Raising the Age of Criminal Responsibility:
There is a better way

October 2019

Jesuit
Social Services
Building a Just Society

Jesuit Social Services: who we are and what we do

Jesuit Social Services has been working for more than 40 years delivering practical support and advocating for improved policies to achieve strong, cohesive and vibrant communities where every individual can play their role and flourish.

We are a social change organisation working with some of the most marginalised individuals and communities, often experiencing multiple and complex challenges. Jesuit Social Services works where the need is greatest and where we have the capacity, experience and skills to make the most difference.

Our services span Victoria, New South Wales and the Northern Territory where we support more than 57,000 individuals and families annually.

Our service delivery and advocacy focuses on the following key areas:

- **Justice and crime prevention** – people involved with the justice system
- **Mental health and wellbeing** – people with multiple and complex needs including mental illness, trauma, homelessness and complex bereavement
- **Settlement and community building** – recently arrived immigrants and refugees, and disadvantaged communities
- **Education, training and employment** – people with barriers to sustainable employment
- **Gender and culture** – providing leadership on the reduction of violence and other harmful behaviours prevalent among boys and men, and building new approaches to improve their wellbeing and keep families and communities safe.
- **Ecological justice** - inviting discussion on what practices, policies and actions can be taken by governments, individuals, organisations and the community services sector within Australia, to build an ecologically just society.

The promotion of education, lifelong learning and capacity building is fundamental to all our activity. We believe this is the most effective means of helping people to reach their potential and exercise their full citizenship. This, in turn, strengthens the broader community.

Research, advocacy and policy are coordinated across all program and major interest areas of Jesuit Social Services. Our advocacy is grounded in the knowledge, expertise and experiences of program staff and participants, as well as academic research and evidence. We seek to influence policies, practices, legislation and budget investment to positively influence people's lives and improve approaches to address long term social challenges. We do this by working collaboratively with the community to build coalitions and alliances around key issues, and building strong relationships with business and government.

Our Learning and Practice Development Unit builds the capacity of our services through staff development, training and evaluation, as well as articulating and disseminating information on best practice approaches to working with participants and communities across our programs.

We acknowledge the Traditional Custodians of all the lands on which Jesuit Social Services operates and pay respect to their Elders past and present. We express our gratitude for their love and care of people, community, land and all life.

Raising the age of criminal responsibility

Children belong in school, not in prison. But across Australia, the minimum age of criminal responsibility is just 10 years, meaning that primary school age children can be brought before the court, sentenced and put in prison.

When a child causes harm, how we respond can dramatically affect the likelihood of reoffending. We know that young people who have early interaction with the criminal justice system are more likely to be drawn back in later in life.[1] When children cause harm, we have a window of opportunity to respond in a way that sets them on a different path and gets them back on track. There is a better way to respond. It's time for all Australian governments to raise the age of criminal responsibility. Raising the age of criminal responsibility does not mean that there are no consequences for children. On the contrary, it's about holding them to account the *right way*. We must remove the lens of justice and criminality when we respond to the harmful behaviour of children under 14, and look seriously at the underlying factors in a young person's life.

> **Experts maintain that children between 10 and 14 are not developmentally mature enough to be fairly tried in the criminal justice system.[2]**

Leading medical bodies, including the Australian Medical Association, the Royal Australiasian College of Physicians and the Australian Indigenous Doctors' Association are calling to raise the age. Research into brain development consistently shows that young people lack the ability to make comprehensive judgements,[3] and that the prefrontal cortex of the brain, which is responsible for impulse control, planning and decision-making, is not fully developed until roughly 25 years of age.[4] As a community, we recognise this in other contexts; for instance, young people are not allowed to vote or drink alcohol until they are 18, and VicRoads recognises that children up to 12 years old still require supervision when crossing the road.[5] Moreover, brain development can be affected by maltreatment and exposure to trauma and violence.[6]

> **Most children involved with the justice system have faced multiple layers of complex disadvantage in their young lives, in circumstances beyond their control.**

Many have had contact with child protection services, have mental health problems, or experience cognitive difficulties. Most young people in the justice system are themselves victims of trauma, abuse or neglect,[7] and children in contact with the justice system are often victims of crime themselves.[8] Our current approach to youth justice fails to respond to these issues in an effective way. Raising the age of criminal responsibility allows us to use therapeutic responses to properly address the factors that have led to a child's offending.

A new approach will benefit all children under 14, and especially Aboriginal and Torres Strait Islander children. Aboriginal and Torres Strait Islander young people in Victoria are 12 times more likely than non-Indigenous young people to be detained.[9] Aboriginal and Torres Strait Islander peoples continue to experience the ongoing impacts of colonisation, the trauma of the Stolen Generations, and institutional and systemic racism. The over-incarceration of Aboriginal and Torres Strait Islander children and young people is both an outcome of this marginalisation, and simultaneously serves to exacerbate it. Raising the age of criminal responsibility will reduce the likelihood of Aboriginal and Torres Strait Islander children becoming entrenched in the justice system and enable and empower Aboriginal families, communities, and organisations to support children in culturally safe and appropriate ways.

Addressing children's behaviour is about looking at its causes. When a child causes harm or breaks the law, it can also be a sign that it is time to fully assess the needs of their family as well. Evidence shows that interventions that work with families are more effective than individual-focused responses in preventing reoffending.[10] Raising the age of criminal responsibility involves recognising that children in contact with the law have often faced the toughest circumstances, and that the safety net of systems that should have caught and supported families and children has failed. Welfare-based responses to offending prioritise therapeutic interventions that meet the needs of the child, such as health and mental health care, support to reengage with school, and drug and alcohol rehabilitation support. It also involves investing in social supports for children and their families, providing access to safe and appropriate housing and reconnecting children to culture, community and education.

> **By focusing on the needs and developmental neurological stage of the child, we reduce the likelihood of further harm to others and we stop a cycle of justice involvement before it starts.**

As the Victorian Government embarks on large-scale reforms to youth justice legislation and governance, raising the age of criminal responsibility must be a priority.

Raising the age of criminal responsibility – international evidence

Internationally, strong systems support children in trouble in meaningful and holistic ways. These examples show us that raising the age of criminal responsibility is possible.

Australia is lagging behind other jurisdictions in our protection of the rights of children. An analysis of 90 jurisdictions found that an age of criminal responsibility of 10 was young in comparison to the most common and international median of 14 years old.[11] Elsewhere, the age of criminal responsibility is higher:

Minimum ages of criminal responsibility around the world

10	Australia
12	Belgium, Canada, Israel, Netherlands, Scotland
14	Austria, Germany, Italy, Japan, Spain
15	Denmark, Finland, Iceland, Norway, Sweden, Greece
16	Portugal

Source: AIHW, Youth justice in Australia 2017-18

The UN Committee on the Rights of the Child maintains that 'a minimum age of criminal responsibility under the age of 14 years is considered…not to be internationally acceptable'.[12]

Similar jurisdictions around the world demonstrate that there are effective ways to address anti-social or harmful behaviour, using welfare-based interventions as the primary response for children in trouble. Some elements of overseas systems can be utilised in a model suitable for the Australian context.

When a young person causes harm and has contact with the police in the first instance, strong systems of diversion direct children out of the quicksand of criminal justice. For instance, in **New Zealand**, police divert the majority of young people away from further contact with the justice system – over 75 per cent of young people in contact with the police are funnelled out of the system through warnings or diversion.[13] The equivalent figure in Victoria is 56 per cent.[14] For low-level offending, children are supported in their communities, and may undertake an Alternative Action Plan, which might include reparations for damage, community work, or counselling.[15]

In the **Netherlands**, children under the age of 12 cannot be prosecuted for criminal offences. If children do come into contact with the police, the police confer with their parents or refer them to the Youth Care Agency, a child welfare body.[16]

For children who are not diverted, appropriate mechanisms support children to address their needs. In **New Zealand**, Family Group Conferences use restorative practice and are a mainstay of the system, bringing the young person together with their family, lawyers, social workers, teachers, health workers, and victim. The young person and their support team develop a plan to address the harm caused to the victim and stop re-offending in future. This might include better engagement in education, community, or addressing needs like mental health or drug and alcohol problems.

Alternatives overseas

New Zealand	Family Group Conferences
Scotland	Children's Hearings System
Sweden	Best interests of the child ensured through legislation – interventions should be based on the needs not the actions of the child
Belgium	
Spain	

A similar approach is taken in **Scotland**. When children cause harm, they are referred to the specialised Children's Hearings System. The central principle of the Children's Hearings System is the philosophy that 'deeds are symptomatic of needs'. Children's hearings consider the welfare of the child and their best interests above all else when making decisions for further intervention. Responses are centred on the physical, emotional and educational welfare of the child, and not punishment. Scotland raised the age of criminal responsibility from eight to 12 in 2018. While children under 12 will continue to be heard in the Children's Hearings System, children aged eight to 11 will no longer be referred on the grounds of having committed an offence – so while a young person's needs and behaviour are dealt with in targeted and intensive ways, no criminal justice response is taken.[17]

The principle of the 'best interests of the child' is enshrined in many jurisdictions. In **Belgium**, **Sweden** and **Spain** legislation states that interventions should be based on the needs, not the actions, of the child. In **Belgium**, this provision means children are protected from formal punishments before the age of 16 as it would contradict their welfare and best interests. In **Spain**, a team reports to the presiding judge on the child's best interests, and the judge is then compelled to follow their expert recommendations.[18]

Raising the age in Victoria – a snapshot of children in contact with the justice system

Most children and young people do not offend, and the number of children and young people sentenced in the Children's Court is declining: the number of children sentenced annually fell by over two-thirds between 2008 and 2017.[19]

On the next page is a snapshot of the data relating to offending and justice supervision of children under 14 in Victoria. It shows us children under 14 account for only a small proportion of alleged offenders in Victoria, and the majority of their offending is not within the most serious offending categories. This reflects research into the profile of youth offending in Australia – children and young people tend to commit crime in groups and in public areas, close to where they live. Offences are often attention-seeking, as well as episodic, unplanned and opportunistic.[20]

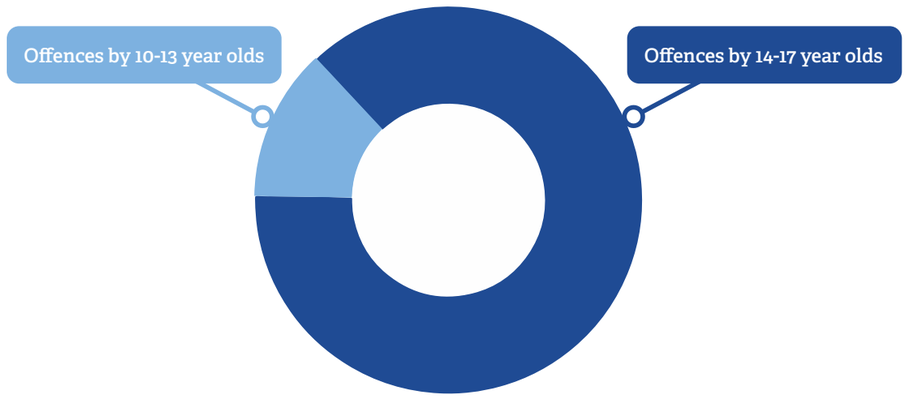
The snapshot also shows us that children under 14 make up only a small proportion of the youth justice system. On an average day in 2017-18, just 2.3 per cent of children and young people under youth justice supervision were children under 14. Throughout 2017-18, 26 children under 14 were detained in Victoria – the equivalent of roughly one primary school class.

Though there are few children under 14 in detention, the impacts of this detention have serious social consequences in the long-term. Research undertaken by Jesuit Social Services in 2013 found that children who come into contact with the justice system at a younger age are more likely to commit multiple offences.[21] This has been reinforced by Sentencing Advisory Council research, which has shown that "the younger children were at their first sentence, the more likely they were to reoffend generally, reoffend violently, and continue offending into the adult criminal jurisdiction":

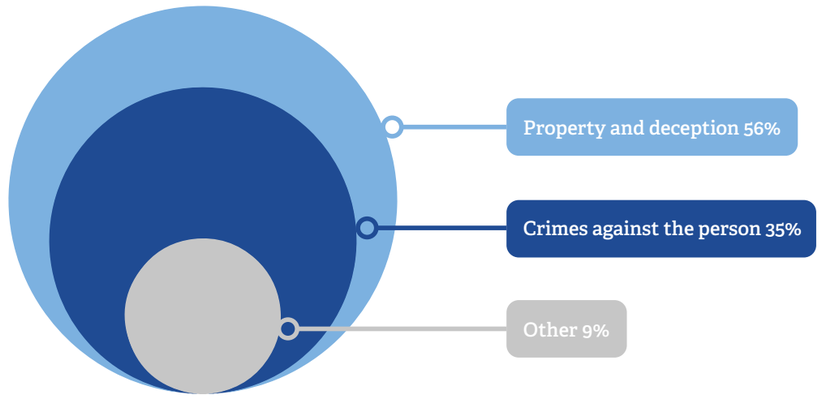
- Children who were first sentenced aged 10–13 had particularly high reoffending rates, with over 80 per cent reoffending and over 60 per cent reoffending with an offence against the person.
- Three-quarters of the children who were first sentenced aged 10–12 continued offending into the adult criminal jurisdiction, and 36 per cent were sentenced to a term of adult imprisonment before the age of 22.[22]

All this suggests that early contact with the justice system does not promote community safety. There is a better way to work with children who cause harm through targeted and individualised responses to this small cohort.

The majority of youth offending in Victoria is not attributable to children under 14.



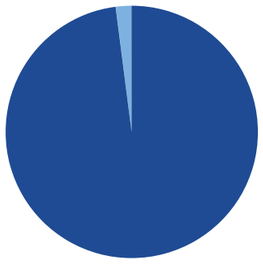
In the year ending June 2019, there were 18,783 alleged incidents recorded for youth offenders aged between 10–17 years – **13 per cent of those incidents were recorded for 10–13 year olds**[23]



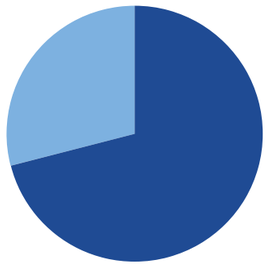
In the year ending June 2019, most alleged offender incidents involving children aged 10-13 were **property and deception offences**[24]

The majority of offences committed by children under 14 are **not crimes against the person**, but property and deception offences (including arson, property damage, burglary/break and enter, theft, and deception rather than assault, sexual offences, robbery, stalking and harassment, or dangerous and negligent acts endangering people).

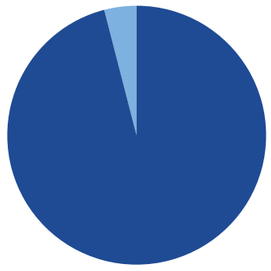
Across Australia, children under 14 are only a small proportion of all children under justice supervision.



There were 1,033 children and young people under supervision on an average day, of which **2.3 per cent were children under 14** in 2017-18[25]



On an average day in 2017-18, 29 per cent of children aged 10-13 under supervision were Aboriginal and Torres Strait Islander[26]



In 2017-18, there were 716 children and young people in detention, of which **26 were children under 14**[27]

Of the **438 children aged 10-13** first sentenced or diverted in the Children's Court in 2016-17:

1 in 2 were the subject of a **report to child protection**

1 in 3 were the subject of a **child protection order**

1 in 3 experienced **out-of-home care**

1 in 4 experienced **residential care**[28]

Aboriginal and Torres Strait Islander young people are overrepresented in this cohort.

Children under 14 involved in youth justice are more likely to have had contact with children protection services.

Given that the number of children under supervision is so small and they are often the most vulnerable in our community, it raises the question – what is a more effective response for this cohort of highly vulnerable children?

A plan for a better system

Principles for responding to children under 14

This plan presents a model that looks to prevent harm, promote accountability, and provides support for children and their families to get back on the right track. First, it outlines the five key principles that should underpin our response to children who engage in harmful behaviour. Then, it describes three levels of response - prevention and early intervention, responding to low level social behaviour and responding to serious anti-social behaviour. Finally, it describes specific responses to very serious violent behaviour that are separate to the way the system would respond to every child.

Once the age of criminal responsibility has been raised, this plan outlines how we can:

- Establish community-wide systems of support for prevention and early intervention through:
  - Strengthening universal systems like housing and education, and ensuring stronger health equity
  - Targeted and place-based approaches to addressing disadvantage
  - Further enhancing maternal-child health and early childhood support and education, building on investment already being made in this space
  - A culturally strengthening approach for Aboriginal and Torres Strait Islander communities
  - Reducing the number of children, including those in child protection and out-of-home care, who are facing disadvantage to reduce their risk of justice involvement in the first place
  - Delivery of community education and activation programs, like *Modelling Respect and Equality (MoRE)*, to support community-driven cultural change to challenge harmful masculine stereotypes by working with people who can positively influence boys and men such as teachers, social workers and sports coaches.
- Support families at the first sign of low-level antisocial behaviour by:
  - Focusing on the needs of children and their families when children engage in harmful behaviour
  - Making restorative justice approaches and diversion the default option
- Ensure that children are held accountable for more serious antisocial behaviour through mechanisms such as:
  - Children's Hearings model, as seen overseas
  - Specialised responses to adolescent family violence
  - Evidence-based interventions and approaches such as Jesuit Social Services' *Our Way of Working* recommended by Armytage and Ogloff's *Youth Justice Review and Strategy*, and family-based therapy models.
- A specialised and targeted response for those rare cases of very serious violent behaviour, including:
  - Wrap-around support in small, deeply therapeutic facilities with four to six beds with well-trained and supported multidisciplinary staff.

Principles underpinning the treatment of children under 14

Children are distinct from adults. They cannot be held criminally responsible in the same way as adults.

Children's behaviour must be met with restorative, not punitive responses.

Children's needs should be prioritised over their deeds.

Aboriginal children, families and communities must be supported and strengthened. Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations should deliver services wherever possible to Aboriginal children and families.

The best place for a child is with their family, extended family, or community.

Prevention and early intervention:

This reduces the number of children facing disadvantage to reduce their risk of justice involvement in the first place, and supports families at first signs of trouble.

Responses to low-level anti-social behaviour:

If a child under 14 causes harm or comes into contact with police, these responses divert children out of further harmful behaviour, working with families and taking a therapeutic and restorative approach.

Responses to serious anti-social behaviour:

Hold children who use violence or cause serious harm to account and promote community safety by responding effectively to the needs of the child and their family through intensive, evidence-based, therapeutic interventions and forms of supervision.

Responses to very serious violent behaviour:

For the small number of children who are at high risk of causing serious harm, a small facility staffed with multi-disciplinary specialists supervising children in an intensely therapeutic environment.

Raising the age – our plan in depth

Principles for responding to children under 14

These principles relate to the treatment of children under 14 and must underpin all services that work with them. These are not new – they are grounded in and based on those laid out in the United Nations Convention on the Rights of the Child (UNCRC), to which Australia is a signatory and reflected in Australian law (such as in Victoria's Children Youth and Families Act 2005 and the Victorian Charter of Human Rights). These principles are all of equal importance.

The UNCRC:

- Article 3, (1): In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.
- Article 37, (c): Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age.

The Children Youth and Families Act (Vic):

- S10, (2): When determining whether a decision or action is in the best interests of the child, the need to protect the child from harm, to protect his or her rights and to promote his or her development (taking into account his or her age and stage of development) must always be considered.
- S10, (3): in determining what decision to make or action to take in the best interests of the child, consideration must be given to the following, where they are relevant to the decision or action
  a. the need to give the widest possible protection and assistance to the parent and child as the fundamental group unit of society and to ensure that intervention into that relationship is limited to that necessary to secure the safety and wellbeing of the child;
  b. the need to strengthen, preserve and promote positive relationships between the child and the child's parent, family members and persons significant to the child;
  c. the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community.

The Charter of Human Rights and Responsibilities Act 2006 (Vic):

- S23, (3): A child who has been convicted of an offence must be treated in a way that is appropriate for his or her age.
- S25, (3): A child charged with a criminal offence has the right to a procedure that takes account of his or her age and the desirability of promoting the child's rehabilitation.

The Northern Territory Royal Commission:

- Chapter 25: (Citing the Beijing Rules) Any decisions concerning a child or young person are to be made in the best interests of that child or young person, with youth justice processes to be aimed at rehabilitation and wellbeing.
- Chapter 39, Principles of reform of the child protection system: Child focused: based on a child-centred belief that every child has the right to a safe passage through childhood and the right to grow in an environment free from harm. The child's needs and welfare, the best interests of the child, are the primary concern and the primary focus of practice.
  - Centrality of the family and community: acknowledgment of the centrality of the family and community in the present and ongoing life of the child
  - Early support: support for children and families available and accessible as early as possible, oriented towards prevention
  - Community based: with the meaningful engagement and participation of families, communities and organisations in decisions that affect their lives and the services delivered to them
  - Evidence-based: strategies, services and programs based upon the latest knowledge, from research and through consultation with local communities about what works and what doesn't work
  - Locally tailored: solutions tailored to meet local problems and needs, identified by and developed with local communities.
  - An understanding that adult adversity and problems result in disruption, distress and trauma for children. Services for adults must acknowledge and be prepared to deal with the effect of adult problems on the lives of children.

Children's needs should be prioritised over their deeds.

- Children's behaviour is the product of their environment/ circumstances. As such, their needs and welfare must be the primary (if not sole) basis for our response.

Children's behaviour must be met with restorative, not punitive responses.

- Restorative approaches prioritise healthy relationships and accountability over retribution. This framework must be the basis for responses to harmful behaviour that children perpetrate.

Children are distinct from adults. They cannot be held criminally responsible in the same way as adults.

- Children are distinct from adults in their brain development and therefore in their moral culpability for their actions.
- Because children are distinct from adults, responses to their actions must be different to those taken when adults offend.

The best place for a child is with their family, extended family, or community.

- This provides continuity, stability, connection to structures like school, and connection to culture.
- When their immediate family is not the safest place for them, children must be placed with kin or community where possible.
- Aboriginal family structures must be respected and included as part of this framework.

Aboriginal children, families and communities must be supported and strengthened. Aboriginal Community Controlled Organisations and Aboriginal Community Controlled Health Organisations should deliver services wherever possible to Aboriginal children and families.

- Aboriginal children have the right to live and thrive within their families and communities.
- An understanding of the history of child removal, cultural disconnection and the impacts of intergenerational trauma must inform any response to Aboriginal children under 14 and their families.

Raising the age: our plan in depth

Responding to the needs of children under 14

This section outlines the graduated responses involved in working with children under 14 who engage in harmful behaviour.

Prevention

AIM: Reduce the number of children facing disadvantage. This reduces their risk of justice-involvement in the first place.

WHAT:

- A place-based approach to addressing entrenched disadvantage.
- This would involve a whole-of-government justice reinvestment approach, particularly investing in areas of locational disadvantage.
- Holding universal systems of support to account.

HOW:

- Reinvesting the justice budget with a focus on universal services, holding them to account to ensure some children and families do not continue to fall through the cracks.
- Maternal-child health (with emphasis on the first 1000 days) – strengthening assertive outreach for vulnerable parents with a 'step-up/step-down' model of service delivery to recognise and respond to the needs of parents in the early days of a child's life.
- Schools – creating community hubs in schools, where services are centralised. This includes allied health personnel (social workers, speech pathologists, occupational therapists) who can support families when problems are identified.
- Strengthening universal systems of housing, health and mental health support – supporting parents to provide a safe environment for their children.
- Addressing harmful cultures of masculinity - working with men and boys from a young age to promote healthy ideas about what it means to be a man, and identifying when young boys are using physical (or other) violence in school.
- Equip influencers – such as school teachers, social workers, counsellors and sports coaches – with an awareness of how expectations regarding what it means to be a man impact behavior, including the provision of tools to engage with men and boys to positively shift attitudes.
- Supporting Aboriginal communities – community control, agency, autonomy.

Early intervention

AIM: Support families at first signs of struggle.

WHAT:

- Supporting children and families facing difficulties with services that address the needs of the child and their family, and the needs of their community.
- An approach which strengthens families and supports children to engage in pro-social behaviour.
- This could be at a stage when children are showing signs of problematic behaviour, or it could be related only to family needs.

HOW:

- Equip teachers and schools to identify warning signs (such as neglect), indications of violent behaviours, and impacts of trauma, and provide them with better options for working with children. Target specific programs and services for children and families such as **Navigator** and **Before it Starts** to keep children engaged in school as a protective factor.
- Schools as hubs to refer families to services like mental health, drug and alcohol support for families and children, housing support, linkages with Targeted Care Packages, parenting programs, interventions which address contexts of family violence.
- Taking a culturally strengthening approach – ownership over intervention from Aboriginal communities and Aboriginal Community Controlled Organisations, e.g. Barreng Moorop model.

Children involved with child protection and out-of-home care

AIM: Keep children placed in out-of-home care out of youth justice.

WHAT:

- Given that a large cohort of young people are involved in both the child protection and the youth justice systems, before they turn 14 or after, we must give specific attention and support with respect to education, trauma-informed care, access to therapeutic services, and restorative approaches to conflict resolution between children and carers/peers which are adequately resourced.
- There is also a need to better equip out-of-home care staff to work with children in trauma-informed ways.

Low level anti-social behaviour

AIM: Remove the 'justice lens' and look at the needs, not the deeds, of the child. Children under 14 who cause harm must be diverted out of further harmful behaviour by taking a therapeutic and restorative approach. This may be at the stage of police contact.

WHAT:

- When children engage in harmful behaviour, it is reflective of the needs of the child not being met. When a child causes harm, their needs and welfare must be at the forefront of the response.
- At this stage, children and families must be directed back toward services and support systems – such as those outlined in 'early intervention' above.

HOW:

- Thorough assessment and referral that addresses the needs of the child and family - it is at this stage that a specific plan for the individual child/family/carer/ community is devised through thorough assessment by experts, through a panel or a team.
- Restorative approaches (including group conferencing) to encourage responsibility and accountability for actions. However, this must be worked through without court or legal intervention – should be delivered as part of a holistic response by community services organisations. It should be culturally specific and informed by understandings of gender-based attitudes/social expectations.

Serious anti-social behaviour

AIM: Hold children who use violence or cause serious harm to account and promote community safety by responding effectively to the needs of the child.

WHAT: Intensive, evidence-based, therapeutic interventions and forms of supervision.

HOW:

- In the event that police must respond to an incident relating to a child under 14, there must be better options available to work with children and families where harm has occurred. At present, there is a lack of suitable options for police that keep children and families safe and prevent further harm.

At the stage of police contact or involvement:

- A range of options should be made available to police, including but not limited to:
  - Specially trained police readily available in each unit to respond to call outs where children are involved, with social workers working alongside police.
  - Upskilling police more generally to respond to the behaviour of young children.
  - Places for temporary supervision, staffed with qualified and trained workers, close to home and community to house children overnight before community services can be involved through afterhours support and assertive outreach.

Escalation to more intensive models of accountability and support:

- Restorative justice conferencing, accompanied by ongoing support (e.g. case management)
- Children's Hearing System (as per Scotland's model)
- Intensive, dedicated education and support
- Continue to implement restorative responses, including group conferencing.
- Multiple and Complex Needs Initiative approach
- Evidence-based interventions and approaches such as Jesuit Social Services' Our Way of Working, and where appropriate, family-based clinical models.

Very serious violent behaviour

Recognising that these cases are rare, that only a few arise in a given year, they should not dictate what happens to the rest of the cohort of children under 14.

WHAT: Children who cause serious harm and/or pose considerable risk

HOW:

- Restorative justice approaches that ensure children responsible for harm understand the impacts of their behaviour in full.
- In this circumstance, wrap around support may be needed: e.g. small-scale, 4-6 bed facility with trauma-informed, well-trained multi-disciplinary staff and access to education, allows children to be supervised in an intensely therapeutic environment.
- However, this supervision should be entirely oriented toward working with the child in a therapeutic way, with all efforts geared toward their rehabilitation and eventual return to the community.
- Children would undergo thorough assessment to ascertain their specific needs.
- This intervention would be reserved for rare cases where no other options are suitable or available, and would be determined by a panel of experts (i.e. in the mode of Children's Hearings).

Explanation of approaches

This section explains some of the responses outlined in the previous section, and provides detail on implementation.

Prevention

AIM: Reduce the number of children facing disadvantage. This reduces their risk of justice-involvement in the first place.

WHAT:

- A place-based approach to addressing entrenched disadvantage.
- This would involve a whole-of-government justice reinvestment approach, particularly investing in areas of locational disadvantage.
- Holding universal systems of support to account.

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Early intervention

AIM: Support families at first signs of struggle.

WHAT:

- Supporting children and families facing difficulties with services that address the needs of the child and their family, and the needs of their community.
- An approach which strengthens families and supports children to engage in pro-social behaviour.
- This could be at a stage when children are showing signs of problematic behaviour, or it could be related only to family needs.

Universal systems of support:[29]

- Given what we know about the links between disadvantage and youth offending, universal systems such as education and housing must be appropriately resourced so that all children and their families have access to the basic support they deserve. This means schools, housing and healthcare for children and families.
- Schools can be the centre-point of family and community engagement in services. For example, the Doveton model.
- Young people must be supported to stay engaged with school when initial signs of disengagement emerge. There is a link between school disengagement and justice involvement - the Youth Parole Board annual survey of 226 young people involved with Youth Justice in 2017, 65 per cent had previously been suspended or expelled from school. Jesuit Social Services delivers casework and support to disadvantaged young learners as part of the Victorian Government's *Navigator* initiative. *Navigator* works with disengaged learners aged between 12 and 17 to engage with them and their support networks to return them to education or training. Re-engaging vulnerable young people in educational, learning and employment pathways gives them the foundational skills and opportunities they need to flourish. The program's work includes the development of individualised learning and cultural plans, and restorative practice including therapeutic and practical support. **We recommend the Victorian Government lower the age of eligibility for Navigator to 10.**
- There is also an urgent need for **investment in public and social housing.** Increase access to social housing and build at least 3,000 new public housing properties each year over the next four years and invest in support for individuals with multiple and complex needs. Ensuring accommodation for families is the first step in creating the right home environments for children and addressing other aspects of concern in a child's life.
- A considerable proportion of justice-involved children and young people have alcohol and other drug related misuse or dependence issues, and for many these issues are directly associated with their anti-social behaviour. Alcohol and other drug misuse problems are best dealt with through a health lens. For children under 14 with alcohol and other drug needs, this would require both a **treatment and harm minimisation** approach, prioritising the health and wellbeing of children and young people.

Place-based approaches:[30]

- In addition to these universal systems, attention must be focused on the needs of particular communities experiencing long term, entrenched and complex disadvantage.
- Jesuit Social Services' experience over several decades delivering community development work in some of the most marginalised communities in Australia – along with our series of Dropping off the Edge research reports – has demonstrated the concentrated and overlapping nature of disadvantage. For example, the fourth Dropping off the Edge report, released in 2015, found that complex and entrenched disadvantage continues to be experienced by a small but persistent number of locations in each state and territory across Australia. The report identified concentrated disadvantage across a broad variety of locations, from remote and rural communities to regional and metropolitan areas.
- **Place-based approaches empower communities to develop and deliver local solutions by bringing together residents, community organisations, businesses, government and public services to design and implement innovative solutions to complex social issues specific to their community, drawing on local strengths, opportunities and goals.**
- Place-based approaches focus on the causes rather than the consequences of entrenched disadvantage, embracing prevention and early intervention in an effort to resolve issues before they escalate.
- There are confirmed links between complex and entrenched community-level disadvantage and involvement in youth justice. Investment in place-based approaches takes a justice reinvestment approach, focusing resources on targeting the drivers of youth offending.

Maternal-child health:[31]

- The first years of a child's life are critical for their development. Research suggests that unidentified Foetal Alcohol Spectrum Disorders (FASDs) are highly prevalent amongst young people in detention, especially for Aboriginal and Torres Strait Islander young people. This demonstrates the need for stronger prenatal support for mothers and families.
- The first 1000 days of a child's life are particularly critical - there is a window of opportunity from a woman's pregnancy to a child's second birthday when nutrition has a long-term impact on the future health and development of both children and societies. Poor nutrition during early life is well recognised as having the potential to cause irreversible damage to a child's neurological, immune and physical development.
- High quality early childhood education has a substantial, positive impact on school outcomes for all children. High quality early childhood education is also linked with higher levels of employment, income and financial security, improved health outcomes and reduced crime.
- In 2015, children living in the most socioeconomically disadvantaged locations in Australia were twice as likely as those from the least disadvantaged areas to be developmentally vulnerable on one or more domains, and three times more likely to be developmentally vulnerable on two or more domains. **Investment in early childhood development and health** is the most cost effective strategy for the government to tackle disadvantage, and we commend the Victorian Government's significant investment in this space.

Explanation continued

A culturally strengthening approach for Aboriginal communities:

- **Investment and resourcing of Aboriginal Community Controlled Organisations to deliver culturally appropriate, family-centred programs for Aboriginal and Torres Strait Islander children and families when signs of need emerge.**
- Recognising the need to divert vulnerable children away from the youth justice system, Jesuit Social Services delivered the Barreng Moorop program in partnership with the Victorian Aboriginal Legal Service (VALS) and the Victorian Aboriginal Child Care Agency (VACCA). The program is funded by the Commonwealth Government, and in 2017 was transitioned over to VACCA to administer and run the program, with VALS and Jesuit Social Services remaining engaged as partners.
- Barreng Moorop works with 10-14 year old children, their siblings and their families residing in the North and West metropolitan regions of Melbourne who intersect the criminal justice system. The program provides a culturally responsive and trauma-informed service to divert young Aboriginal people away from the criminal justice system.
- Barreng Moorop works with the whole family and community (where appropriate) to provide a wrap-around response, understanding the composition of Aboriginal families, in which the extended family is the norm. The responsibility of child care and rearing is shared amongst a range of family members with, in many cases, a multi-generational core of kin providing primary care. In response Barreng Moorop works with, and provides support to, family members with the focus of using family, community and culture as a protective factor to divert young people away from the criminal justice system.

Restorative practice for boys who perpetrate violence in the home:

- Jesuit Social Services uses its experience delivering Youth Justice Group Conferencing to work with adolescent boys who perpetrate violence in the home. Commencing in early 2018, Jesuit Social Services' The Men's Project has partnered with The Children's Court of Victoria to pilot the Restore program. This pilot is being evaluated by experts at the University of Melbourne.
- This program was developed in response to an identified absence of interventions for adolescent perpetrators in the Family Division of The Children's Court. Restore delivers an effective intervention which applies restorative practice principles and offers a Family Group Conference process for civil cases involving young people who are using family violence. It assists the family member victims and adolescent perpetrators to address the harm caused by family violence and prevent further harm being caused.
- **This program should be expanded for children under 14, to work with children who use violence in the home.**

Out-of-home care:[32]

- Children and young people with out-of-home care experience are overrepresented in the youth justice system – nearly one in six sentenced or diverted children have experienced out-of-home care. Children and young people involved with youth justice have been identified as having high rates of complex trauma experience.
- Too often, when conflict or challenging behaviour occurs in out-of-home care, the default response is to involve police, which leads to the criminalisation of these children.
- Complex trauma has long-lasting effects on children and young people. Trauma-informed practice and services are sensitive to these impacts, recognising that impulsivity and adverse reactions may be the result of trauma in children and young people in care. Trauma-informed practice is underpinned by safety, trustworthiness, choice, collaboration and empowerment.
- **Restorative approaches to conflict resolution between children and their peers or carers in out-of-home care** creates safer environments and avoids the entrenchment of vulnerable children in a cycle of justice-involvement.

Driving cultural change in relation to gender and preventing violence (Modelling Respect and Equality):

- *Modelling Respect and Equality (MoRE)* was developed and is delivered by The Men's Project to support people who work with men and boys.
- *MoRE* promotes social change across the community by fostering peer leadership and thus addressing the culture that underpins gender inequities and the associated harms experienced by both women and men, working to create healthy, respectful and thriving boys and men.
- The program helps build awareness, knowledge, skills and confidence to model and promote respect and equality. It includes training and a period of supported project work with a community of practice, which equips participants (Including school teachers, social workers, counsellors and sports coaches) to challenge harmful stereotypes and promote healthier attitudes and behaviours amongst the boys and men they work with.
- The delivery of community education and activation programs, like *Modelling Respect and Equality (MoRE)*, should be expanded and funded on an ongoing basis to support community-driven cultural change in relation to gender.

Explanation continued

Low level anti-social behaviour

AIM: Remove the 'justice lens' and look at the needs, not the deeds, of the child. Children under 14 who cause harm must be diverted out of further harmful behaviour by taking a therapeutic and restorative approach. This is at the stage of police contact.

Restorative approaches and diversion:[33]

- Restorative justice prioritises accountability and repairing harm. Research has shown that when comparing non-restorative, retributive approaches with restorative justice, the latter is more successful at achieving three main objectives: improving victim and/or offender satisfaction; getting the offender to comply with restitution; and decreasing offender recidivism.
- For children under 14, restorative approaches should be the default response to addressing harm. Restorative conferencing prioritises accountability and responsibility for actions. **Group Conferencing in Victoria must be 'opt-out' rather than 'opt-in' when a young person engages in harmful behaviour.**
- Most offending by young people is episodic, transitory, of a minor nature, and unlikely to constitute a risk to the safety and welfare of the community. Most young people will outgrow their anti-social behaviour as they mature and/or are turned away from crime by police cautioning or youth diversion programs.
- Based on Jesuit Social Services' experience delivering the Youth Diversion Pilot Program, we know that building a supportive relationship of respect and trust via a strengths-based practice approach is what builds capacity and resilience in young people in the long term. A key element of our approach includes creating partnerships with program participants, their families and community supports.
- More than 90 per cent of participants successfully completed our pilot diversion program and had their matter dismissed. Common positive outcomes included: young people demonstrating a better understanding of the impact of their offending; improved family and community relationships; reengagement with education; and improved mental health. This success was underpinned by Jesuit Social Services' deep community roots and proven engagement with young people with a history of offending.
- **Diversion for children under 14 is best delivered by a community agency, enabling children to successfully complete diversion plans with the right support, outside the statutory system**.

Serious anti-social behaviour

AIM: Hold children who use violence or cause serious harm to account and promote community safety by responding effectively to the needs of the child.

WHAT: Intensive, evidence-based, therapeutic interventions and forms of supervision.

Children's Hearings model:[34]

- Scotland uses their Children's Hearings system to work with young people who cause harm. A children's hearing consists of a legal tribunal of trained lay members. The members discern whether a child or young person should be put under a measure of compulsory supervision. The child or young person might be in need of care or protection or might be at risk of harming others or themselves. The welfare of the child is the paramount concern, bar in limited circumstances where it is necessary to protect the public from serious harm. In those cases, the welfare of the child becomes a primary, rather than paramount consideration.
- Measures that restrict a young person's liberty promote welfare and are not punitive. Detention in secure accommodation is available as an option to the children's hearing only in limited circumstances.
- Children are first referred to the Children's Reporter who determines whether or not to arrange a children's hearing. For children under 12 (the age of criminal responsibility in Scotland) a small proportion of referrals on offence grounds flow through the Children's Reporter to children's hearings (less than six per cent). Within this group compulsory supervision is necessary in only half the cases.
- As the National Convener of Children's Hearings Scotland explains: "specific measures available to the children's hearing to address welfare needs related to a child's harmful behaviour include the option to direct that the child reside at a specified place other than their home, to restrict the child's liberty in such a specified place, to include a condition to restrict the child's movements and to authorise the child's placement in secure accommodation. These measures are applied in order to address the child's needs for protection, guidance, treatment and control. At present the courts have a range of disposals including detention and community-based and financial penalties with both deterrent and punitive functions which have no place within the welfare focused hearings system. Measures of supervision available to children's hearings are specific to the child and designed to address welfare needs. The disposals available to the courts are offence specific and take limited account of the young person's personal and family circumstances other than in relation to risk."

Explanation continued

Responses to family violence callouts:[35]

- The Victorian Royal Commission into Family Violence found that there are limited options available to police in contexts of adolescent family violence in the home. It found that "investment is needed in supported accommodation options for these young people that can run alongside adolescent family violence programs and provide an immediate option for police and families" and "that out-of-home care/residential care is not an appropriate option for many of these children as this brings its own risks in terms of the wellbeing of children".
- The Royal Commission found that access to appropriate accommodation should be bolstered by a therapeutic response, which is "more likely to improve identification of individual risk factors, such as previous exposure to family violence, trauma, mental health, disability and other factors that have been linked to this form of family violence".
- Jesuit Social Services is developing a new evidenced-informed intervention model for responding to police call outs to adolescent family violence focussed meeting the needs of adolescents and their families, including ensuring family safety. Provision of accommodation options will be explored as part of this service given the shortage of current crisis accommodation options appropriate for adolescents.
- Existing family violence responses primarily target family violence perpetrated by adults and are not specifically designed for adolescent offenders or parent victims. Likewise, generalist interventions for youth violence fail to address the complex family dynamics surrounding adolescent offenders or their victims. Current programs tend to treat parents/ carers and adolescent offenders separately and do not account for the reality that most families want to remain intact.
- The Jesuit Social Services program model will aim to work with families, police, and other agencies, intervening before adolescents become entrenched in the criminal justice system. The model includes a social worker attending the family violence incident at the time of police call-out to provide additional support, as well as follow up outreach support for families post incident, with the aim of reducing violent behaviour and ensuring wherever possible that adolescents can stay (or return) to the family home.

Jesuit Social Services' *Our Way of Working*:[36]

- The Youth Justice Review and Strategy noted that "the youth justice system does not have a clear youth engagement approach to provide staff with a framework and model of working" and commended Jesuit Social Services' *Our Way of Working* as a model.
- *Our Way of Working* underpins all Jesuit Social Services work with individuals and communities. The framework speaks to the inherent dignity of each individual and their capacity to envisage and achieve a more positive and engaged future, no matter their current circumstances. It articulates the dynamic interplay of **five components**, which work together to help people reach their full potential and become active participants in their communities: **Valuing self and others, Affirming goals and aspirations, Linking individuals and communities with support, Using skills and building capacity** and **Enhancing civic participation**.
- Progress on these domains is measured across ten indicators. Participants' outcomes across our programs show improved view of the future, improved use of supports, improved view of self, improved connection to family/significant people, and improved capacity to manage day to day.
- *Our Way of Working* is a proven framework for working with vulnerable children and young people.

Family-focused therapies:

- The Youth Justice Review and Strategy recommends implementing family-centred approaches to working with justice-involved young people.
- Family-centred treatment models utilise a range of empirically validated treatments that include cognitive behaviour therapy, parental skills training, and structural family therapy.[37]

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