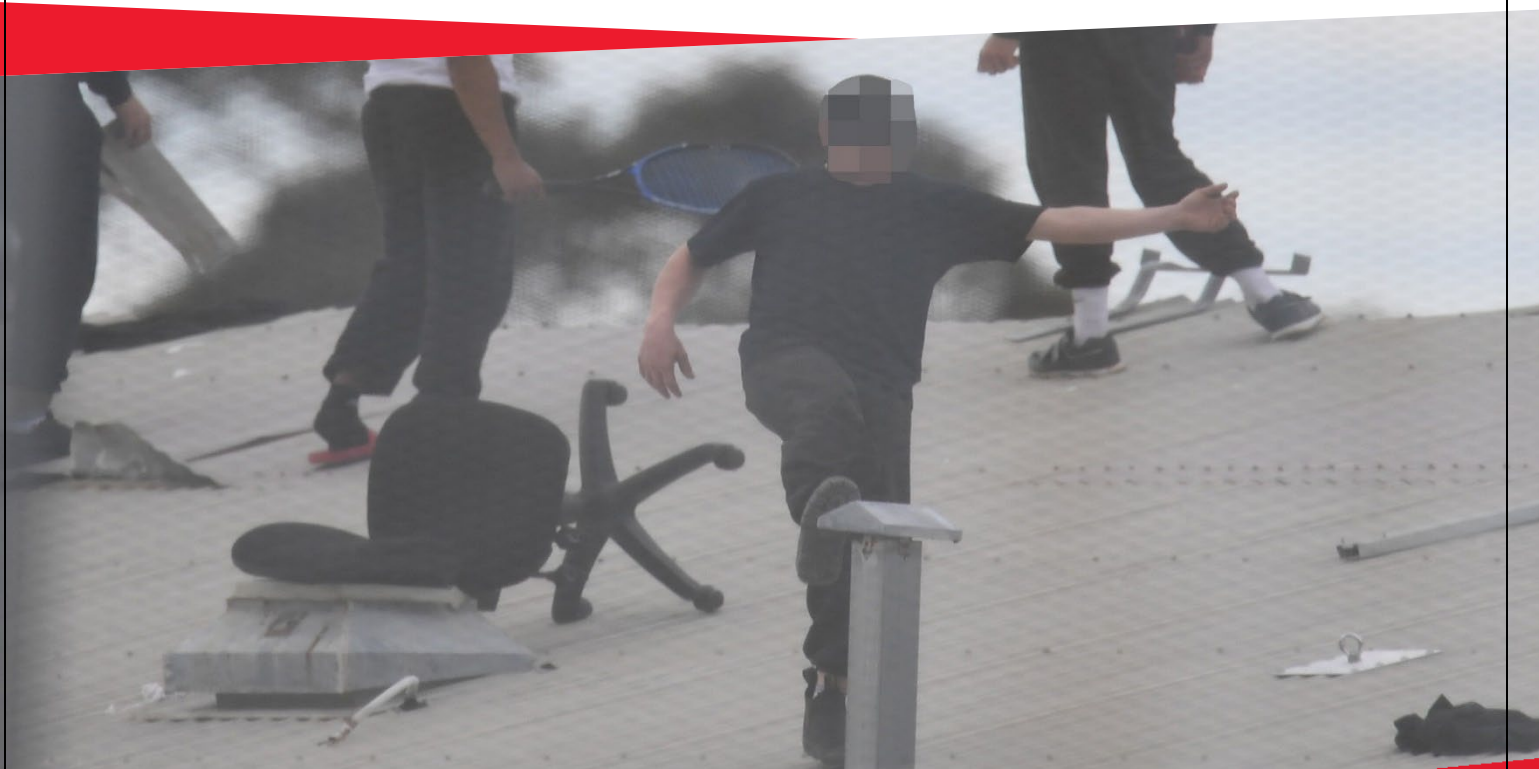




# Community and Public Sector Union

Submission into the Review of Youth Justice and Child Well-being Reform



## Community and Public Sector Union

### Submission into the Review of Youth Justice and Child Well-being Reform

#### About the CPSU

The CPSU has members in each state and territory and together in our two groups and 6 branches have over 120,000 members. The CPSU has coverage of members who work across government, including specifically for this inquiry, in the justice sector, including courts and tribunals, police support, legal aide, public prosecutors, corrective services, youth justice, probation and parole. We also have coverage of workers in a range of other services that significantly affect youth justice contact and outcomes as well as child well-being, including child protection, education support, housing, Aboriginal Affairs and health.

We believe there is a need for a whole of government response to this inquiry and welcome the questions for the terms of reference. More information can be provided if requested about specific systems in operation that have been replied to in brief here.

#### Foreword

Numbers of detainees in youth justice are declining but at a slow rate potentially recently influenced by the policy measures surrounding the COVID pandemic.

2016- 2017	2017-2018	2018-2019	2019-2020	2020-2021	2021-2022
4340	4468	4441	4046	3457	3395

**Table: Average daily number of young people in community based supervisions and detention<sup>i</sup>**

Despite decreasing numbers of detainees in youth justice, there appears to be a regular occurrence of extreme incidents such as riots and other occurrences. These incidents cause longer and new sentences, and a number of examples have seen children and staff injured and permanently disabled.

With the decrease in numbers recorded in several states, we now have a different environment in youth justice centres, where higher risk detainees are making up a greater percentage of the children under custody.

Our members are dedicated and committed to improving childrens' lives and are not content to see numbers of children in youth justice increase again. Ideally in the long run the success of youth justice is measured by putting our members out of existing jobs or transforming their work into a community preventative setting.

However, youth justice, similar to a range of other services needs to be properly resourced so that we can keep children out of youth justice detention and safe in the community.

#### ***Term of Reference***

***1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?***

With years of austerity the CPSU has seen proactive preventative and early intervention measures reduced by state treasuries across the country, with youth justice often being there to pick up the pieces

after other failing services. Youth justice is an issue primarily of poverty and disadvantage, and as a result has become an inter-generational issue.

Australian Institute for Health and Welfare has stated, “ *Children from areas of greatest socioeconomic disadvantage were 10 times more likely than those living in areas of least disadvantage to be under supervision (140 per 100,000 compared with 14 per 100,000*”<sup>ii</sup>

Similarly the experiences of children entering youth justice is over-represented for other areas of social-disadvantage including for Aboriginal people who have experienced many of these disadvantages.

“*Children under youth justice supervision are an especially disadvantaged group (RACP 2011). Research indicates that young people in the youth justice system have often experienced:*

- *high rates of child maltreatment and neglect, including time spent in out-of-home care (Cashmore 2011; Stewart et al. 2002)*
- *drug and alcohol abuse (Kenny & Nelson 2008; Prichard & Payne 2005)*
- *trouble at school, including issues with poor school attendance and performance*
- *parental substance abuse*
- *parental incarceration*
- *homelessness or unstable accommodation (JH&FMHN 2017).*”<sup>iii</sup>

This tends to indicate that involvement with youth justice must be prevented through other services.

### **Early Intervention**

Early intervention itself is welcomed to divert young people from detention. However, there are significant limitations as to how early an intervention can occur due to the nature of the justice system.

In the making of a submission to the *NSW Parliament Select Committee on the High level of First nations People in Custody and Oversight and Review of Deaths in Custody*<sup>iv</sup>, an Aboriginal Elder and delegate in Youth Justice who worked with Aboriginal children expressed frustration,

“*Many of the programs offered require an offence to occur prior to provision of access. If the programs were offered ahead of an offence to First Nations communities who are inherently at risk, then these programs could reduce incarceration rates and the chronic presentation of First nation people in the criminal justice system.*

*Examples of where this could work are programs such as My Journey My Life which addresses violence related offences, and an Aboriginal Specific Drug and Alcohol Program that operate in Youth Justice. If these were incorporated into communities and education in schools, this could significantly reduce the presentations of First Nations people into the court and custodial systems.”*

A national approach to enabling early intervention prior to the committing of an offence targeted at communities at high risk of youth offence through our schools and child protection could assist in reducing youth offenders.

### **Criminal Justice System**

#### **Policing**

The CPSU does not cover sworn police officers, but covers non-sworn police workers. Amongst these officers include Police Aboriginal Liaison Officers, community education officers, and Aboriginal Community Liaison Officers. These were introduced to address Recommendation 231 of the Royal Commission into Aboriginal Deaths in Custody. The roles and titles of these officers are various in every jurisdiction, however, amongst the key roles are:

- a) to build connections to communities and police
- b) to liaise with Aboriginal communities
- c) in liaising with Aboriginal communities, to identify children at risk of coming into contact with the law, and connecting them with services and parts of the community to prevent this
- d) to provide education to children and communities about what the police do, how they work with community

This is but one aspect of a community policing model, but is aimed at building relationships and has positive results in reducing recording offences for minor crime and increases pathways to diversionary services.

A national approach to assisting skills development and employment of more of these workers would assist in reducing young people's interactions with youth justice.

### **Group Conferencing**

Processes such as the Koori Youth Court, Circular Sentencing and other group conferencing approaches we are told is working to divert youth offenders with less serious crimes from custody. Research has concluded that participation in these processes is likely to reduce likelihood of a custodial sentence, less likely to offend, and those that do re-offend take an additional time to re-offend.<sup>v</sup>

### **Doli Incapax- Sentencing Age of Criminal Responsibility**

As per Human Rights Commission recommendations, the age of criminal responsibility should be raised. There are of course a number of issues with this recommendation that should be addressed.

Most children in this age group are currently being diverted from youth justice by the court system, and other diversionary measures.

Reducing incarceration as an option for this demographic cohort should include compulsory wrap around intensive services as this cohort may have minimal opportunity to avoid future incarceration if remaining in the same environment without the support.

However, a more advanced social policy decision will need to be developed regarding young offenders such as who are committing highly violent offences including homicide and terrorism under the age of 14. In other jurisdictions these offenders have been included in an exception clause such as in New Zealand.

### **Fetal Alcohol Spectrum Disorder (FASD)**

In research in West Australian Banksia Hill Detention Centre, research found that 36% of young people sentenced to detention had FASD, and 89% are severely impaired in a least one area of neurodevelopmental function.

The presence of FASD and the level of neurodevelopmental dysfunction raises issues regarding the ability of the children to appropriately make decisions about right and wrong, navigate the judicial system, and how the children are supported in youth justice. <sup>vi</sup>

It has been recommended that young people are screened when they come into contact with the law and before to enable early diagnosis, treatment and rehabilitation for FASD.

### **Education**

All youth justice centres operate in conjunction with Education Departments a school service as is required by Education legislation. The quality of the education in several jurisdictions is questionable due to the diverse learning needs and inability to follow the curriculum including with reduced literacy rates<sup>vii</sup><sup>viii</sup>.

Due to the boutique nature of the youth justice education, a national approach to learning the curriculum in a youth justice custodial environment should be developed.

### **Schools for Special Purposes and TAFE**

Often young offenders when released do not fit in with mainstream schools, often experiencing conflict with other students, poor disciplinary records and expulsions and suspension periods. Several states operate only a few schools for special purposes which operate with other services to wrap around and provide support to at risk students in gaining an education.

Additionally TAFE offers opportunities to finish secondary education without the school environment.

A national approach should be developed to provide evidence based educational facilities to support young offenders completing secondary education.

### **Home Economics and PDHPE**

Due to the often disjointed and independent living of detainees released from detention centres, a number of the services include a fundamental educational component to assist youth offenders with these basic skills. This should be mandatory.

### **TAFE and Vocational Training**

Providing access to TAFE training and VET training in a range of practical skills including farm skills, hospitality, and other skills can lead to detainees finding employment or apprenticeships following a period in custody. Employment provides an avenue for independence and diversion from crime.

A national approach to VET assistance through TAFE for youth offenders would provide assistance in reducing recidivism.

### **Housing, Homelessness, and “Half Way” Houses**

There is already a shortage of out of home care beds available leading to child protection services already accommodating hundreds of children in care every day in hotels and offices. Non-Government Organisations have simply closed their doors with the demand.

Whilst all states formerly run a form of “halfway house”, these services seem to have been minimally deferred to Non-Government Organisations, privatised or there is absence in the field. There is a limited government run Resicare service in several states for at risk children who don’t have a home or can’t return to home but these are not prioritized for teenage offenders. A number of youth offenders cannot return home due to AVOs or other court orders. For many children this means that they must couch surf with friends, are homeless or return to associate with adults who are involved in drug dealing, other crime and prostitution. They are often re-exposed to the environment or behaviour that saw them placed in custody.

The youth housing system is failing in every state and requires a national approach.

A national approach to assisting youth who do not have access to government provided safe housing in conjunction with child protection agencies.

### Health

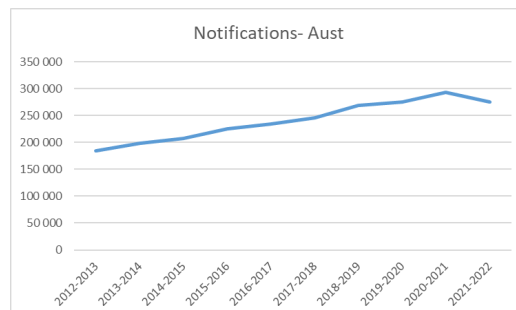
There is a lack of public mental health and alcohol and other drug rehabilitation facilities in our community for young people. There are long waiting lists for rare public services and for private services these require access through the financial support of a wealthy family or on occasion a child protection service. Many of these services are not available in certain regions at all. This lack of services can see a number of young people commit more serious crime as their mental health and addictions are not managed.

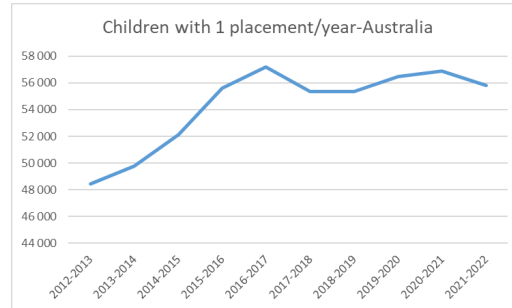
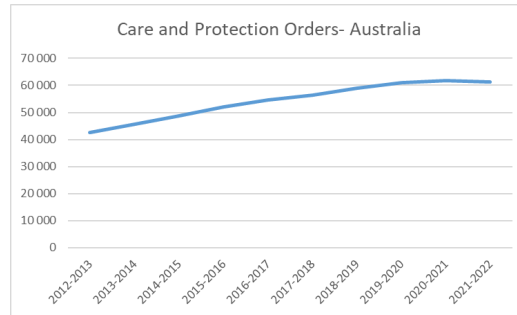
A national approach to supporting public access to youth mental health and alcohol and other drug services is needed to support young people in the community from offending.

### Child Protection

Our Child Protection system is in crisis. As sited above time in out of home care, neglect and mistreatment, alcohol and other drugs, parental incarceration are key experiences of young people in detention.

In every state notifications (complaints) have gone up, child protection orders, and children in out of home care have gone up. Meanwhile staff vacancies have increased and these vacancies are not being filled.





**Source: Productivity Commission , ROGS 2022, Child protection**

The net result is that large numbers of children at risk are being reported to child protection agencies, but are not being followed up. When these are not followed up the opportunities for supporting the child in family becomes narrow, as early intervention and diversionary support options get replaced with more harsh interventions such as court orders, child removal and placement in out of home care.

The CPSU has a four step approach to improve this situation included in our Child Protection Workforce Strategy that includes greater support for training a child protection workforce, tax concessions to equally support workers in statutory child protection stay in the industry, short term skilled migration, and research as to best practice case loads and future demand.

**Interstate Operation of Child Protection, Youth Justice Orders and Probation and Parole systems**

**Child Protection**

Currently finding whether placement of a child into care inter-state is safe, is complicated and time consuming.

There is no national child abuse database, nor is there the current capacity to share screening information for carers between states.

A national approach to screening carers for placement of young offenders, and a child abuse database would assist child protection workers find placement for at risk children.

**Community Probation and Parole Management**

It is extremely difficult at present to operate probation and parole services for young people between states. In most scenarios going interstate is considered a breach of parole. This is despite kinship groups

and carers often being interstate who can often provide a supportive environment away from the offending environment or behaviours.

National assistance should be provided to enable states to manage community orders between states.

### **More options for Probation and Parole services**

Currently there is a narrow range of probation and parole options particularly in regional areas. Many of these involve Non-Government Organisations for programs often managed by NGOs. Unfortunately non attendance mean that participation ends for the young person and no further participation occurs.

If the probation parole service could work with statutory Child Protection services, this would enable the continued provision of supervisory services to divert young offenders from further periods of incarceration.

There also needs to be greater options for Probation and Parole to have more programs to assist in education, employment and also diversion from re-offending.

### *Term of Reference 2*

*What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?*

### **Casualisation and Staffing Crisis**

Due to staff shortages, inability to recruit, numbers of staff on workers compensation, a number of staff on suspension, following use of force or allegations, much of the youth justice network is staffed by casuals. Many of these casuals are inexperienced and many units are being managed by inexperienced staff filling vacancies. Many of these casuals have not completed the Certificate 4 in Youth Justice, however, there are minimal training options inside youth justice after the Certificate 4.

The CPSU submits that we need to have a national approach to staffing our youth justice system that increases the ways we support our young people, constantly builds their professionalism, skills over a career and remunerates the workers for building up the knowledge and experience.

### **Professionalisation, Safety and Clear Procedures for Staff**

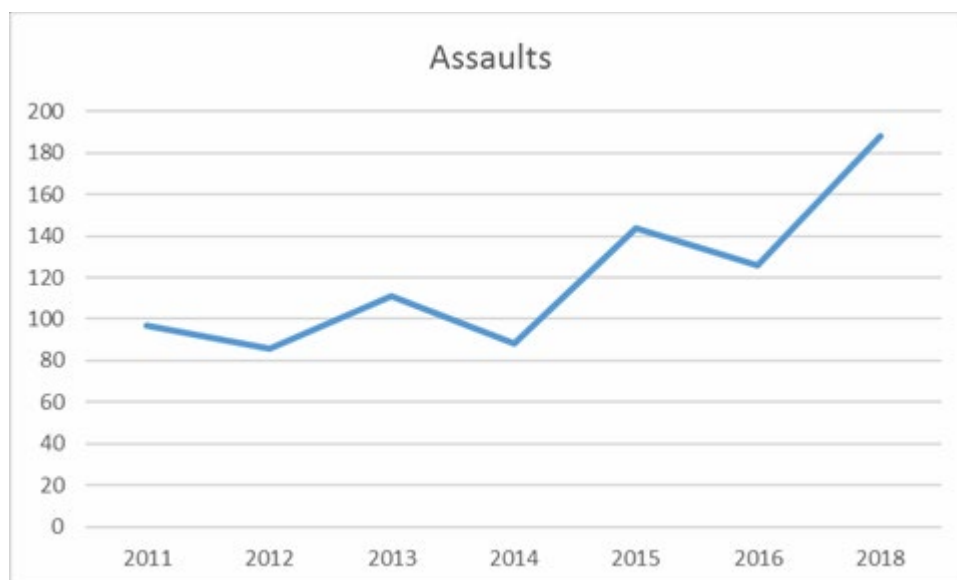
Government Youth Justice Agencies are not honest with their statistics to staff or externally. As an example of this compare the reported statistics to the Productivity Commission of reported assaults on children and staff in the Productivity Commission<sup>ix</sup> with the following tables from the NSW Inspector of Custodial Services or Parliamentary Inquiry. This is for illustrative purposes as most states do not report assaults on staff or detainees accurately.



**Figure 12: Assault incidents, 2015–18<sup>129</sup>**

Assault Category	Count of Incidents		
	2015–16	2016–17	2017–18
<b>Assault – Physical</b> <i>Includes young person on young person, young person on staff, young person on non-DJJ and police on young person</i>	321	346	401
<b>Assault – Verbal</b> <i>Includes young person on young person, young person on staff, and young person on non-DJJ</i>	64	23	20
<b>Assault with Weapon</b> <i>Includes threat, young person on young person, young person on staff, and young person on non-DJJ</i>	8	21	22
<b>Total<sup>130</sup></b>	<b>393</b>	<b>390</b>	<b>443</b>

Justice, Inspector of Custodial Services, use of force, separation, segregation and confinement in NSW Juvenile Justice Centres, (Nov 2018), p. 61



**Source:** 2011-2016 Parliament of NSW, Legislative Assembly, House Papers Questions on Notice, Guy Zangari to Minister Elliott, 5910 - Assaults On Staff At Juvenile Justice Centres  
 2017 data is only available in part year and has been excluded  
 2018. Daily Telegraph, 3 November 2018

The paramount responsibility should be to keep detainees and staff safe. As the numbers of detainees in youth detention decreases, we are seeing an increase in the incidence of violent assaults on detainees and also staff as more violent offenders make a greater percentage of detainees.

There are several factors related to this. The detainees in goal are now often seen as a harder group, committing higher order crimes so that they cannot be diverted into community orders. A second factor is that staff are often faced with large numbers of vacancies through turnover or through workers compensation after assaults, through suspension and as a consequence often receive often untrained casual staff to fill vacancies. At times the staffing is so low that time out of cells, attendance at other activities and education must be risk managed or abandoned. This removal of activities can lead to increased frustration by the detainees and more violence.

We have seen major riots in a number of jurisdictions over the last few years, which have included assaults on staff, assaults on sex offender detainees, wings burnt down, and necessitated either police or corrective services to enter the centre to diffuse the riot. These riots lead to extra offences and time served for many of the detainees, and has led to life changing disabilities for staff and detainees assaulted.

### **Training and Procedures- Damned if we Do and Damned if We Don't**

The CPSU advocates for more training and better procedures to support the very difficult work that our members do. This includes improved case management training, training to work with children with challenging behaviours, training to work with children with alcohol and other drugs, training to work with children with violent behaviours and the like. By investing in staff, there is more likelihood that the staff will stay long enough to utilize these skills to make a difference to the children.

One particular area that is inconsistent leaving our members in a clear conflict is that of the responsibilities and duty of care and the responsibility for reasonable use of force.

The training and procedures are inconsistent across the jurisdictions for use of force. Several states have special security staff to diffuse fights and riots, and in several states these staff are not trained. Use of force is necessary usually to break up fights and quell riots, and stop assaults on staff and detainees.

The management of these processes are through gazetted policies in correctional services goals, enshrining the duty of care in clear processes. Unfortunately, in youth justice we have seen far too many workers lives destroyed by using force to ensure duty of care of detainees. If you allow the fight to continue you can be charged with failing to ensure duty of care, if you intervene and use reasonable force, you may be physically injured or assaulted, as well as being investigated, suspended, losing your job, getting a child protection listing prohibiting the worker from working in a range of child related work.

Nationally consistent and verified procedures and training for the use of force, that should be vetted by the National Childrens Commissioner, and Police should be developed in consultation with the CPSU.

### **Case Management and Clinical Staff**

There are difficulties hiring staff in a youth justice custodial setting or community setting. Increasing these staff numbers is needed to increase early interventions, and utilize diversionary approaches whilst in the community. If these positions are vacant or there are not enough case management and clinical

staff employed then the opportunity for children to become more integrated with criminal behaviours will go unchecked.

### **Mental Health Support**

Staff who work in a mental health setting are supported by professional supervision. Most staff who work in youth justice are exposed to trauma and also have to deal with a large number of youth offenders with mental health problems. They receive minimal mental health support, often being referred to EAP services. There needs to be a built in professional supervision regime implemented for all staff in youth justice. Several states are embedding professional psychologists in every workplace to support staff mental health.

A national approach to support staff mental health who work in youth justice.

### ***Terms of Reference***

*3. Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?*

### **Proper Classification Systems**

The failure of several of our jurisdictions to classify different detainees appropriately and then separate these detainees has led to increased violence and riots. Members have reported seeing older detainees standing over younger detainees to undertake violence, to move contraband, and to assault staff. Fights have developed between groups and gangs inside the centres. Detainees have also been able to indoctrinate other detainees to commit crimes in the community.

The classification systems need to be robust and include relevant information including that from the people who work with the detainee on a daily basis, not just the clinical workers.

### **Consequence Regimes**

All youth justice environments utilize incentive schemes. These work to the level of their inconsistency usually weighted heavily on the positive reinforcement but very light on the consequences part of the incentive schemes. The result is that we have witnessed the incentive scheme application being the reason for further violence amongst youth offenders and with staff. This is in contrast with corrections where consequences are known and administered consistently resulting in less violence.

As further example, a number of members have reported coming into conflict with their management when they have reported to police when they have been assaulted at work, partially due to adult detainees on youth sentences likelihood to be moved to adult facilities due to the adult offence.

A national approach needs to be developed to ensure that consequence regimes are consistent and fair.

### **Therapeutic Units**

Therapeutic Units appear to operate on a basis of a smaller cohort of youth offenders, with a range of additional clinical services assisting the detainees.

Several models have been started to be used in Australia for different focus groups.

Forest Hill (Vic) is not open yet but will include a therapeutic approach with pods of 4 detainees with a number of youth justice clinical and non-clinical staff per pod.

Banksia Hill (WA) after a riot has announced a trauma and therapeutic approach<sup>x</sup>.

After several assaults and riots an Enhanced Support Unit Frank Baxter (NSW) was established to support several of the high risk detainees in the system.

The Scandinavian models appear to work well, but operate from a whole of community basis as described above with built in community services and education to divert community members from youth justice. This may require some time for our community to adopt as these were inter-generational in their development.

One of our branches went on a study tour in 2019 to review the New Zealand model. This is the report from the delegation which includes an emphasis on early intervention and education.

### **The New Zealand Model**

In August 2019, the CPSU NSW branch delegation visited New Zealand to learn about the country's unique youth justice system.

After addressing significantly high level of violence among youths through major reform, New Zealand now has a youth justice system to be envied by the world. The reforms have included early intervention by Police Liaison type workers with the Maori and specific centres for different crime (sex offenders) and interventions with traditional cultural programs. The early reports are that with the additional programs as an incentive, violence levels have been significantly reduced.

During the recent visit, the CPSU NSW visited two centres on the North Island, Palmerston North Youth Residence and Napier Correctional Centre Youth Wing and can confirm that it appears that they are moving in the right direction and would recommend that the government also visit and consult with their New Zealand counterparts.

The laws regarding youth justice in New Zealand are enshrined in the Children Young Persons, and Their Families 1989 (Oranga Tamariki) Legislation Act. New Zealand's four youth justice residences house about 150 teenagers, who are generally aged 14 to 18. The Oranga Tamariki Act 1989 recently extended the "young person age" from 17 and under to instead include 17 year olds up until their 18th birthday. This change has applied since 01 July 2019.

The New Zealand Youth Justice system is designed to keep as many young people out of the official youth justice residences as possible, through rehabilitative treatment programmes. There are nine specialist community treatment programmes for adolescents who sexually offend and one residential unit.

The only offences that children under 14 can be charged with are murder and manslaughter. Otherwise, children aged 10 to 13 are called child offenders and may be dealt with by police warning or Child Youth and Family Services intervention.

As at 30 June 2018 there were 220 young people in youth justice custody. About 40 per cent of youth offenders will have repeat visits to youth justice residences.

New Zealand's youth justice residences are designed with a community-minded, rehabilitation approach.

### ***Terms of Reference***

*4. From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?*

The CPSU submits that the following areas may lead to improved outcomes for youth justice and child well-being:

- A national best practice approach enabling early intervention prior to the committing of an offence targeted at communities at high risk of youth offence through our schools and child protection could assist in reducing youth offenders.
- A national approach to assisting skills development and employment of more youth justice workers would assist in reducing young people's interactions with youth justice.
- A national approach to staffing our youth justice system that increases the ways we support our young people, constantly builds their skills over a career and remunerates the workers for building up the knowledge and experience.
- Due to the boutique nature of the youth justice education, a national approach to learning the curriculum in a youth justice custodial environment should be developed.
- A national approach should be developed to provide evidence based educational facilities to support young offenders completing secondary education when released.
- A national approach to VET assistance through TAFE for youth offenders inside Youth Justice centers would provide assistance in reducing recidivism.
- A national approach to a national youth justice workforce plan to address staff vacancies (in custodial and community) and make the vocation more professional and permanent.
- A national approach in the youth justice system would be assisted by a serious attempt at harmonizing and creating a best practice use of force rules and training in consultation with the Child Commissioner, CPSU to ensure child and staff safety and a reduction in misconduct allegations.
- A national approach to screening young people and training for staff to dealing with underlying health issues including mental health , FASD and drug and alcohol issues for children in the community and in detention to prevent offending and re-offending.
- A national approach to assisting youth who do not have access to housing to be provided with government provided safe housing in conjunction with child protection agencies.
- A national approach to child protection screening carers for placement of young offenders, and a child abuse database would assist child protection workers find placement for at risk children.
- National assistance should be provided to enable states to manage community orders between states.
- A national approach to support staff mental health who work in youth justice.

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<sup>i</sup> Productivity Commission, Report on Government Services, Table Serious Assaults in Custody by Indigenous Status, Table 17.a.1 <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services>

<sup>ii</sup> <https://www.aihw.gov.au/reports/cws/69/australias-children/contents/justice-safety/children-youth-justice-supervision>

<sup>iii</sup> Ibid.

<sup>iv</sup> Public Service Association of NSW, CPSU NSW Branch NSW Submission to the Parliament Select Committee on the High level of First nations People in Custody and Oversight and Review of Deaths in Custody. <https://www.parliament.nsw.gov.au/lcdocs/submissions/69063/0118%20Public%20Service%20Association%20of%20NSW.pdf>

<sup>v</sup> Yeong, S., and Moore., E., (2020) Circle Sentencing, Incarceration and recidivism (Crime and Justice Bulletin No. 226) Sydney: NSW Bureau of Crime Statistics and Research

<sup>vi</sup> Nine out of ten young people in detention found to have severe neuro-disability, The telethon Institute, <https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>

<sup>vii</sup> Levels of literacy among juvenile offenders: The incidence of specific reading difficulties November 2000, Criminal Behaviour and Mental Health 10(4):229 - 241

<sup>viii</sup> Snow P & Powell M 2012. Youth (in)justice: Oral language competence in early life and risk for engagement in antisocial behaviour in adolescence. Trends & issues in crime and criminal justice no. 435. Canberra: Australian Institute of Criminology. <https://www.aic.gov.au/publications/tandi/tandi435>

<sup>ix</sup> Productivity Commission, Report on Government Services, Table Serious Assaults in Custody by Indigenous Status, Table 17.a.16 <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services>

<sup>x</sup> Minister Bill Johnston, Ex-Mental Health Commissioner to realise youth detention reforms, <https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/Ex-Mental-Health-Commissioner-to-realise-youth-detention-reforms-20230404>