- In 2017–18, there were 787 young people (aged 10 to 17) under youth justice supervision^b in WA on an average day.³ About four in five (81% or 640) were supervised in the community and the remainder were in detention (19% or 153)^c.⁴ In 2017–18, 86 per cent of the young people aged 10 to 17 under youth justice supervision were male.⁵

^a Quotes in this paper are from the Commissioner's 2016 consultation with young people involved in the youth justice system.

^b Youth justice supervision refers to the supervision of young people on legal orders. They may be supervised in the community or in detention facilities.

^c Some young people were under community-based supervision and in detention on the same day.

- The rate of young people aged 10 to 17 years under supervision on an average day in WA in 2017–18 was 29 per 10,000; higher than the national average of 21 per 10,000.⁶ Rates of young people under community-based supervision (24 per 10,000) and in detention (6 per 10,000) in WA on an average day were both higher than the national levels (17 per 10,000 and 4 per 10,000, respectively).⁷
- The majority of young people (61%) first entered supervision when aged 14 to 17 years; however, WA had the highest proportion among all states and territories of young people who first entered supervision when aged 10 to 13 years (39%).⁸
- In 2017–18 the rate of Aboriginal young people aged 10 to 17 under youth justice supervision on an average day in WA was 293 per 10,000 and 11 per 10,000 for non-Aboriginal young people.⁹ This means Aboriginal young people were 27 times more likely than non-Aboriginal young people to be under supervision on an average day in WA. This was the highest level of Aboriginal over-representation of all Australian states, and higher than the national rate (17 times as likely).¹⁰

Recidivism

The majority of young people who are currently under youth justice supervision in WA have previously been involved in the youth justice system for other offences.

In 2017–18, 93 per cent of young people under youth justice supervision in WA had previously been sentenced to community-based supervision and 67 per cent had previously been in detention for other offences.^{11,12}

The WA Department of Justice reports that in 2017–18, over half (58.7%) of young people returned to sentenced detention within two years of their release from detention.¹³

Banksia Hill Detention Centre

On an average day in 2017–18, the WA Department of Justice managed 148 young people in Banksia Hill Detention Centre.¹⁴ Of these 148 young people:

- 141 were male and 7 were female
- 108 were Aboriginal and 41 were non-Aboriginal
- 75 were sentenced and 73 were unsentenced.¹⁵

A research study of a sample of young people in WA's Banksia Hill Detention Centre in 2015–16 found 89 per cent had at least one form of severe neurodevelopmental impairment and 36 per cent had Fetal Alcohol Spectrum Disorder (FASD).¹⁶ FASD is characterised by impairment in executive function, memory, language, learning and attention, due to prenatal alcohol exposure, and can result in a range of difficulties

for young people including understanding consequences, learning from past experiences, decision making and general impulsivity.¹⁷ Young people with FASD are therefore much more susceptible to repeat involvement with the justice system.

Types of crime

Most young people involved in the youth justice system commit low-level property crimes such as graffiti and vandalism. Only a small minority of those with repeat contact with the youth justice system commit serious, violent crimes.¹⁸

In 2016–17, of WA young people proceeded against by police, the three most common principal offences were in the following three categories:

1. Theft and related offences (20 per cent or 545 youth offenders)
2. Acts intended to cause injury (18 per cent or 487 youth offenders)
3. Unlawful entry with intent (17 per cent or 449 youth offenders).¹⁹

Targeting the underlying causes of young people's offending

"I stopped going to school when I was in Year 9, I was 13 years old. My mum was on drugs, that's what got me in trouble. She wasn't around." 15 year-old

Strategies to address youth justice issues must be grounded in an understanding of the underlying reasons for young people's offending, which stem from the broader social and economic disadvantage they experience.

It is important to recognise that young people's environments and individual circumstances fundamentally influence their offending behaviour instead of blaming young people's contact with the justice system on their own 'bad choices'. A range of interrelated social and environmental factors including family and community dysfunction and violence, alcohol and drug use, poverty, disengagement from education and social exclusion, contribute significantly to young people's likelihood of coming into contact with the justice system.²⁰

Research shows that children and young people who have been abused or neglected are at greater risk of engaging in criminal activity and entering the youth justice system.²¹ Linked data now identifies the intersection of young people who are involved in both the child protection and youth justice system. In Australia, between 2013 and 2017, young people under youth justice supervision were nine times as likely as the general population to receive child protection services; and 47.7 per cent of young people under youth justice supervision were also in the child protection system.²² Of young people who had received both child protection services and youth justice services between 2013 and 2017, 82 per cent had received child protection services as their first contact.²³

The reasons for the relationship between young people in the child protection and youth justice systems are complex. Studies show that behavioural issues, poorer educational attainment, mental health problems and substance misuse can exacerbate the link between maltreatment and offending, and parental factors such as low income, mental illness and incarceration can increase the risk of offending among victims of maltreatment.²⁴ In addressing youth justice issues, responses that balance the need to hold a young person accountable for their offending behaviour with acknowledging and responding to their experience of maltreatment and adversity are essential.

An important component of this is trauma-informed approaches and practice. An estimated 80 per cent of incarcerated young people in Australia have experienced multiple traumatic stressors.²⁵ Therefore, staff working with young people in the youth justice system must be adequately trained to understand the effects of trauma on young people, their families and communities, recognise the signs of trauma, and provide support to increase young people's sense of safety and hope and resist re-traumatisation.²⁶

In 2016 the Commissioner undertook a consultation with 92 children and young people in the youth justice system to hear their views about why young people get into trouble with the law and what support and assistance they need to help them develop positive behaviours and navigate away from criminal behaviour.²⁷ Overwhelmingly, the young people who participated in the consultation indicated that serious dysfunction at home, disengagement from school and the broader community, and personal struggles with mental health or alcohol and drug use, underpinned much of their involvement in crime. They highlighted the importance of respectful, trusting and long-term mentoring relationships, with professionals, including youth justice workers and police, as crucial to sustaining behavioural changes, participating in education and employment, and in building a more positive future.

Similarly, the Commissioner's School and Learning consultation with almost 2,000 WA school students identified quality interpersonal relationships, with friends, other students, teachers and other school staff, as well as with their families, as the foundation for students' engagement with education.²⁸ This is important in the context of youth justice as strong engagement with school can provide an important source of early intervention and support for vulnerable children and young people and prevent disengagement from school, which is a known risk factor for young people's entry into the youth justice system.

It is clear a comprehensive response to addressing the underlying causes of young people's offending and pathways into the justice system requires a whole-of-government approach combined with community consultation and participation. This must occur alongside the provision of diversionary programs and efforts to addressing the offending behaviour itself. The youth justice system needs to work

collaboratively with human service agencies including child protection, police, courts, schools, out-of-home care providers and the health system (including mental health, and drug and alcohol) as well as working with families, communities and young people. This collaboration needs to be reflected across policy platforms and include information sharing and training.

Underpinning principles in youth justice

"I was sort of hanging out and didn't expect to come into troubledness and it just turns you out and you go into it and you try to get out but you can't. You gotta turn your life around somehow." 19 year-old

Youth justice in Western Australia is governed by the *Young Offenders Act 1994* (the Act). The Act describes a number of fundamental principles, including rehabilitation of young offenders as a primary goal.

The Act includes the following principles:

- Encouraging police and courts to use measures other than judicial proceedings for dealing with a young person if it is appropriate to do so (s 7(g)).
- Detention to be considered a last resort for children and young people, and if imposed, should be for as short a time as possible (s 7(h)).
- Young people should be dealt with in ways which are appropriate to their sense of time (s 7(k)), their age, maturity and cultural background (s 7(l)).
- Young people should be dealt with in such a way as to encourage them to accept responsibility for their conduct (s 7(b)) and to develop a sense of social responsibility (s 7(j)).
- Protecting the safety of the community (s 7(d)).

Diversion

"She used to take kids out to the spring and stuff but that stopped because there was no more funding and no...other activities so that's why the kids are getting in trouble." 15 year-old

In 2016, the Department of Corrective Services released a Green paper, *Young People in the Justice System: A Review of the Young Offenders Act 1994*.²⁹ As identified in the 2008 Auditor General's performance examination of the juvenile justice system,³⁰ the Green paper outlined that the strategies to minimise young people's contact with the justice system were losing momentum and potentially ineffective.³¹ Both reviews also stated that fewer young people were being diverted from the court system and police use of cautions and diversion to juvenile justice teams was declining.^{32,33} The lack of progress in this area during the eight year

period between the two reviews is disturbing and a clear indicator that the current approach is not working. This was reinforced by the release of a report from the Auditor General in 2017, *Diverting Young People Away From Court*, which found:

- Police divert young people away from court less than half of the time, which fails to maximise the benefits of diversion.
- For most of the young people involved, diversion does not result in meaningful or needs-based help to address their offending.³⁴

Detention and rehabilitation

Banksia Hill is the sole facility for the detention of young people aged 10 to 17 years in WA. It accommodates young males and females from all areas of WA who:

- have been sentenced to a period of detention
- have been arrested and are waiting for a first court appearance or bail determination
- are waiting for their court case if they have been denied bail
- are waiting to be sentenced after conviction.

A large proportion of young people (49%) in Banksia Hill on an average day are on remand.³⁵ The high remand rates appear to persist despite the support of supervised bail in the form of Metropolitan Youth Bail Services and young people having the unqualified right to bail.

It may be argued that young people who are routinely held in Banksia Hill for welfare issues such as homelessness and family dysfunction intensify rates of remand. The practice of detaining young people who have been granted bail but are remanded in custody due to a lack of suitable accommodation or responsible adult, contravenes State legislation³⁶ and the United Nations Convention on the Rights of the Child³⁷ agreed use of detention as a last resort. The mixture of remand and sentenced young people in Banksia Hill also counters national and international agreements³⁸ in that an accused person should be treated according to their unconvicted status, which includes being segregated from convicted young people.

As noted in the Green paper,³⁹ a youth detention centre should provide consistent and quality rehabilitation and supervision services for youth in detention. However, the Office of the Inspector of Custodial Service's 2017 review *Behaviour Management Practices at Banksia Hill Detention Centre*⁴⁰ identified significant failings in the operation of the centre and in particular that some management practices have conflicted with a rehabilitative, trauma-informed approach. This is despite the fact that the transformation of Banksia Hill's culture, services and operations was identified as a key priority area for reform for 2015 to 2016.⁴¹ The review

recommended a number of changes to ensure Banksia Hill becomes a stable, positive environment to support the rehabilitation of young people in detention.

In November 2017 the *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory* was released.⁴² The findings of the Royal Commission identified a systematic failure in the Northern Territory to address the challenges faced by children and young people in care and detention and in some cases exacerbated these problems. The report called for wide ranging reforms and many of the specific recommendations align closely with the Commissioner's key priorities for improving youth justice in WA discussed below.

Working with other Commissioners and Guardians for children around Australia, the Commissioner has endorsed a *Statement on Conditions and Treatment in Youth Justice Detention*⁴³ to guide development of policy and practice in detention facilities.

What needs to change?

"In a way, I do think that the system is still a bit unbalanced, unstable... they do get caught, they do get put on orders, and they do breach, they do go to lockup, they come out and do the same thing over and over...there's not that much kids that do get into trouble and learn their lesson...Being locked up...is mainly a badder influence than being on the street and stealing and stuff, like us boys we have been locked up we have, like we seen everything." 18 year-old

Preventing children and young people from becoming involved in the youth justice system and improving the outcomes for those who do, has been a focus for the Commissioner since the office's inception in 2007. The following areas for improvement have been identified from this work.

1. Comprehensive strategic framework for youth justice in WA

Develop a whole-of-government, collaborative approach to youth justice, guided by a strategic framework and implementation plan that re-evaluates the *Youth Justice Framework 2015 to 2018*⁴⁴ and embeds the strategy in a prevention, rehabilitation and restorative justice approach. Collaboration between departments and agencies including education, child protection and family services, health, housing and police is essential to enact meaningful and sustainable change to youth justice in WA.

A comprehensive approach must include a strong focus on reducing the overrepresentation of Aboriginal young people in the youth justice system through Aboriginal-led solutions⁴⁵ and culturally safe, trauma-informed intervention and diversion programs.

2. Prevention and early intervention to address disadvantage

Build robust service models that focus on early intervention in the cycle of disadvantage by identifying children and young people who may be at risk prior to any interaction with the youth justice system, to prevent them offending, including:

- **Engagement in education:** Disengagement from education is an early indicator of a young person's potential risk of entry into the youth justice system. Identifying and intervening early in response to signs of disengagement from education is therefore critical to disrupt pathways into offending.
- **Supporting families:** Ensure programs and services take a family-integrated approach and focus on supporting and strengthening families to provide the best opportunities for their children to grow up in healthy, safe and nurturing environments.
- **Community-based support:** Accessible services and programs that focus on the family unit and provide support to address underlying factors that can lead to offending including alcohol and drug use and mental illness. This could include treatment support in the home.
- **Place-based approaches:** Collaborative, community-led, multiagency strategies to identify local solutions to address the issues children and young people experience in their town or neighbourhood.⁴⁶
- **Raising the age of criminal responsibility:** The Commissioner supports raising the minimum age of criminal responsibility from 10 years to at least 12 years. This is in line with UN Committee on the Rights of the Child which has urged States Parties, including Australia, to raise the minimum age of criminal responsibility to 12 years as the absolute minimum.⁴⁷ Offending by children aged 10 to 12 years is best dealt with by human services agencies rather than the criminal justice system through investment in intensive supervision and support that includes comprehensive wrap around family and community based interventions.

3. Intervention and diversion early in the offending behaviour

Intervention and diversion once children and young people begin contact with the justice system is also critical to ensuring that the underlying causes of offending are appropriately responded to and that further contact with the justice system is prevented or reduced.

- **Comprehensive needs assessment and support planning:** Implement a child-centred review of any child or young person involved in criminal activity to identify the issues contributing to the offending behaviour to provide the basis for a coordinated, collaborative plan for intervention for the child and their

family. This includes assessment of physical and mental health, education and learning needs, safety and basic care needs, and family support. This should also include formal neurodevelopmental assessments for young people entering the justice system to identify FASD and other disability and provide appropriate rehabilitation and therapeutic interventions.⁴⁸

- Mental health assessments: Continued funding for, and rapid expansion of, the forensic mental health service at the Children's Court, to ensure children and young people appearing before any WA court have access to appropriate, comprehensive mental health assessment, referral and treatment services.⁴⁹
- Investment in diversion: Investment in programs to support diversion and reduce recidivism by delivering needs-based programs and follow-up assistance to children and young people, particularly in regional and remote areas where services are limited. Diversion programs must be designed to address the underlying causes of offending (such as school disengagement and family issues) and be monitored to ensure they are achieving positive outcomes for young people.

4. Community-based supervision

- Opportunity: Provide community-based orders that recognise the complex interplay of social conditions and support the rehabilitation of young people in their communities.
- Integration: Integrate community-based orders with local service providers to ensure that young people are accessing the supports that they need during and post-order.
- Juvenile justice teams: Utilise the skills of juvenile justice teams in all geographical areas over extended service hours and with full integration into other support systems and services to facilitate optimal treatment and diversion of young people.

5. Custody and detention

Police custody

Children and young people can be held in police custody for a variety of reasons and are particularly vulnerable during these periods. This vulnerability can be exacerbated by the traumatic or distressing circumstances that frequently precede arrest and detention as well as the varying risk factors to which young offenders are predisposed. Furthermore, police custody facilities are not designed for the purpose of detaining young people and this can create additional risks.⁵⁰ Ensuring the wellbeing of children and young people who are held in police custody requires:

- Reducing exposure: Young people should remain in police custody for the shortest amount of time possible.
- Supporting children: If a young person must remain in police custody, the processes and procedures should ensure that the needs of children and young people are appropriately met.
- Monitoring and oversight: A system of comprehensive independent oversight of the detention of children and young people in police custody should be undertaken in WA.⁵¹

Bail services

The Australian Institute of Criminology's review of bail support programs identifies a set of best-practice principles for the implementation and operation of these programs.⁵² Areas requiring significant attention in WA are:

- Improved resources: The provision of a statewide 24-hour bail service is required to achieve shorter periods of police custody.
- Bail conditions: Conditions should be tailored to address the individual circumstances of the young person to assist in preventing breaches, for example those breaches caused by community or cultural commitments or an inability to report due to regional/remote location.

Detention

- Recidivism: Investment in effective, evidence-based programs that reduce recidivism.
- Smaller facilities, closer to home: Providing options for detention which maintain a young person's connection to key support systems (including family and culture) and services that will also assist them in reintegrating into the community post-detention.
- Rehabilitation and therapeutic services: Significant improvement and focus on these services in detention facilities is required. This includes:
 - school and education programs that connect young people back into their school in their home community when they exit detention^{d,53}
 - employment and training programs
 - psychiatric and psychological services

^d When exiting youth justice detention, education is consistently identified as a key protective factor against further criminal activity and recidivism

- drug and alcohol services
 - relationship and family support programs
 - training for justice staff to ensure they are suitably skilled to work with young people with neurodevelopmental impairment, mental health issues and experiences of trauma.
- Investment in throughcare, a coordinated and integrated case management approach to young offender rehabilitation from their first point of contact with the youth justice system to the completion of their legal order, including their supported, reintegration into the community.⁵⁴
 - Monitoring and oversight: Regular, independent monitoring and oversight of WA's youth detention facility is required, which includes access to an independent advocate to support children and young people to raise concerns about their treatment and support.⁵⁵

Guiding principles

Each of the key areas outlined above should be guided by the following principles:

Young people's participation. Consulting with and acting on the views of young people who have experience in the youth justice system, from early intervention and diversion through to incarceration, is essential to ensure changes to the system are informed by their views and the system can therefore more effectively meet their needs. These young people and their families must also have opportunities to participate in the development, delivery and monitoring of policies and programs to improve youth justice services.

Culturally secure and responsive interventions. To address the significant over-representation of Aboriginal children and young people in contact with the justice system,⁵⁶ all strategies and programs must be culturally secure and include Aboriginal-led and controlled services and supports.^e

Trauma informed care. Consistent with the high levels of disadvantage and dysfunction associated with young people's offending behaviour, all interventions should be undertaken using a trauma informed approach that can identify and respond appropriately to the trauma young people may have experienced and the affect this has on their wellbeing, and address their individual needs.

^e The Commissioner notes this is consistent with recommendation 25.14 of the *Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory, Findings and Recommendations*, November 2017, p 42.

Action by the Commissioner

"I want a life for myself and I want a job when I get out of [Banksia Hill] cos I'm sick of it. Like, this life we live is not sustainable, if you get what I mean. Like, we can't keep going the way we go. You can't keep on doing crime, cos this is the way we end up, in here...we're all young still and got time. I have a lot of time." 17 year-old

The Commissioner has worked closely with a wide range of stakeholders in government and the non-government sector to advance the interests of children and young people involved in the youth justice system. Since the Commissioner's 2013 youth justice issues paper, the Commissioner has continued to publish policy briefs and reports relating to youth justice⁵⁷ and has strongly advocated through submissions⁵⁸ and engagement with stakeholders for improvements to youth justice in WA.

The Commissioner will continue to use the views shared by young people in his 2016 youth justice consultation⁵⁹ to make representations and advocate for changes to the WA youth justice system to improve the opportunities and outcomes for young people in the system and their families.

In May 2019 the Commissioner tabled a report in State Parliament calling for a new approach to reducing vulnerability in WA's children and young people.⁶⁰ The report details five recommendations to government including the development of a statewide Child Wellbeing Strategy that requires government to set meaningful targets and measure and report on how they are improving the wellbeing of children and young people. Another recommendation calls on government to enable Aboriginal-led solutions as the model for service design and delivery in Aboriginal communities. Given children and young people in the youth justice system are some of the most vulnerable in our state, this work is anticipated to create the change needed to address some of the underlying drivers of youth offending and prevent young people from becoming involved in the youth justice system.

In 2018 the Commissioner released the Engaging with Aboriginal Children and Young People Toolkit which outlines a process for establishing a long-term, sustainable commitment to working with Aboriginal children and young people within their community to develop effective initiatives that improve their current wellbeing and future opportunities. It supports the development of Aboriginal-led solutions through engaging children and young people, community Elders and senior leaders to ensure programs are produced with the community and for the community. Given the high proportion of Aboriginal children and young people who have contact with the justice system, it is anticipated that the toolkit will be a valuable resource.

The Commissioner is also integrating youth justice issues with the office's other relevant portfolios and projects, including:

- Education: In 2018 the Commissioner released a report on the findings of a consultation of more than 1,800 students from primary and secondary school across WA on the factors that influence their engagement in school and learning.^{61,62}
- Monitoring and oversight: The Commissioner has mapped the current framework of independent oversight against services provided to children and young people and has highlighted the need for increased independent oversight of police custody and youth justice to monitor the wellbeing of children.⁶³
- Wellbeing: The Commissioner has included early indicators as well as justice indicators in the Wellbeing Monitoring Framework which records baseline data for the wellbeing of children and young people across the state. The components of the framework will be released throughout 2019 and consistently monitored and reported on thereafter.

The opportunities presented by a renewed focus on reducing reoffending rates by young people in the WA Premier's whole-of-government targets released in 2019,⁶⁴ and on oversight of institutions due to the findings and recommendations from the *Royal Commission into Institutional Responses to Child Sexual Abuse*⁶⁵, should continue to be a catalyst for significant improvements to youth justice in WA.

Endnotes

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