



Submission to the National Children's Commissioner Youth Justice and Child Wellbeing Reform across Australia

June 2023



**Jesuit
Social Services**
Building a Just Society

Introduction

Jesuit Social Services welcomes the opportunity to respond to the National Children's Commissioner-led project, investigating *Youth Justice and Child Wellbeing Reform across Australia*. Our experience working with children and young people involved in the justice system has spanned Jesuit Social Services' 45-year history. Our most recent [Annual Report](#) highlights some of this work.

Our direct experience with youth justice systems includes:

- **Youth Justice Community Support Service (YJCSS):** YJCSS provides integrated and intensive support and services to young people aged 10–21 involved with the youth justice service in Victoria to complement case management undertaken by youth justice workers. Currently Jesuit Social Services provides community support to approximately 40% of young people under youth justice supervision in Victoria.
- **Youth Justice Group Conferencing (YJGCP):** We have delivered pre-sentence Youth Justice Group Conferencing throughout Melbourne, Victoria since 2003, and have piloted the program in Darwin, Palmerston and Katherine in the Northern Territory since early 2017, as well as Alice Springs and Tennant Creek since March 2020.
- **Northern Territory Youth Justice Programs – Youth Diversion and Back on Track:** Delivering Youth Diversion in partnership with The Gap Youth and Community Centre in Alice Springs since February 2020. We continue to deliver Element 2 (restorative responses) of the Back on Track diversion program in Katherine since July 2019. The program is available for 8–13-year-olds and 14–17-year-olds, with referrals from government, non-government agencies, police, the courts, families and self-referrals.
- **Link Youth Justice Housing Program:** Providing an alternative housing model to young people aged 16–22 involved with the criminal justice system and at risk of homelessness.
- **Next Steps/Dillon House:** Supports marginalised young people aged 16–24 with multiple and complex needs, who intersect with the justice system and are experiencing, or at risk of, homelessness.
- **Perry House:** Providing stable housing to young people with multiple and complex needs, who are living with an intellectual disability, and who have involvement in the criminal justice system.
- **Community Connections Mentoring:** Connects young people who are living in or have lived in out-of-home care with a volunteer mentor from the community.
- **Crime Prevention Projects:** Delivering intensive support to young people in contact with the justice system in Dandenong, Broadmeadows and Wyndham.
- **Ignatius Learning Centre:** The Ignatius Learning Centre is a Catholic Specialist Secondary School in Melbourne for boys aged 15–17 who are involved with the youth justice system. The school provides a safe, holistic and therapeutic learning environment, and promotes the development of the whole person – including intellectual, physical, social, emotional, cultural and spiritual elements of each young person.

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

A small number of young people experiencing vulnerability become caught up in the criminal justice system from a very young age. We know that the young people most likely to offend are often the ones who have faced the toughest circumstances growing up, and that the most effective approach to prevent their trajectories into the justice system is to address the issues driving their vulnerability — issues such as family dysfunction, trauma, abuse and neglect.¹ Further to this, research into brain development consistently shows that children’s brains are still developing and that they are less able to form good judgements than adults are.² This research is important in formulating fair and just policy that supports the rehabilitation of children and young people, and prevents their ongoing contact with the justice system.

The following description reflects our experience through service provision and draws on existing research.

Locational disadvantage

Where a young person lives significantly influences whether they will come into contact with the justice system. Entrenched geographical disadvantage has been explored in our series of research reports conducted over the past 20 years titled *Dropping off the Edge* (DOTE). The reports, released most recently in 2021, have found that communities in particular locations experience a web-like structure of disadvantage, with a number of compounding challenges including unemployment, a lack of safe, secure and affordable housing, low educational attainment, and poor infrastructure and services.

Multiple and complex needs

The multiple layers of complex disadvantage experienced by young people can manifest in a combination of factors including homelessness, family violence, trauma, mental ill-health, disability and alcohol and substance misuse. This is shown in data from the Victorian Youth Parole Board Annual Report 2021–22³ on 119 young people in custody whose experiences were characterised as follows:

- 72% had experienced abuse, trauma or neglect as children.
- 50% had experienced family violence.
- 62% were accessing mental health support for their diagnosed mental illness.
- 66% had a history of misuse of alcohol.
- 87% had a history of misuse of drugs (illicit or prescription).
- 63% had offended while under the influence of alcohol and/or drugs.
- 55% were currently or had been the subject of a child protection order.

¹ Youth Parole Board (2018). Victorian Youth Parole Board Annual Report 2017–18. ([Weblink](#))

² Johnson, S., Blum., R., & Giedd, J. (2009). Adolescent Maturity and the Brain: The Promise and Pitfalls of Neuroscience Research in Adolescent Health policy. *Journal of Adolescent Health, 45*(3): 216–221. ([Weblink](#)); Lebel, C. & Beaulieu, C. (2011). Longitudinal Development of Human Brain Wiring Continues from Childhood into Adulthood. *Journal of Neuroscience, 31*(30): 10937–10947. ([Weblink](#))

³ Youth Parole Board (2022). Victorian Youth Parole Board Annual Report 2021–22, page 26. ([Weblink](#))

Systemic overrepresentation of particular cohorts of young people

Aboriginal and Torres Strait Islander young people:

Aboriginal and Torres Strait Islander people have been the subject of adverse government interventions since early colonisation and continue to experience the ongoing impacts of dispossession, structural racism, intergenerational trauma and disadvantage;⁴ overrepresentation in the justice system must be understood in this context. In Victoria, for example, the Commissioner for Children and Young People released the 'Our Youth, Our Way' report, finding that:

In 2019/2020, 15 per cent of children under youth justice supervision in Victoria (community and detention) were Aboriginal and Torres Strait Islander children, yet they comprised only 1.5 per cent of the Victorian population aged 10 to 23 years.⁵

Culturally and Linguistically Diverse (CALD) young people:

CALD children and young people are disproportionately overrepresented in youth justice systems across Australia. This is demonstrated in Victoria, where almost 40 per cent of children in custody identified as being from CALD communities, mainly Māori, Pacific Islander and South Sudanese.⁶ There are many factors leading to the overrepresentation of CALD communities in the justice system, including family breakdown, financial and housing challenges, mental health issues, unemployment and experiences of racism and discrimination.⁷

Young people in out of home or residential care:

Previous or current contact with the Child Protection system can also indicate a high risk for children and young people entering the youth justice system.⁸ This is evidenced by the Australian Institute of Health and Welfare:

Across Australia, contemporary data indicates that children receiving statutory child protection services due to maltreatment or parental incapacity are 9 times more likely to offend and come under the supervision of youth justice services compared to other children in the community.⁹

⁴ Commission for Children and Young People (2021). Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system. ([Weblink](#))

⁵ Commission for Children and Young People (2021). Our youth, our way: inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system. ([Weblink](#))

⁶ Victorian Government. (2020). Youth Justice Strategic Plan 2020–2030. ([Weblink](#))

⁷ Shepherd, S., & Masuka, G. (2020). Working With At-Risk Culturally and Linguistically Diverse Young People in Australia: Risk Factors, Programming, and Service Delivery. *Criminal Justice Policy Review*. ([Weblink](#)); Wylie, L., Van Meyel, R., Harder, H., & Sukhera, J. (2018). Assessing trauma in a transcultural context: Challenges in mental health care with immigrants and refugees. *Public Health Reviews*, 39(1). ([Weblink](#))

⁸ Australian Institute of Health and Welfare 2018. Child Protection Australia 2016–17. Child Welfare Series no. 68. ([Weblink](#)); quoted in, Sentencing Advisory Council of Victoria. 2019. 'Crossover Kids': *Vulnerable Children in the Youth Justice System*. ([Weblink](#)).

⁹ Ibid, p. 5.

Intergenerational or parental incarceration¹⁰

Substantial links have been made between parental imprisonment and children going on to have justice involvement. In 2019, one in five prison entrants across Australia reported that one or more of their parents or carers had been in prison during their childhood.¹¹ On average, a child whose mother has been to prison is 6 times more likely to become incarcerated themselves.¹²

Disengagement from education

Disengagement from school is a risk factor for involvement with the criminal justice system. In Victoria, recent Youth Parole Board Annual Reports have shown that at least two thirds of young people in Victorian youth detention facilities were suspended or expelled from school before their arrest.¹³ Further, a Victorian Ombudsman report investigating the rehabilitation and integration of prisoners found that only 5–7 per cent of adult prisoners in Victoria have completed Year 12.¹⁴

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?

Jesuit Social Services has developed key principles for effective and humane justice systems (for a list of the principles please see Appendix A). In summary, our vision is for a justice system that better acknowledges and responds to the drivers of crime. It sees incarceration used only as a last resort and, where it is used, rehabilitation is the priority. Intervening early and diverting children from detention to prevent trajectories into the youth and adult justice system must form a critical part of this vision.

Embed a clear national vision of youth justice, and streamline legislative foundations

Although legislation differs across jurisdictions, many State and Territory Governments have enacted legislative amendments over the years that have made it harder to get bail, limited access to parole and reduced access to non-custodial options – affecting both adults and young people alike. Jesuit Social Services advocates a reversal of this trend – proposing that legislation for children and young people in all jurisdictions needs reviewing to better reflect a commitment to early intervention and non-custodial strategies.

¹⁰ See our Submission to Parliament of Victoria's Legislative Council Legal and Social Issues Committee's *Inquiry into children of imprisoned parents*. ([Weblink](#))

¹¹ Australian Institute of Health and Welfare 2019. *The health of Australia's prisoners 2018*. Cat. no. PHE 246. Canberra: AIHW.

¹² Cox, M. (2009). *The relationships between episodes of parental incarceration and students' psycho-social and educational outcomes: An analysis of risk factors*. Temple University.

¹³ See: Youth Parole Board Annual Report 2019–20. ([Weblink](#)); Youth Parole Board Annual Report 2015–16 (cited in the *Inquiry into Victoria's Criminal Justice System Final Report*, at 6.4.3). ([Weblink](#))

¹⁴ Legal and Social Issues Committee (2021). *Inquiry into Victoria's Criminal Justice System Final Report 6.4.3*. ([Weblink](#)); referencing Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, Victorian Ombudsman, Melbourne, 2015. p. 63.

Raise the age of criminal responsibility

Early engagement with the criminal justice system can establish a trajectory towards further justice involvement into adulthood. Raising the age of criminal responsibility to at least 14 years of age serves as a critical prevention measure by diverting children from contact with the criminal justice system and breaking the cycle of offending. Our paper, [Raising the Age of Criminal Responsibility: There is a Better Way](#), sets out the most effective approach to prevent children's trajectories into the justice system; to intervene early and support families at the first signs of struggle.

Uphold the Rights of the Child

As a signatory to the *United Nations Convention on the Rights of the Child (1989)*, Australia has obligations to protect the best interests of the child as a primary consideration (Article 3); and to protect, respect and fulfil the rights to non-discrimination (Article 2), education (Article 28), a safe place to live (Article 27), the highest attainable standard of health (Article 24), protection from violence, abuse and neglect (Article 19), life, survival and development (Article 6), and participation in all decisions that affect them (Article 12). This rights-based framing, and a commitment to legislative protection of these rights, are currently absent from many youth justice laws across Australia.

Address disengagement from education early

Engagement with education, as well as training and employment, is widely regarded as a key protective factor against involvement in the criminal justice system. However, many young people experience significant and ongoing challenges to remaining engaged in education and schooling systems. In order to prevent the cycle of involvement with the criminal justice system for children, young people and adults alike, there is a need for preventative and coordinated systemic reform as well as programmatic interventions to increase engagement in education, training and employment.

Strengthen pre-court diversion and early intervention

Pre-court and court-ordered diversion are also crucial measures to prevent ongoing contact with the justice system. This was a key finding of the Inquiry into Victoria's Justice System which highlighted the importance of diversion in connecting people with the supports needed to address factors contributing to their offending.¹⁵ It also recommended an expansion of existing court-based diversion programs to meet increasing demand.¹⁶ Jesuit Social Services echoes these calls, advocating for greater use of pre-court and court-ordered diversion to allow people to address the drivers behind their offending while still holding them accountable.

¹⁵ Legal and Social Issues Committee (2021). Inquiry into Victoria's Criminal Justice System Final Report. Finding 18, page xxxix. ([Weblink](#))

¹⁶ Legal and Social Issues Committee (2021). Inquiry into Victoria's Criminal Justice System Final Report. ([Weblink](#))

Build the capacity of communities using place-based approaches

As explored in our *Dropping off the Edge* research, where a person lives is a significant factor contributing to whether they will come into contact with the justice system, highlighting that entrenched disadvantage is an underlying cause of offending.¹⁷ Jesuit Social Services strongly believes that place-based approaches can address the complex and interconnected social determinants of crime, thereby preventing contact with the justice system. Jesuit Social Services established the [Centre for Just Places](#) with a key focus to build research and advocacy around the need to address the root causes of social, economic and environmental inequality.

Place-based approaches require concerted, sustained, collaborative and long-term commitment across the government, community and business sectors to improve access to appropriate housing, education, employment and support services. They must also be community owned and driven, and directed at the individual, community and state levels.¹⁸ Further, access to data plays a critical role in informing place-based approaches. However, at present, data are fragmented across the criminal justice system and social service agencies, which limits our ability to build a clear picture of locational disadvantage and the current effectiveness of the systems that respond to people experiencing vulnerability.

Address the use of violence and harmful behaviours of boys and men

We note that over 90% of those in custody are boys and men; and that men are overwhelmingly the perpetrators of family violence. In our view, the justice system is relied on too heavily as a blunt tool to address violence and anti-social behaviour. This contributed to Jesuit Social Services' decision to establish The Men's Project in 2017, having identified the need to invest in research, workforce capacity building, and the development, piloting and evaluation of early interventions to positively shift cultures and attitudes to address the underlying drivers of violence and other harmful behaviours by boys and men.

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?

Youth Justice Group Conferencing

Jesuit Social Services' Youth Justice Group Conferencing program (YJGC) has been a core part of our service delivery across Victoria since 2003, and the Northern Territory since 2017. The YJGC program seeks to enable dialogue between children who have offended, their victims and others impacted by harm caused to the wider community.

¹⁷ Tanton, R., Dare, L., Miranti, R., Vidyattama, Y., Yule, A. and McCabe, M. (2021), *Dropping Off the Edge 2021: Persistent and multilayered disadvantage in Australia*, Jesuit Social Services: Melbourne.

¹⁸ Jesuit Social Services. (2017), *Flourishing Communities: Taking lessons from place-based approaches, justice reinvestment and social cohesion*. Position paper. Jesuit Social Services. ([Weblink](#))

The program is grounded in the principles of restorative justice, which emphasise reparation and restoration,¹⁹ and aims to:

- Raise the young person's understanding of the impacts of their offending on the victim, their family and/or significant others, and on the community.
- Reduce the frequency and seriousness of re-offending by the young person.
- Improve the young person's connection to family/significant others and the community.
- Negotiate an outcome plan that sets out what the young person will do to make amends.
- Increase victim satisfaction with the criminal justice process.
- Divert the young person from a more intensive sentence.²⁰

Evidence shows that restorative practices are more effective in reducing re-offending and making our communities safer.²¹ A 2010 evaluation found that more than 80 per cent of participants had not reoffended two years later, compared to 57 per cent in the comparison group.²² Further, research released in 2022 identified that YJGC is associated with substantive reductions in the likelihood of ongoing recidivism for young people (24–40 per cent reduced likelihood).²³

Key themes identified from our international #JusticeSolutions Tours

In 2019, senior leaders from Jesuit Social Services embarked on [a study trip to New Zealand](#) to learn more about innovative approaches to supporting people who have contact with the criminal justice system.²⁴ This study trip followed a similar [tour in 2017 to Norway, Germany, Spain, UK and USA](#).²⁵ On our Justice Solutions tours, we saw that justice system reform needs to be underpinned by a clear, well-articulated vision, centred on addressing the needs of people and their families and driven by leadership committed to evidence and best practice.

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 benefits in taking a national approach to youth justice and child wellbeing reform include:

- Developing a National Youth Justice Strategy to provide a common approach to legislative reform in all jurisdictions.
- Hold State and Territory Governments to account in raising the age of criminal responsibility from 12 to 14 years.

¹⁹ Larsen, J. (2014). Restorative justice in the Australian criminal justice system. *Research and public policy series, Australian Institute of Criminology, Report 127*. ([Weblink](#))

²⁰ Victorian Government (2015). Youth Justice Group Conferencing factsheet, March 2015. ([Weblink](#))

²¹ Jesuit Social Services (2019). #JusticeSolutions New Zealand Tour. ([Weblink](#)); and Larsen, J. (2014). Restorative justice in the Australian criminal justice system. AIC Reports: Research and Public Policy Series 127, Australian Institute of Criminology, Australian Government. ([Weblink](#))

²² KPMG (2010). Review of the youth justice group conferencing program: Final report. Melbourne: State Government of Victoria. ([Weblink](#))

²³ Robert Bonnett (2022). Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences. ([Weblink](#))

²⁴ Jesuit Social Services (2019). #Justice Solutions New Zealand Tour. ([Weblink](#))

²⁵ Jesuit Social Services (2017). #Justice Solutions Tour Expanding the Conversation. ([Weblink](#))

- Building a consensus that responding to anti-social and offending behaviour should be seen in the context of children’s development and wellbeing as distinct from crime and punishment.
- Development of targeted early recognition (of risk) and intervention strategies within universal service systems – particularly education, health, family violence and community services.
- Creating benchmarks of accountability in all jurisdictions for the performance of key Government Agencies in setting priorities for children and young people at risk – in particular, Child Protection, Justice (including Police and Courts), Education, Health, and Family Violence.
- Developing and endorsing exemplar models of intervention for children and young people at risk – evidence informed and capable of adaptation within communities of diverse locations and demographics.
- Creating a resource base for intervention that takes account of place-based disadvantage – acknowledging the need for greater investment in some rural and remote communities.

Suggested next steps:

The National Children’s Commission should take a lead in creating a National Youth Justice Strategy to set policy objectives for all jurisdictions specifically in relation to children and young people at risk of entering or engaged with the youth justice system. Key actions that the Commission could consider include:

- Develop a national policy framework for early intervention, prevention and targeted intervention for children and young people at risk, incorporating key principles that should be reflected in all jurisdictions.
- Work with the Standing Council of Attorneys General to obtain agreement from each jurisdiction to amend legislation where necessary to reflect the principles outlined in the National Strategy.
- Engage with each State and Territory Government to obtain agreement for the National Strategy to guide policy and practice for all Government agencies engaged with children, young people and families who are at risk.
- Establish a monitoring and reporting framework to assess and review the performance of the system in relation to the principles and objectives set by the National Strategy.
- Commission research to identify and promote models of intervention that have proven efficacy – or where local initiatives show promise and would benefit from support in evaluating outcomes to build new evidence, particularly in relation to First Nation communities.

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APPENDIX A

Principles of an effective and humane criminal justice system

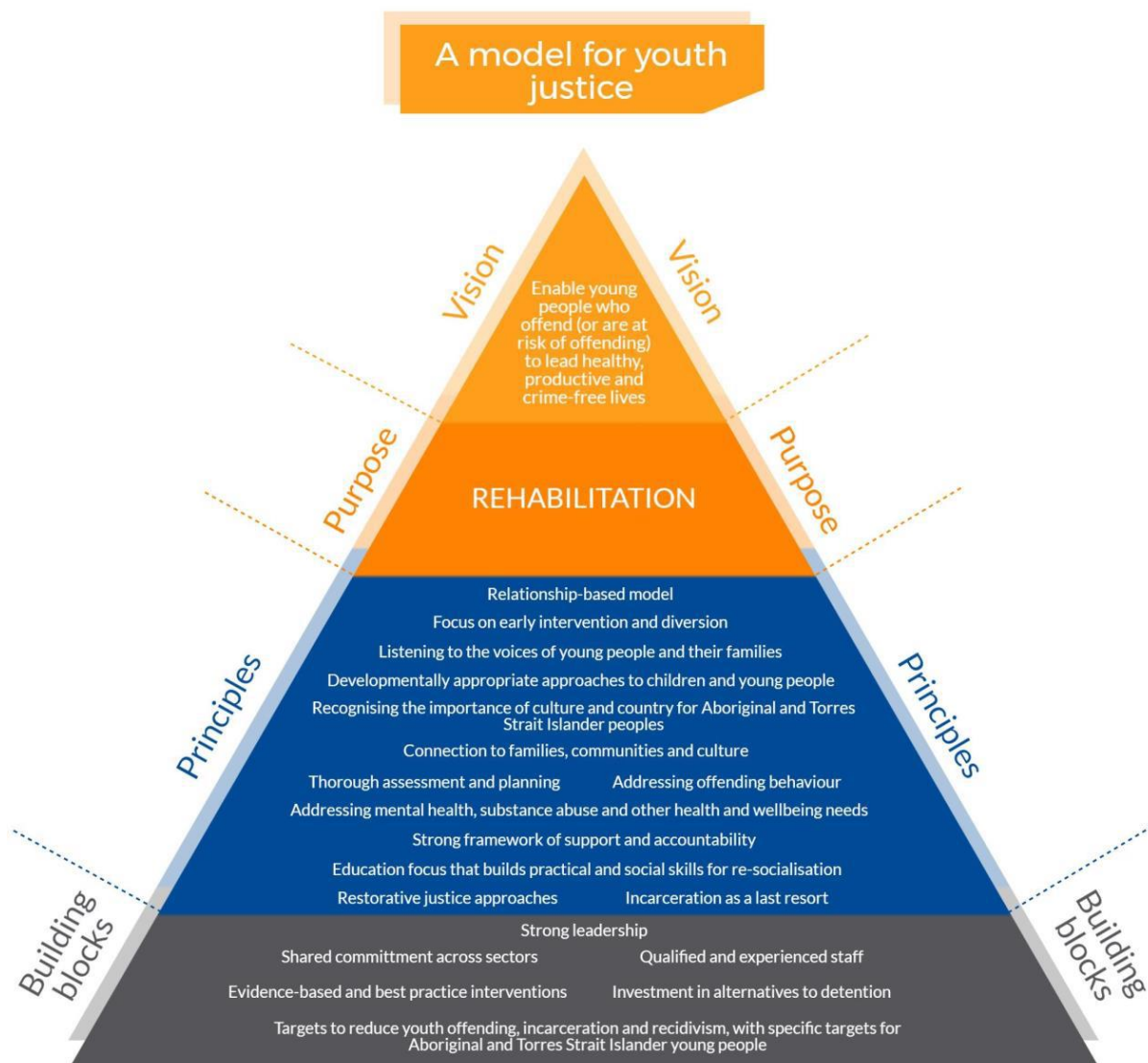
With more than four decades of experience seeking solutions and working with people intersecting with the justice system, as well as their families and communities, Jesuit Social Services calls on Governments and key stakeholders across Australia to adopt and put into action the following key principles for effective and humane justice systems:

- Incarceration as a last resort
- Focus on early intervention and diversion
- Listening to the voices of people and their families
- Developmentally appropriate approaches to children and young people
- Recognising the importance of culture and country for Aboriginal and Torres Strait Islander peoples
- Connection to families, communities and culture
- Thorough assessment and planning
- Addressing offending behaviour
- Addressing mental health, substance abuse and other health and wellbeing needs
- Strong framework of support and accountability
- Restorative justice approaches
- Education focus that builds practical and social skills for re-socialisation.

When people are incarcerated, we must:

- Adopt a relationship-based model across every aspect of operations
- Offer small community-based settings (prioritising normality and ongoing engagement with family and community)
- Facilitate connection with family, community and culture
- Prioritise education and skills for life
- Address offending behaviour
- Address mental health, substance abuse and other health and wellbeing needs
- Focus on re-socialisation, transition and reintegration to the community
- Keep remandees separate from sentenced offenders
- Engage and support staff who have appropriate personal attributes, qualifications and experience to build relationships of trust and deliver on the re-socialisation goal.
- And to achieve all this we need:
 - Strong leadership
 - Shared commitment across sectors
 - Agreed, embedded values and respect for culture and community
 - Evidence-based and best practice interventions
 - Investment in alternatives to detention
 - Qualified and experienced staff
 - Targets to reduce youth offending, incarceration and recidivism, with specific targets for Aboriginal and Torres Strait Islander young people.

APPENDIX B



Detention

Adopt a relationship-based model across every aspect of operations
Dynamic security
Offer small community-based settings (prioritising normality, and ongoing engagement with family and community)
Facilitate connection with family, community and culture
Prioritise education and skills for life Address offending behaviour
Address mental health, substance abuse and other health and wellbeing needs
Focus on re-socialisation, transition and re-integration to the community
Keep remandees separate from sentenced offenders
Engage and support staff who have appropriate personal attributes, qualifications and experience to build relationships of trust and deliver on the re-socialisation goal