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YOUTH JUSTICE AND CHILD
WELLBEING REFORM ACROSS
AUSTRALIA

ORYGEN SUBMISSION

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Orygen welcomes the opportunity to provide a submission to the National Children's Commissioner research into Youth Justice and Child Wellbeing Reform across Australia.

ABOUT ORYGEN

Orygen is the world's leading research and knowledge translation organisation focusing on mental ill-health in young people. At Orygen, our leadership and staff work to deliver cutting-edge research, policy development, innovative clinical services, and evidence-based training and education to ensure that there is continuous improvement in the treatments and care provided to young people experiencing mental ill-health.

Orygen conducts clinical research, runs clinical services (including specialist services, forensic youth mental health services, and five headspace centres), supports the professional development of the youth mental health workforce and provides policy advice relating to young people's mental health. Our current research strengths include: early psychosis, mood disorders, personality disorders, functional recovery, suicide prevention, online interventions, neurobiology and health economics.

SUPPORTING YOUNG PEOPLE INVOLVED WITH THE YOUTH JUSTICE SYSTEM

Supporting young people involved in the youth justice system requires intersecting support within the community and justice system. Currently responses to young people who offend 'is divorced – operationally and philosophically – from other mainstream and specialist services'.⁽¹⁾ This has to change. A throughcare approach sees treatment and support for a young person continue from youth justice involvement and into community. See for example, the North Australian Aboriginal Justice Agency's Throughcare Program. This approach would also continue existing treatment and support a young person was receiving prior to justice involvement.

The prevalence of mental ill-health increases the deeper a young person's involvement with the justice system. In Australia, the prevalence among young people increases from 14.4 per cent (of 12 to 17 years olds) in the community, to a third (33 per cent) among young people with prior justice involvement (14 to 17 years) and up to more than four-in-five (83.3 per cent) of young people (14 to 21 years) in detention.⁽²⁻⁴⁾ Suicide risk factors are also more prevalent among children and young people in youth detention compared with the general population.⁽⁵⁾ Data shows that in 2019-20, more than a third of incidents of self-harm and attempted suicide by young people in custody required hospitalisation.⁽⁶⁾

WHAT NEEDS TO CHANGE

There is evidence available to guide governments in the delivery of mental health and psychosocial support to young people with justice system involvement. What is needed is political will and commitment to adequately fund the delivery of these services through an integrated and collaborative model. There is much focus on custodial services and a lack of resources placed in the community to provide support for justice involved young people, both prior the custodial intercept and post-release from custody. Early intervention starts in the community; custody-based services, while critically important, is late intervention.

All young people need support through the developmental and transitional period from childhood to adulthood. This support can come from family, school, and community-based activities and services. Community-based services support young people with social inclusion, education, training and employment participation and physical and mental health. These services are intended to support any young person who could benefit, irrespective of involvement with the justice system.

There are a number of intercept points with the justice system a young person might have, with most occurring in the community.(7) The continuum of care for young people involved with the justice system begins with early intervention in the community, and if necessary, temporarily extends into custodial-based settings and then continues back into community-based services; a process known as throughcare. At every intercept point the justice system response needs to facilitate continued engagement with or access to community-based services.

The singular focus on individual young people ignores the systemic issues that impact communities, families, and young people. The politics of ‘responsibilisation’ absolves government of their role and responsibility. Leadership and collaboration across all three levels of government is required to coordinate comprehensive funding of family resourcing, social inclusion (i.e., community-based sporting and interest activities), education and integration with training and employment and housing.

The expansion of specialist Children’s Courts would also support better outcomes for young people. The magistrate’s and judges in the specialised courts are much better versed in developmental issues and the environmental factors impacting on youth crime. A national review of best practice would provide a framework for Children’s Courts across jurisdictions.

DATA GAPS

There is no national mental health data reporting for children and young people in youth detention. In contrast, (some) mental health data is reported for adult prison populations by the Australian Institute of Health and Welfare (AIHW). The national performance indicator framework for youth justice services does not include a measure for either the assessment of mental health or delivery of mental health services. It does include self-harm and attempted suicide in custody but there are differences in data recording and reporting.(8) Any action to improve data collection should include young people on remand and sentenced to community supervision.

An AIHW feasibility study (2018) considered a national health dataset for justice-involved young people,(9) however, data collection and reporting has not been funded. The National Health and Medical Research Centre has funded a national youth justice data linkage project that aims to better understand the health outcomes of justice-involved young people.(10) This project has considerable potential but is limited to incorporating existing datasets. Without mental health data for children and young people at different intercept points the prevalence and service need cannot be measured.

POLICY DIRECTION

The Australian Government fund a national physical and mental health dataset for justice-involved young people to inform service funding and delivery and to understand long-term health outcomes.

COMMUNITY-BASED SERVICES

Community-based services, that are independent of the justice system should be the foundation for supporting young people. The mental health needs of most young people involved with the justice system can be met in existing primary and specialist services. Existing forensic youth mental health services would continue to provide services as part of a community-based service. A community-based service is best placed to provide continuity of care. If a young person is detained, a community-based service connection would be able to consult with custody-based services to enable continuation of care. With a similar hand-over prior to release from detention to provide throughcare.

Young people who are sentenced to a supervision order are more likely to serve this in the community than youth detention. Most young people sentenced to supervision service this in the community (82 per cent). Data from 2021-22 shows that most young people in detention had not been sentenced (76 per cent) and most of them were on remand (89 per cent). The median length of unsentenced detention in 2012-22 was seven days and 61 days for sentenced detention. The median length of community-based supervision was 173 days (about 25 weeks).(11) Disruption to existing mental health care from short periods of detention highlights the importance of having a consistent community-based approach to their treatment and support.(12)

Service delivery in custody settings should be delivered by community-based services. This model best enables the continuation of care and support into and out of custody. Depending on the jurisdiction these services might be public services or non-government services. This model should be used for primary and specialist mental health, as well as education and training services. Custody-based services

Young people in custody are supposed to receive primary and mental health care equivalent to young people in the community.(13) There are many barriers to achieving this policy intention. These barriers include a repressive, punitive environment; workforce shortages; privatised service delivery; and a lack of coordination with community-based services.

The provision of mental health care in youth detention centres varies between jurisdictions. In some cases (for example, New South Wales) psychologists are employed to practice within detention centres.(14) Alternatively, consultant psychologists (for example, Queensland) are brought in as needed and support for less severe mental illness, such as depression and anxiety, is provided by primary health care services (for example, ACT).(15, 16) The contracting of services used in Victoria includes a specialist forensic youth mental health service.

Support for young people in custody-based settings needs to be delivered through community-based services. Funding separate, dedicated services for young people involved with the justice system reinforces perceptions that specialisation is required and presents barriers to engaging young people. Specialist custodial-based forensic youth mental health services would be a component of a specialist community-based mental health service to enable throughcare.

POLICY DIRECTION

The Australian Government partner with states and territories to establish a model for primary and specialist mental health services to be delivered in youth detention settings by community-based services. The National Partnerships and Project Agreements Federation Funding Agreement – Health provides a mechanism for this policy.

SENSORY MODULATION ROOMS

Improving the custody environment is an essential longer-term objective. In the long run reducing dependence on detention is the best solution to the negative impact detention has on young people. As an interim measure, detention centres could be improved by retrofitting sensory modulation rooms. Sensory modulation rooms are therapeutic settings can support children and young people to self-regulate their emotions and contribute to reduced levels of stress. Evidence from mental health inpatient settings may provide direction for trialling the use of sensory modulation rooms in youth detention.

A systematic review of sensory rooms in adult psychiatric inpatient settings found a lack of evidence for assessing reductions in distress. However, reported experiences from staff and people using the rooms were positive and the rooms ‘appear to improve’ levels of distress.(17) There is less research into the use of sensory rooms in forensic mental health settings. A single site study of sensory rooms in an adult forensic mental health service resulted in a mean decrease in distress.(18) The use of sensory rooms in a youth mental health context can reduce the use of restraint and/or seclusion.

Evident variation in the impact of sensory rooms highlights the need to consider how sensory rooms are implemented, including staff training, and evaluation.(19) This limited evidence supports the need to trial sensory modulation rooms in youth justice settings to determine their efficacy.

A COORDINATED APPROACH

There can be a range of barriers to engaging young people in support services. Flexible, opportunistic service models are required to maximise opportunities to engage and support young people. A case coordinator role is suited to coordinating the range of supports young people can benefit from. This is a specialist role and requires experience working with young people within the broad support sector. Youth services with established connections with local health, housing, education and employment, legal, and justice services are well placed for hosting case coordinators.

Multidisciplinary teams are best placed to support young people with complex needs. Young people can have a combination of support needs, including education engagement, family relationships, emotional and behavioural issues and alcohol and other drug use, and for some of them involvement with the justice system. That justice system involvement is one of many potential support needs makes community-based multidisciplinary teams the best option for these young people too.

Continuity of care is important to maintaining engagement with mental health services and maximising the benefits of this engagement. The same is true for other supports. A case coordinator role supports continuity by providing a regular contact person for both young people and their families and for support services involved in providing services. Should a young person be in detention a case coordinator can liaise with custody-based services to inform treatment planning.

A ROLE FOR THE COMMONWEALTH

Many of the services and supports (including education, vocational training, specialist mental health services) available for young people are responsibility of the states and territories. Youth justice, including police, children's and magistrates' courts and supervision orders are also the responsibility of the states and territories. These responsibilities mean there is a role for the Australian Government in providing independent oversight and accountability in the delivery of youth justice services and protecting young people's rights.

INDEPENDENT MONITORING BODY

Although Australia has ratified the UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment; it has delayed the associated establishment of an independent monitoring body with responsibility for delivering changes necessary to protect children and young people in youth detention (Part IV).(21) National leadership is required to protect the health and wellbeing of children and young people in youth detention and guarantee equivalent availability, access and quality of mental health care.

The Australian Government is required to establish an independent monitoring body with responsibility for delivering changes necessary to protect children and young people in youth detention. This body would ideally sit within the Australian Human Rights Commission. Such a body would be strengthened by including young people with a lived experience of youth detention within its membership, secretariat, advisory board or similar.

POLICY DIRECTION

The Australian Government establish an independent monitoring body required under the ratified UN Optional Protocol to the Convention Against Torture and other Cruel, Inhuman, or Degrading Treatment or Punishment within 12-months.

REFORMING YOUTH DETENTION

Persisting with the youth detention model is not going to solve the systemic issues that contribute to offending behaviour. Building new detention centres based on the same out-dated model is not going to change the experience of young people or staff. The rhetoric of providing trauma-informed care is empty as long as the environments themselves are trauma-inducing. National leadership is required to reimagine a new approach to youth detention and lift it out of the political “tough on crime” cycle. Alternative models exist and have been implemented in culturally similar policy contexts.

In 2010, the Scottish Government reformed the youth justice system to be an early intervention service. The Whole System Approach operates through multi-agency partnerships and employs a three-stage early intervention model with a focus on supporting a young person’s social participation. The Whole Systems Approach included establishing a residence-based alternative to detention. The Scottish Government has published guidance for the implementation of Alternatives to secure care and custody.⁽²²⁾ Since implementation of the new approach to youth justice there have been significant reductions in detention (70 per cent) and court appearances (74 per cent).⁽²³⁾

POLICY DIRECTION

The Australian Government partner with states and territories in a 10-year youth justice reform program. National leadership would deliver universal standards for care and access to services for young people involved in the justice system. The National Partnerships and Project Agreements model already used in cross-jurisdictional areas provides a mechanism for delivering this reform program.

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