



Youth Justice and Child Wellbeing Reform across Australia

Submission for the National Children's Commissioner
Australian Human Rights Commission

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June 2023



Acknowledgement

The submission was prepared on *lutruwita* (Tasmania) Aboriginal land. We acknowledge with deep respect the traditional owners of this land, the palawa people.

The palawa people belong to the oldest continuing culture in the world. They cared and protected Country for thousands of years. They knew this land, they lived on the land and they died on these lands. We honour them.

We pay respects to elders past and present and to the many Aboriginal people that did not make elder status and to the Tasmanian Aboriginal community that continue to care for Country.

We recognise a history of truth which acknowledges the impacts of invasion and colonisation upon Aboriginal people resulting in the forcible removal from their lands.

Our Island is deeply unique, with spectacular landscapes with our cities and towns surrounded by bushland, wilderness, mountain ranges and beaches.

We stand for a future that profoundly respects and acknowledges Aboriginal perspectives, culture, language and history. And a continued effort to fight for Aboriginal justice and rights paving the way for a strong future.

About the Peter Underwood Centre

The Peter Underwood Centre aims to support children and young people to flourish through the transformative power of learning. The Centre was established in 2015 as a partnership between the University of Tasmania and the Tasmanian Government, with the Office of the Governor of Tasmania.

Our focus is on research, partnerships and initiatives that contribute to positive and sustained change in educational outcomes for children and young people, especially in disadvantaged communities. We integrate and connect research and practical support, which leverage each other to provide outcomes that are rich and impactful for children, young people and the wider community.

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Introduction

Submission focus

We thank the National Children’s Commissioner for the opportunity to make a submission for her project on Youth Justice and Child Wellbeing Reform across Australia. We give permission for our submission to be made publicly available. The submission is relevant to Questions 1, 2 and 3 on the Call for Submissions website.

This submission is focused on the role of education in relation to youth justice.

We note the interconnected web of factors associated with young people’s involvement in the youth justice system. Therefore improved support through education is not sufficient. However it is an essential component of reshaping youth justice and associated systems for the benefit of children and young people, as well as the community.

This submission is underpinned by three principles of significance to young people involved in the youth justice system:

- Right to education
- Children First Offenders Second
- Interagency collaboration

For details about these, please see pp. 3-5 in our submission in response to the Tasmanian government discussion paper “Reforming Tasmania’s Youth Justice System”, available here:

<https://www.utas.edu.au/underwood-centre/publications-and-resources/submissions-to-government-inquiries-and-consultations>

Submission sources

This submission is based on the above submission to the Tasmanian government and on the following research publications:

Te Riele, K., Corcoran, T., MacDonald, F., Baker, A. & White, J. (2023). *Incarcerated Young People, Education and Social Justice*. Palgrave. <https://link.springer.com/book/10.1007/978-3-031-23129-2>

MacDonald, F., Te Riele, K., White, J., Corcoran, T., Moylan, P., Baker, A. and Manan, R. (2020). *Educational Transition from Custody*. Final report. Melbourne: Victoria University. Available: <http://vuir.vu.edu.au/40209/> [Funded by the Department of Education and Training, Victoria]]

White, J., Te Riele, K., Corcoran, T., Baker, A., Moylan, P. and Manan, R. (2019). *Improving educational connection for young people in custody*. Melbourne: Victoria University. Available: <https://www.vu.edu.au/sites/default/files/Improving-educational-connection-for-young-people-in-custody.pdf> [Funded by the Lord Mayor’s Charitable Foundation]

Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court. Evaluation of the Education Justice Initiative. Final Report*. Melbourne: The Victoria Institute for Education, Diversity and Lifelong Learning. Available: <https://www.vu.edu.au/sites/default/files/victoria-institute/pdfs/Education-at-the-Heart-of-the-Children%27s-Court-Final-Report-web.pdf> [Funded by Parkville College]

Details for additional sources are provided in footnotes.

Schools in the community

Education is a key social structure in relation to youth justice. Schools “can exacerbate or ameliorate the vulnerability of children” associated with broader societal marginalisation.¹ It is common for young people in youth justice to have had negative experiences of school, including poor relationships with teachers. This tends to be associated with experiences of trauma, especially for ‘dual track’ children who are both in the out-of-home care system and the youth justice system.

Being at school

Schools can only support prevention and early intervention if students are actually there. Unfortunately, children and young people in the justice system commonly have experienced significant absences from school. Absence (for whatever reason) is associated with increased social isolation and reduced academic achievement². Here we highlight three specific ways in which children and young people miss out on school.

1. Reduced access to time at school due to part time enrolment

Part time enrolment can be a suitable option if there is a sound reason why it is in the best interest of the child. However, in practice schools may initiate part-time enrolment for inappropriate reasons³. For example, Aboriginal children in care may be placed on “reduced hours of schooling in response to their trauma-related behaviours and the inability of schools to work with them”⁴.

2. Reduced access to time at school due to suspension and exclusion

Exclusionary school discipline approaches contribute to young people’s criminalisation.⁵ This intersects with low academic achievement, including low levels of literacy⁶, which may lead to ‘challenging behaviours’ in school and subsequent suspensions and exclusions. In turn, the loss of access to instructional time due to such measures is likely to further impair learning.

3. Reduced access to time at school due to being out of education for prolonged periods

Some children and young people miss school for weeks or months⁷. This may be due to “school movement [which] provides an opportunity for the ‘relay baton’ to be dropped if schools are unable to confirm that students have enrolled and are attending in their new location”⁸.

¹ Christle, C. A., Jolivet, K., & Nelson, C. M. (2005). Breaking the school to prison pipeline: Identifying school risk and protective factors for youth delinquency. *Exceptionality*, 13(2), 69-88. (pp.86-87)

² AITSL (2019). *Spotlight: Attendance matters*. <https://www.aitsl.edu.au/tools-resources/resource/spotlight-attendance-matters>

³ Graham, L., McCarthy, T., Killingly, C., Tancredi, H. & Poed, S. (2020). *Inquiry into Suspension, Exclusion and Expulsion Processes in South Australian government schools*. Centre for Inclusive Education, QUT.

⁴ CCYP Victoria (2016). *Always was, always will be Koori children*. <https://ccyp.vic.gov.au/upholding-childrens-rights/systemic-inquiries/always-was-always-will-be-koori-children/> (p. 87)

⁵ Kim, C., Losen, D. & Hewitt, D. (2010). *The school-to-prison pipeline: Structuring legal reform*. NYU Press

⁶ Snow, P. C., & Powell, M. B. (2011). Oral language competence in incarcerated young offenders: Links with offending severity. *International Journal of Speech-Language Pathology*, 13(6), 480-489.

⁷ Robinson, C. (2018). *Outside In: How the youth sector supports the school re-engagement of vulnerable children in Tasmania*. <https://www.anglicare-tas.org.au/research/outside-in-how-the-youth-sector-supports-the-school-re-engagement-of-vulnerable-children-in-tasmania/>

Watterston, J. & O’Connell, M. (2019). *Those who disappear. The Australian education problem nobody wants to talk about*. <https://education.unimelb.edu.au/mgse-industry-reports/report-1-those-who-disappear>

⁸ Watterston, J. & O’Connell, M. (2019). (p. 13) *ibid*

Our research⁹ of about 100 young people appearing before the Melbourne Children’s Court shows:

- 70% had attended four or more schools (including 20% who attended six or more schools);
- 84% had not attended school at all in the month before they met the education support team at the Court. Almost half of these young people were not enrolled in school at all.
- 9% of the young people who were actually enrolled in education had attended school in the week prior to that meeting, and most of those only for a single day.

Implications

- a) Schools need to minimise the use of part-time enrolment and disciplinary absences in response to student behaviours they consider challenging.
- b) School systems / sectors need to support schools to do a), by providing professional learning (e.g. in trauma informed practice), sufficient and appropriate allied professional staff (e.g. social workers, speech pathologists), and communication to the wider community / media about why a) is an important approach.
- c) School systems / sectors need to collaborate to follow up on students with low attendance or who seem to be missing altogether, and then enable these students to be at school.

Enrolment of students who are in the youth justice system

Ensuring that students in the youth justice system are supported to be enrolled in school and that schools are enabled to provide appropriate learning and wellbeing support for these students are the most powerful strategies that the education system can provide. However, 40% of 13-16 year olds in our research¹⁰ were not enrolled in any school at the time they came before the Court.

1. *Informal expulsion*

Formal exclusion is associated with explicit responsibilities for providing appropriate access to learning and arranging a re-entry process or transfer to another school. Informal exclusion, however, does not involve such responsibilities. Students may believe they have been ‘kicked out’, for example if they have been told it would be better for them to leave. In these cases, they may be still formally enrolled at that school but in fact not attend any school.¹¹

2. *Resisting enrolment*

The desire of young people in the youth justice system to engage with education can be met with resistance from the school they hope to attend or return to¹². This highlights the tension between a general commitment to children’s right to education and the right of a specific student who is in the youth justice system to attend a particular school¹³.

⁹ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court*. See page 1

¹⁰ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children’s Court*. See page 1

¹¹ Mitchell, J. (2016). *Out of sight, out of mind? Exclusion and inclusion of students in Victorian schools*.

<https://www.yacvic.org.au/assets/Documents/SUB-Exclusion-and-inclusion-of-students-in-Victorian-schools-2016.pdf>

Victorian Ombudsman (2017). Investigation into Victorian government school expulsions.

<https://www.ombudsman.vic.gov.au/our-impact/investigation-reports/investigation-into-victorian-government-school-expulsions/>

¹² Armytage, P. & Ogloff, J. (2017). Youth justice review and strategy: Meeting needs and reducing offending: Executive summary – July 2017. Victorian Government. <https://www.justice.vic.gov.au/justice-system/youth-justice/youth-justice-review-and-strategy-meeting-needs-and-reducing-offending>

¹³ MacDonald, F. et al (2020). *Educational Transition from Custody*. (p.59) See page 1

Non-government schools have significant legal leeway to refuse enrolment. Government schools also at times resist enrolment, although the reasons given may not adhere to official policy, e.g.:

- indicating the course the student wishes to enrol in is 'full';
- stating that the location the student lives in is outside the school's 'zone';
- arguing that the young person cannot re-enrol because they owe fees.¹⁴

Schools face multiple pressures, not only to offer an inclusive education, but also to achieve high academic outcomes (such as NAPLAN and ATAR results) and provide a safe environment for all students and staff. Balancing various demands can be difficult.

3. Enrolment after custody

Pathway planning for children and young people after leaving custody is an essential aspect of their access to education. Resistance (see 2 above) to enrol a student after custody is difficult to overcome. While schools can be reminded of their legal obligations it is counterproductive to secure enrolment in a school against the wish of key school staff.

It is common for young people to be referred to alternative, 'second chance' flexible learning options (FLOs). Although FLOs have considerable success with marginalised students, they should not be the automatic option for students leaving custody.¹⁵

Useful practical resources to support post-custody transition to education include:

- Transition toolkit 3.0: Meeting the educational needs of youth exposed to the juvenile justice system¹⁶
- Developing and implementing a case management model for young people with complex needs¹⁷
- Parkville College Transition Framework¹⁸

Implications

- a) School systems / sectors need to reward and recognise schools for outstanding inclusion practices (e.g. reduced informal exclusion; welcoming enrolment of students in the youth justice system) just like schools gain recognition for outstanding academic results.
- b) School systems / sectors need to provide access to allied professional staff to provide targeted support for students in the youth justice system, such as school psychologists, school nurses, and Teacher Assistants.
- c) Courts, schools (and other education providers) in the community and schools inside youth custodial centres need to collaborate to enable every child and young person to be enrolled in a school/course that suits their interests and needs.

¹⁴ Te Riele, K. & Rosauer, K. (2015). *Education at the Heart of the Children's Court*. See page 1

¹⁵ McGregor, G., Mills, M., Te Riele, K., & Hayes, D. (2015). Excluded from school: Getting a second chance at a 'meaningful' education. *International Journal of Inclusive Education*, 19(6), 608-625.
<https://doi.org/10.1080/13603116.2014.961684>

¹⁶ <https://files.eric.ed.gov/fulltext/ED577087.pdf>

¹⁷ https://www.researchgate.net/publication/331671024_Developing_and_Implementing_A_Case_Management_Model_for_Young_People_with_Complex_Needs

¹⁸ <https://www.parkvillecollege.vic.edu.au/resources>

Schools inside youth custodial centres

Schools within youth custodial centres provide an opportunity to use engagement with education as a circuit breaker and to help overcome students' previous inequitable educational outcomes and experiences.

Moreover, state and territory governments are responsible for children and young people while they are incarcerated. As a 'responsible parent' they need to ensure that children and young people in prison are able to participate in education at least as well as their peers outside the walls.

In the conclusion to our book¹⁹ we highlight three overall actions required to fulfil these opportunities and responsibilities.

Recalibrating the power balance between security and education

Traditionally, there has been a tension between the purposes of accountability and rehabilitation in custodial youth justice. Although both are aimed (at least partly) at diversion from the criminal justice system and reducing further criminal acts, their focus is very different.

Accountability emphasises the needs of the wider community and focuses on punishment.

Rehabilitation emphasises the rights of the child and focuses on enhancing the child's future life chances. Education is widely recognised as a central component of this, as well as having benefits beyond rehabilitation²⁰.

Too often decisions are made that prioritise security over education in youth custody.

If, in contrast, incarcerated children's and young people's education drives decisions (in both frontline service provision and system-level policies and procedures) this would yield major benefit not only for children and young people but for the wide community too.

Responding to the role of prior disadvantage and trauma

Formulas for what is considered fair distribution vary. Neither the equality of opportunity notion of 'to each person an equal share' nor the meritocratic notion of 'to each person according to merit and effort' is sufficient. Instead, an equity notion along the lines of 'to each person according to need' is required.

This means schools and other services inside youth custody must respond to the role of the prior disadvantage and trauma that most incarcerated children and young people have experienced.

This includes recognising the way in which such experiences play out differently depending on other characteristics, such as health conditions, race and gender – without inscribing deficit views.

¹⁹ Te Riele, et al (2023). *Incarcerated Young People, Education and Social Justice*. See page 1

²⁰ Jesuit Social Services (2013). Thinking outside: Alternatives to remand for children. http://jss.org.au/wp-content/uploads/2015/10/Thinking_Outside_Research_Report_-_Final_amend_15052013.pdf

Victorian Auditor-General's Office (2018). Managing rehabilitation services in youth detention. <https://www.audit.vic.gov.au/sites/default/files/2018-08/20180808-Youth-Detention.pdf>

White et al (2019). *Improving educational connection for young people in custody*. See page 1

Regarding young people in custody as human beings

Youth custodial services, including schools in custody, must regard children and young people in custody as human beings, with all the rights and dignity that entails. This is represented well by the notion of the 'children first, offenders second' model²¹. Unfortunately, too often incarcerated young people are treated as animals²² (Menagh, 2022).

Seeing incarcerated children and young people as humans means seeing them as a whole and unique person with their own experiences, interests, strengths and aspirations – and not merely as an accused youth or young offender.

Implications

- a) Education needs to be prioritised for children and young people in custody.
- b) Provision of education and other services in custody needs to be informed by children's and young people's own previous experiences of disadvantage and trauma.
- c) Children and young people in custody need to be considered and treated as whole human beings, with all the rights and dignity that entails.

In conclusion

Currently across Australia the approach to youth justice is based largely on a law and order model, in which a focus on the sanctioning of behaviour is supplemented with provision of treatment only where security regulations allow.

Ultimately, reform of youth justice will require a move to a more therapeutic model, with education as a key component.

We would welcome the opportunity to discuss the contents of our submission in further detail if that is useful for the Commissioner's project.

²¹ Case, S., & Hazel, N. (2020). Child first, offender second – A progressive model for education in custody. *International Journal of Educational Development*. <https://doi.org/10.1016/j.ijedudev.2020.102244>

²² Menagh, J. (2022, February 10). Perth Children's Court president slams 'dehumanising' conditions in Banksia Hill Detention Centre. *ABC News*. <https://www.abc.net.au/news/2022-02-10/hylton-quail-slams-conditions-banksia-hill-detention-centre/100819262>



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in association with the Office of the Governor of Tasmania.