

**Centre for Innovative Justice****Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory**

November 2016

**Summary**

This submission argues that the detention of children and young people should not be countenanced in circumstances where such detention exposes them to further trauma. If young people continue to be held in places of detention, then they must be given access to education, and any youth justice system responses to them must be trauma informed and culturally appropriate. Until this occurs, children and young people will continue to be propelled into the criminal justice system, following a trajectory from victim to offender. This submission also notes that youth detention is costly and ineffective, asking whether it may be possible to respond instead with innovative alternatives that address the underlying issues rather than their symptoms.

The primary purpose of this submission is to highlight the opportunity that exists to support children and young people in detention with access to education based on the Parkville College model. The implementation of such a model would be trauma informed and culturally appropriate, and could introduce additional safeguards into the system, reducing the risk of inappropriate treatment of children and young people in detention.

This submission also briefly touches on research conducted by the Centre for Innovative Justice and examples of innovation that the Royal Commission may wish to consider in the course of its inquiry, including more effective approaches to the design and implementation of culturally appropriate youth justice policy responses.

**About the Centre for Innovative Justice**

The Centre for Innovative Justice, based at RMIT University, advocates, conducts research, translates this research and participates in teaching and student supervision, all to find innovative and workable solutions to complex problems in the justice system. The Centre for Innovative Justice's focus is on identifying alternatives to the traditional approaches to criminal justice, civil dispute resolution, legal services provision and access to justice. Its aim is to develop and promote strategies that address the factors that propel people, including children and young people, into contact with the justice system.

**The scope of this submission**

The Letters Patent require the Commission to inquire into a range of matters set out in the Terms of Reference, including failings in the child protection and youth detention systems of the Government of the Northern Territory and the treatment of children and young persons detained at youth detention facilities administered by the Government of the Northern Territory, including the Don Dale Youth Detention Centre in Darwin.

This submission has a particular focus on clause 7 of the Terms of Reference, but it is not intended to be a comprehensive submission. The purpose of this submission is to identify information which may assist the Royal Commission to plan its further work and prompt particular lines of inquiry. This submission highlights a model for the provision of education to children and young people in detention that the

Commission may wish to explore further, given the potential benefits of the model in preventing the inappropriate treatment of children and young people in detention. Noting that the Commission is required to identify potential law reform, reform of administrative practices and oversight measures and safeguards, this submission explores the potential of the Parkville College model to provide children and young people in detention with access to education and, simultaneously, deliver an oversight mechanism and safeguard to prevent future inappropriate treatment. It is hoped that, following further consideration of the Parkville College model, the Commission considers recommending a similar, suitably adapted approach be adopted in the Northern Territory.

This submission also briefly touches on further research conducted by the Centre for Innovative Justice, including examples of innovation that the Commission may wish to consider in the course of its inquiry. It is acknowledged that innovations in one jurisdiction cannot be transposed seamlessly into another. Nevertheless, the innovations identified offer examples and evidence of the possibility of more effective approaches to the design and implementation of trauma and culturally informed youth justice policy responses.

## Centre for Innovative Justice

### Submission to the Royal Commission into the Protection and Detention of Children in the Northern Territory

#### Introduction

It has been observed that the history of youth justice in Australia is characterised by:

the failure of punitive detention to impact on recidivism or to address at an individual or systemic level the underlying issues which have propelled many of these young people into the justice system and into custody over 200 or so years.<sup>1</sup>

This failure to solve many persistent issues in youth justice has been costly in human and financial terms. Detention facilities have become warehouses for disadvantaged groups in the community, failing to effectively support the education and rehabilitation of young people, instead engendering criminogenic relationships and behaviour. Across Australia, youth detention facilities house a disproportionate number of detainees with mental health issues and cognitive impairments, limited educational attainment, and histories of abuse, trauma and victimisation.

Aboriginal people have been more exposed to these failures than any other group and are devastatingly over-represented in the youth justice system in the Northern Territory. Aboriginal people make up approximately 30% of the Northern Territory's population, yet 96% of children and young people in detention in the Northern Territory are Aboriginal.<sup>2</sup> Not enough has been done by successive governments to implement the recommendations of the Royal Commission into Aboriginal Deaths in Custody to address this.<sup>3</sup>

It is well accepted in the domains of jurisprudence, criminology and behavioural science that children and young people have a greater capacity for rehabilitation than adult offenders. Yet the detention of children and young people apparently does nothing to reduce recidivism among this cohort. The evidence shows that, in fact, children and young people who have been detained are more likely to re-offend in future. The following description of the negative effects of youth detention - drawn from the Australian Capital Territory Human Rights Commission's 2011 Report on Bimberi Youth Justice Centre – is commonplace:

Spending time in custody has a proven negative effect on young people. Research has shown incarceration leads to social isolation and disconnection, institutionalism increases the likelihood of reoffending. More specifically, recidivism is correlated highly with future juvenile offending, and adult offending. The most significant reasons for this were found to be:

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<sup>1</sup> Lynn Atkinson, 'An Overview of Juvenile Detention in Australia', page 4, accessed at [http://www.aic.gov.au/media\\_library/publications/proceedings/25/atkinson.pdf](http://www.aic.gov.au/media_library/publications/proceedings/25/atkinson.pdf)

<sup>2</sup> Australian Institute of Health and Welfare, *Bulletin 131: Youth Detention Population in Australia* (2015) accessed at <http://www.aihw.gov.au/youth-justice/>

<sup>3</sup> Particularly relevant recommendations are recommendation 62 (Young Aboriginal People and the Juvenile Justice System); 72 (Schooling); 92-94 (Imprisonment as a Last Resort); and 234-245 (Breaking the Cycle).

stigmatization of young people, formation of criminal associations and networks, placing vulnerable young people at risk, and reduction of opportunities for positive rehabilitation. Remand has been shown to have negative impacts on a young person's family, relationships, education and work. Remanding a young person in custody also comes at significant economic costs to the community.<sup>4</sup>

Detention is the most costly form of responding to youth offending. According to *Report on Government Services* juvenile justice data from 2015, total recurrent expenditure on youth justice services – comprising detention-based supervision, community-based supervision and group conferencing was \$698 million across Australia in 2014-15, with detention-based supervision accounting for the majority of this expenditure (62.8 per cent, or \$438 million).<sup>5</sup> Despite falling numbers of detainees nationally, the cost of detention has risen:

It costs an average of \$1400 a day to keep a juvenile in detention in Australia — and the outlay for taxpayers is rising each year despite a steady fall in the overall number of offenders. According to the Productivity Commission, the cost is lowest in Western Australia (\$886 a day) and the Northern Territory (\$976) — the two jurisdictions with the highest rates of detention in the nation and worst recent records in managing offenders. The highest costs a day are in the ACT (\$5450 a juvenile) and Tasmania (\$3650), where only a handful of young people are locked up, with NSW, Victoria and Queensland around \$1500 a day and South Australia about \$1200.<sup>6</sup>

Recent Western Australian figures, likely to be broadly reflected nationally, suggest that whereas the daily cost of detaining a young person is about \$624, community based justice is substantially cheaper and costs about \$77 per day.<sup>7</sup>

As well as being costly and ineffective, the detention of children and young people in closed environments is inherently unsafe. A brief survey of recent reports or inquiries into Australian youth detention facilities creates the impression that abuse and inappropriate treatment are an almost inevitable consequence when young people are detained.

In 2015, for example, the Kariong Juvenile Justice Centre in New South Wales was closed following a number of incidents relating to the treatment of detainees. Criticism by the New South Wales Ombudsman of the facility addressed the failure to provide rehabilitative programs or case management for young people and the excessive use of isolation on detainees.<sup>8</sup> Youth detention

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<sup>4</sup> ACT Human Rights Commission, *The ACT Youth Justice System 2011: A Report to the ACT Legislative Assembly, Bimberi Youth Justice Centre*, July 2011, page 186 (citations in quoted text removed).

<sup>5</sup> <http://www.pc.gov.au/research/ongoing/report-on-government-services/2016/community-services/youth-justice/rogs-2016-volumef-chapter16.pdf>

<sup>6</sup> <http://www.theaustralian.com.au/news/nation/detention-costs-rise-as-fewer-youths-are-incarcerated/news-story/9391b6f1e28f1de1ba324da10456bd45>

<sup>7</sup> These are Western Australian Department of Corrective Services figures, apparently contained in a submission by the Commissioner for Children and Young People, quoted in Senate Legal and Constitutional Affairs References Committee, *Value of a Justice Reinvestment Approach to Criminal Justice in Australia*, 2013, Chapter 3, page 20.

<sup>8</sup> [https://www.ombo.nsw.gov.au/\\_data/assets/pdf\\_file/0013/3370/SR\\_Kariong-Juvenile-Correctional-Centre.pdf](https://www.ombo.nsw.gov.au/_data/assets/pdf_file/0013/3370/SR_Kariong-Juvenile-Correctional-Centre.pdf)

centres in Queensland have been investigated by that state's Children's Commissioner and adverse findings made in relation to the inappropriate use of force on detainees.<sup>9</sup> Townsville's Cleveland Youth Detention Centre was investigated by the government's Youth Detention Inspectorate in 2013 and 2015, and documented mistreatment of detainees.<sup>10</sup> In Western Australia, the Inspector of Custodial Services has raised serious concerns about strip-searching and other practices at the Banksia Hill Detention Centre.<sup>11</sup> In Tasmania a number of inquiries are currently underway into the conduct of staff at the Ashley Youth Detention Centre.<sup>12</sup> In Victoria, in recent times, the Ombudsman has conducted a number of investigations into youth justice,<sup>13</sup> and allegations of abuse and mistreatment of young people in detention have been identified and are currently being investigated by Victoria's Commissioner for Children and Young People.<sup>14</sup>

This recent history would suggest that the use of excessive force and other forms of inappropriate treatment of young people is endemic to youth detention facilities. In short, it seems that these problems are institutional and systemic and occur whenever young people are detained.<sup>15</sup>

Extensive research on what has been described as the 'the trauma to prison pipeline',<sup>16</sup> including research by the Centre for Innovative Justice on the backgrounds of adult female prisoners<sup>17</sup> and

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<sup>9</sup> <http://www.eccq.com.au/publications/reports/child-guardian-report-investigation-into-the-use-of-force-in-queensland-youth-detention-centres/>

<sup>10</sup> Michael Atkin and Sarah Whyte, 'Images emerge of alleged mistreatment at Townsville's Cleveland Youth Detention Centre', ABC 7.30, 18 August 2016.

<sup>11</sup> <http://www.oics.wa.gov.au/reports/97-report-announced-inspection-banksia-hill-juvenile-detention-centre/recommendations/>

<sup>12</sup> See 'Ashley Youth Detention Centre staff member's use of restraint prompts series of investigations', ABC News, 19 August 2016; Georgie Burgess, 'Tasmania's Ashley Youth Detention report flags worrying staff behaviours', ABC News, 1 September 2016; Rosemary Bolger, 'Ashley Youth Detention standoff: worker stood down after clash with detainees', ABC News, 18 August 2016.

<sup>13</sup> *Investigation into children transferred from the youth justice system to the adult prison system*, Ombudsman Victoria, 2013, accessed at <https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Investigation-into-children-transferred-from-the-y; Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct>, Ombudsman Victoria, 2010, accessed at [https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Whistleblowers-Protection-Act-2001-Investigati-\(2\)](https://www.ombudsman.vic.gov.au/Publications/Parliamentary-Reports/Whistleblowers-Protection-Act-2001-Investigati-(2))

<sup>14</sup> Chris Johnston, 'Broken limb and 10 days in solitary: Victorian youth prisons probed', *The Age*, 27 July 2016, accessed at <http://www.theage.com.au/victoria/broken-limb-and-10-days-in-solitary-victorian-youth-prisons-probed-20160726-gqe6pg.html>

<sup>15</sup> These conditions are compounded when the administration of juvenile justice is not conducted separately from the adult corrections system, as in the Northern Territory and Western Australia, and when there has been a failure to comply with international human rights standards. Australia's failure to ratify the Optional Protocol of the Convention Against Torture (OPCA) means that there is no system of regular inspections to places of juvenile (and adult) detention overseen by the UN through the establishment of a National Preventative Mechanism (NPM). Australia signed the OPCAT in 2009, but is yet to ratify the protocol.

<sup>16</sup> See for example: 2009 NSW Health Young People in Custody Health Survey accessed at <http://www.justicehealth.nsw.gov.au/publications/ypichs-full.pdf>; The Royal Australasian College of Physicians

adolescent and family violence<sup>18</sup> demonstrates that the exposure of children and young people to trauma has a compounding effect, since those who are already in detention are likely to have significant histories of trauma. The documented backgrounds of children and young people in detention include very high rates of family violence, parental drug and alcohol abuse and contact with child protection systems. Rather than addressing this deep-seated trauma, however, youth detention exacerbates it by imposing additional trauma in the form of an uncompromising and authoritarian environment where violence – from other detainees and from authorities – is a constant threat.<sup>19</sup> Writing about juvenile detention facilities in the United States, McCarthy, Schiraldi and Shark have observed that:

Large, institutional structures, surrounded by razor wire and filled with noise and harsh lighting, create a toxic environment. The staff and kids are inevitably caught in their roles of guard and prisoner, locking both into a struggle of power and resistance. Life in these places is about violence and control, submission, and defiance, leaving little room for the guidance, learning, role modelling and caring relationship that young people need.<sup>20</sup>

The detention of children and young people should not be countenanced in circumstances where detention exposes them to further trauma. If this continues to occur, children and young people will continue to be propelled into the criminal justice system, following a clearly marked trajectory from victim to offender.

If these costly facilities are not reducing re-offending and are harming young people, the question must be asked: why do we persist with this approach? Can we respond to trauma with trauma informed practices that address the underlying issues rather than their symptoms? Are their innovative alternatives?

It may be that the continued existence of youth detention centres themselves – with their consumption of a disproportionate share of juvenile justice budgets, and their tendency to present a deceptively appealing ‘out of sight, out of mind’ solution to a complex problem - create the greatest barriers to the development and adoption of alternative responses.<sup>21</sup> Despite this, alternative responses *do* exist, and

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‘The Health and Wellbeing of Incarcerated Adolescents’, 2011, accessed at <http://blogs.rch.org.au/cah/files/2011/05/Peter-Azzopardi-HealthandWellbeingonincarceratedadolescents2.pdf>.

<sup>17</sup> Mental Health Legal Centre/Inside Access/Centre for Innovative Justice, *Submission to Family Violence Royal Commission*, May 2015, accessed at <http://www.rcfv.com.au/getattachment/8E5F49BB-1D8C-4893-B6EC-F39B4C3F0B79/Mental-Health-Legal-Centre-Inc;-Inside-Access;-Centre-for-Innovative-Justice->

<sup>18</sup> Centre for Innovative Justice, March 2015, accessed at <http://mams.rmit.edu.au/r3qx75qh2913.pdf>

<sup>19</sup> Russell Marks, ‘Don Dale is the tip of the iceberg: Mistreatment of vulnerable people in detention is commonplace throughout Australia’, *The Monthly*, 28 July 2016, accessed at <https://www.themonthly.com.au/blog/russell-marks/2016/28/2016/1469673768/don-dale-tip-iceberg>

<sup>20</sup> Patrick McCarthy, Vincent Schiraldi, and Miriam Shark, ‘The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model’, *New Thinking in Community Corrections*, No 2, October 2016, page 10, accessed at [https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc\\_the\\_future\\_of\\_youth\\_justice.pdf](https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc_the_future_of_youth_justice.pdf)

<sup>21</sup> The Centre for Innovative Justice has made similar point in relation to the incarceration of women: see <http://theconversation.com/should-we-be-locking-people-up-in-prisons-at-all-63207>

demonstrate a path forward for youth justice. The next part of this submission briefly outlines a number of these responses, with a particular focus on the Parkville College model, which incorporates culturally appropriate and trauma informed practices, and establishes safeguards for young people in detention.

### **Parkville College**

To properly understand the operation of the Parkville College model, it is necessary to understand the context of youth justice in Victoria. In Victoria, the Department of Health and Human Services (the department) is responsible for the administration of Youth Justice services. The *Children, Youth and Families Act 2005* (Vic) (the Act) gives the department statutory responsibility for the care, custody and supervision of children who have been sentenced to detention or remanded in custody pending the finalisation of legal proceedings. The Act provides that a court can sentence a child aged 10 to 14 who has been found guilty of an offence to a Youth Residential Centre Order. Similarly, a child aged 15 to 20 can be sentenced under a Youth Justice Centre Order. The Act provides for remanded or sentenced children aged 10 to 21 to be detained in a Youth Residential Centre or a Youth Justice Centre.

Victoria has three custodial facilities for children: the Melbourne Youth Justice Centre; the Melbourne Youth Residential Centre; and the Malmsbury Youth Justice Centre. The first two facilities are collectively known as the Melbourne Youth Justice Precinct. The Melbourne Youth Justice Centre is a custodial facility for males aged 15 to approximately 18 years of age who have been sentenced to a Youth Justice Centre Order or remanded in custody. After the age of 18, most detainees will be placed at Malmsbury up until the age of 21, depending on the offences they have committed and their suitability for placement with older detainees. The Residential Centre accommodates males aged 10 to 14 years of age and females aged up to 21 years who have been sentenced or are on remand. There are two units, one for young boys and one for young women. Young male and female remandees are held in the Residential Centre, physically separate from the Justice Centre.<sup>22</sup>

### *Ombudsman investigation*

Given the background to the establishment of this Royal Commission, it is noteworthy that the origins of the Parkville College model can be traced back to a damning report of the Victorian Ombudsman in 2010. In 2010, the Ombudsman described the conditions at the Melbourne Youth Justice Centre as 'appalling' and 'disgraceful', and recommended that it be shut down. The report also documented allegations which appear to have parallels with those raised in respect of Don Dale, including staff inciting assaults between detainees, staff assaulting detainees and restraining them with unnecessary force.

The Ombudsman made 27 recommendations to address the issues identified in the investigation, including reviewing policies and practices to ensure compliance with human rights principles. The Ombudsman was particularly critical of the lack of educational opportunities made available to children and young people in detention.

### *Establishment of Parkville College*

The Parkville College was established in the aftermath of the Ombudsman investigation. The idea was influenced by educators involved with the KIPP Infinity School, an institution for disadvantaged students based in some of the most disadvantaged boroughs of New York in the United States.<sup>23</sup> The Minister

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<sup>22</sup> The foregoing descriptions are drawn from the *Investigation into conditions at the Melbourne Youth Justice Precinct*, Ombudsman Victoria, October 2010.

<sup>23</sup> <http://www.kippnyc.org/schools/kipp-infinity-elementary/>

for Education formally established Parkville College, to commence operation as a Victorian Government School on 30 January 2013 at the Parkville Campus (Parkville Youth Justice Precinct) and the Malmsbury Campus (Malmsbury Youth Justice Precinct). The following chronology is provided on the Parkville College website:<sup>24</sup>

**31 July 2012**

The Minister for Education formally established Parkville College at Parkville Youth Justice Precinct and Malmsbury Youth Justice Precinct, in response to recommendations from the Ombudsman report in October 2010.

**January 2013**

Parkville College officially commenced operation at the Parkville Campus and Malmsbury Campus. At both campuses, Parkville College delivered the Victorian Certificate of Applied Learning (VCAL) at Foundation, Intermediate and Senior levels, and the Victorian Certificate of Education (VCE), to its students.

**February 2014**

Parkville College commenced operation at the Disability Forensic Assessment and Treatment Service facility in Fairfield, supporting people who display high-risk antisocial behaviour, and who are at risk of, or are already involved with the criminal justice system.

Parkville College extended the Parkville Campus to create the Flexible Learning Centre, which serves as a transitional campus and is designed for young people who have been involved with the youth justice system. The Flexible Learning Centre allows students to extend their enrolment with Parkville College upon exiting custody, giving them continuity and stability in their education.

**April 2014**

Parkville College replaced the Bendigo Regional Institute of TAFE in the provision of Vocational Education and Training (VET) subjects at the Malmsbury Campus.

**June 2014**

Parkville College commenced the Education Justice Initiative, based at the Melbourne Children's Court, supporting young people appearing before the courts, providing them with an appropriate education pathway through liaison and advocacy with schools, alternative settings and training providers, and engagement with young people and their families.

**October 2014**

Parkville College commenced operation at the Maribyrnong and Ascot Vale Secure Welfare Campuses, providing education to children who are at substantial risk of harm, and subject to a child protection order.

**January 2015**

The Malmsbury Youth Justice Centre became the Malmsbury Youth Justice Precinct, with a 45-bed maximum-security expansion, where Parkville College began teaching at the commencement of term 1.

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<sup>24</sup> [http://parkvillecollege.vic.edu.au/?page\\_id=14](http://parkvillecollege.vic.edu.au/?page_id=14)

### *The Parkville College model*<sup>25</sup>

Parkville College follows a therapeutic and trauma informed practice approach:

The Parkville College model provides a guide for therapeutic education that promotes safety and recovery from adversity through the active creation of a trauma informed community. A recognition that trauma is pervasive in the experience of human beings forms the basis for the Parkville College model with a focus not only on the students involved in transformative education, but equally on the people and systems who share the transformative experience.

Teachers at Parkville College are trained to use a therapeutic approach when teaching Victoria's most vulnerable and traumatised children. A therapeutic approach involves using a myriad of caring and deliberate strategies to have all students feeling safe, accepted and supported, effectively re-engaging children back into education.

Materials from Parkville College demonstrate that teachers are trained to recognise that their students have routinely been exposed to traumatic circumstances, and for the children and young people in detention, these circumstances include:

a combination of neglect, physical, emotional or sexual abuse, homelessness, intergenerational unemployment and welfare mentality and physical and mental disabilities; resulting in self-harming behaviours, drug use and truancy.

Teachers at Parkville College aim to create lasting change for incarcerated students by creating positive relationships:

For children, the impact of trauma on mind and body are huge. Children who have experienced trauma, have learnt that the world is an unsafe place, and are constantly scanning the surrounding area for threats. Often, they are unable to form and maintain healthy emotional relationships.

The antidote for traumatised children who are suffering the consequences of poor connective experiences is to engage in relationships with them that are positive and sustaining. Having predictable responses, creating stability, acknowledging a child's feelings, and demonstrating care for a child even when their behaviour is challenging and complex, are integral parts to creating secure and positive relationships. Teachers seek to create a secure attachment with a child, so that the '...child can explore their world, always knowing that they can come back to their emotional and relational base camp when they do not feel safe or are uncertain.'

Parkville College teachers also perform 'outreach' within the Youth Justice precinct. That is, teachers spend time with children outside structured classes, for example:

playing table tennis, games, engaging in conversations that are of interest to the child, or even simply sitting quietly with a child. Further to this, phone calls made to important people in the child's life, serve to provide a positive experience for the child, providing positive feedback that

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<sup>25</sup> The following submissions are intended to provide an outline of the features of the Parkville College model for the Royal Commission. If the Royal Commission has not received more detailed submissions about the model from other sources, it is suggested that an appropriate witness be summoned to attend and give detailed evidence pursuant to section 2 of the *Royal Commissions Act 1902* (Cth).

helps reforge or strengthen positive connections. In this way, the child begins to see the genuine care the teacher has for the child as a whole, not simply as a student.

Other features of the approach taken by teachers at Parkville College include:

- The use of motivational interviewing
- Setting high expectations for students so that they may realise their highest potential
- A consistent teaching and learning approach, which include 'explicit instruction' and 'learning intentions' strategies
- 'Descriptive feedback' so that students can learn by providing them with precise information about what they are doing well, what needs improvement and what specific steps they can take to improve
- Strategies for achieving 'independent work stamina'

The Parkville College program is flexible, and based on a recognition that students respond differently 'not merely because of where they are but who they are and how they have developed', but also consistent and predictable to the extent necessary to provide a sense of safety and certainty, since 'it can be extremely unsettling for traumatised children (who are sensitive to control) to sense that the system and or their teachers are, themselves, unorganised, confused and anxious.'

The Parkville College student body, reflecting the overrepresentation of Koorie people in youth detention, always includes a significant group of Aboriginal children. According to Parkville College material:

throughout 2015, 10%-20% of our students have been Aboriginal. This really brings great experiences and enthusiasm to our school but also represents a shameful overrepresentation of Aboriginal children within the precinct.

Parkville College aims to offer cultural connection, support and instruction and offers the Koorie Cultural Education program to all Aboriginal students:

The program includes two hours of instruction each week along with outreach visits to individual students. The program challenges, inspires and assists students to engage with their own stories while elevating expectations of themselves and their learning abilities. The program is guided by Elders and delivered by Aboriginal and non Aboriginal staff from Parkville College and Secure Services.

The Parkville College model has been extended to other areas where education and youth justice intersect in Victoria, including the establishment of a flexible learning centre and an early intervention program to ensure young people facing the Children's Court are linked into education.<sup>26</sup> The model also incorporates effective pathways for young people to maintain their education without interruption while transitioning out of detention.

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<sup>26</sup> See 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.

### *The relationship between teaching and custodial staff*

The nature of the relationship between teaching and Department of Health and Human Services (DHHS) Secure Services (custodial) staff at Parkville College is an important feature of the model. This relationship reflects the interplay between differing legislative duties and obligations imposed on each.

Children and young people in detention are in the legal custody of the Secretary to the Department of Health and Human Services,<sup>27</sup> so DHHS staff have responsibility for the care, control and management of all detainees held in custody. Department of Education and Early Childhood Development (DEECD) staff have obligations in relation to the education of young people pursuant to the *Education and Training Reform Act 2006* (Vic).

Students continue to be detainees in the custody of DHHS despite the activities they undertake as part of their schooling at Parkville College at the direction of Parkville College teachers, who are DEECD staff. Under the *Children, Youth and Families Act 2005* (Vic), teachers are 'visitors' to the Youth Justice centre.

Within a classroom setting, DHHS staff members may direct DEECD employees to do anything that they consider necessary for the management, good order and security of the Youth Justice Centre. However, this direction does not extend to educational practice, for which DEECD staff retain sole responsibility. The supervision of students and detainees at Parkville College is considered the joint responsibility of both DHHS and DEECD staff. In practice, DEECD employees are responsible for maintaining the classroom environment and have recourse to DHHS staff if necessary.

### **Benefits of the Parkville College model**

Parkville College is animated by the principle that everyone has the right to education. References to Article 26 of the Universal Declaration of Human Rights are to be found throughout documentation of policies associated with the school, and there is a clear emphasis on the transformative power of education.<sup>28</sup>

One of the many benefits that this focus brings to the Parkville College model is that children and young people in detention are primarily experiencing a learning environment, where education is a priority. This may be contrasted with a primarily custodial environment where the 'good order and security' of the detention facility is the dominant priority, and education merely a privilege.<sup>29</sup>

For young people, experiencing what is in almost every other respect an ordinary school within a youth detention facility normalises education. Attending classes and learning is no longer an exceptional or unusual activity, and there is an expectation within this environment that they will be active participants.

In some youth justice facilities, detainees would frequently miss classes because of the unavailability of custodial staff to supervise them. By contrast, if a young person is not available to participate in a class at Parkville College, education staff - having an obligation to teach them - may reasonably ask Secure

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<sup>27</sup> *Children, Youth and Families Act 2005* (Vic), section 483.

<sup>28</sup> <http://www.un.org/en/universal-declaration-human-rights/>

<sup>29</sup> See the discussion and criticism of the approach of correctional authorities in Victoria as a privilege rather than a right in the Victorian Ombudsman's 2015 report, *Investigation into the rehabilitation and reintegration of prisoners* accessed at <https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17>

Services staff to enable their students to participate. The Parkville College model upends the usual state of affairs in youth detention facilities, succinctly put, that ‘when custody meets education, custody wins’.

In operational decision-making by Secure Services staff, the good order and security of the facility must be balanced with the obligation to enable students to access education. Even if there is some valid reason for the absence of the student, the ability for teaching staff to ask the question provides an important measure of accountability in the system. Similarly, when other priorities such as the maintenance and upkeep of facilities compete for the attention of Secure Services staff, education will not be subordinated by default. This balance is also reflected in governance arrangements and in the roles of Director, Secure Services and Executive Principal, Parkville College, which are relatively equivalent in public sector status terms.

As the survey of Australian youth detention facilities set out earlier in this submission makes clear, young people in closed environments are especially vulnerable to increased risk of inappropriate treatment. The Parkville College model increases the safety and security of young people in the Youth Justice precinct. The learning environment established by the presence of Parkville College creates a fundamentally different culture where teaching staff model positive interactions with students. For observers, there is a palpable sense that teaching and Secure Services staff are both present to support the young people during their time in custody and that both are working collaboratively to help the children and young people in their care achieve the best education possible.

The co-existence of both teaching and Secure Services staff results in an environment characterised by the presence of greater numbers of staff and therefore greater safety. The physical presence of teaching staff alongside Secure Services staff creates an additional safeguard in the form of mutual monitoring. This is a healthy and productive tension, since both staff groups are independently accountable under their legislation and to different managers, but jointly responsible for supervision of the students and detainees.

It is likely that, as a result of all of these factors, children and young people detained are exposed to a lower risk of inappropriate treatment than would otherwise be the case without the presence of Parkville College.

For all of these reasons, it is submitted that the Royal Commission should explore whether the Parkville College model, suitably adapted, could be recommended for adoption in the Northern Territory.

The Parkville College model is an example of an innovative response to the challenge of providing education to young people in detention. The next part of this submission provides some briefly described examples of other innovative responses that are underpinned by a different approach to justice policy design.

### **Culturally-informed innovative justice responses**

#### *Restorative justice and therapeutic jurisprudence*

In many jurisdictions, courts are taking on ‘solution-focussed’ or ‘problem solving’ roles and practices as they embrace a broader conception of what constitutes justice and their role in creating a safer community. These practices include restorative justice and therapeutic jurisprudence.

Restorative justice is principally concerned with the repair, to the greatest extent possible, of the harm caused by a crime. The focus is on victim inclusion and offender accountability. Restorative justice practices involve facilitated discussions between the victim, offender, their communities, families or representatives.

Restorative justice practices may have particular benefits for Aboriginal people and are able to be designed to be culturally appropriate. Conferences are structured but can take place in environments which are more culturally appropriate than a court room, and the process of restorative justice can restore relationships between accused persons, victims, family and the broader community.

Restorative justice practices are well suited to restoring relationships between young people and their families, and have been particularly effective in integrating culturally strengthening approaches to justice. Examples of this include Rangatahi Youth Courts held on traditional marae and Youth Group Conferencing in New Zealand, and Aboriginal Circle Sentencing in New South Wales, as well as the Youth Justice Group Conferencing approach used in Victoria with a legislated basis in the *Children, Youth and Families Act 2005*. Restorative justice practices are flexible, and there is scope for restorative justice to be used before, during or after sentencing processes, and in the context of protection proceedings. There is clearly scope for such practices to be used within existing Northern Territory legislative provisions including the *Youth Justice Act*. It is suggested that the Royal Commission explore whether restorative justice could address some of the matters raised by the Terms of Reference.

Therapeutic jurisprudence is principally concerned with addressing the underlying reasons for offending, which could include trauma, mental health and other health issues, alcohol and drug addiction, unemployment and homelessness. It sees contact with the justice system as an opportunity to intervene in a positive way and to help get an offender's life back on track. It would inform an integrated response, for example, to family violence and adolescent violence and their complex relationship with youth offending.

Therapeutic jurisprudential approaches would support addressing trauma in a culturally-appropriate way. As children and young people, many Aboriginal people have experienced intergenerational trauma resulting from forced removal, a loss of self-determination and identity, and diminished human capital available to support families.<sup>30</sup> Research indicates that there is a significant correlation between childhood trauma - including historical trauma - and the incarceration of Aboriginal men.<sup>31</sup> Many of these men have long histories of contact with the child protection system. It is important, therefore, that any interaction with the child protection and youth justice system takes the opportunity this offers to provide therapeutic responses, including responses to address intergenerational trauma and support services that are trauma-informed.

Despite the extraordinary overrepresentation of Aboriginal young people in its detention facilities and the capacity of therapeutic justice to address the underlying issues that propel them into contact with the criminal justice system, according to Jared Sharp, writing in February 2016, the Northern Territory is

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<sup>30</sup> Silburn et al. 2006, cited in Closing the Gap Clearinghouse Issue Paper, 'Effective Strategies to Strengthen the Mental Health and Wellbeing of Aboriginal and Torres Strait Islander People' (November 2014), 27.

<sup>31</sup> See for example, Judy Atkinson, 'Trauma-informed services and trauma-specific care for Indigenous Australian children', Resource sheet no. 21 produced for the Closing the Gap Clearinghouse, July 2013, accessed at <http://www.aihw.gov.au/uploadedFiles/ClosingTheGap/Content/Publications/2013/ctg-rs21.pdf>

now the only Australian jurisdiction without any therapeutic justice programs.<sup>32</sup> It is suggested that the Royal Commission explore whether therapeutic justice programs could address some of the matters raised by the Terms of Reference.

#### *User-centred and culturally-informed justice policy design*

In the United States, youth justice experts have observed that:

An overall orientation toward helping youth get back on track means that treatment and developmental programming are trauma-informed; delivered by well-trained, well-supervised, and well-supported staff; and address pro-social skill development, academic or vocational instruction, work readiness, and work experience. Positive youth development also implies that young people have leadership development experiences and opportunities to serve and give back to the community. One of the best opportunities for leadership development is to give youth a voice in their own treatment options and in informing general policy and practice.<sup>33</sup>

Innovative justice responses employ ‘user-centred’ approaches to designing solutions to entrenched and systemic problems. Such approaches focus on understanding the trajectory of people’s journeys through justice systems and processes to identify opportunities for early intervention and diversion.<sup>34</sup> In the context of the youth justice system in the Northern Territory, such an approach would undertake a close examination of the journey of young people through the child protection and youth justice systems to identify opportunities for early intervention and diversion. It would be culturally sensitive, and directly informed by the experiences of Aboriginal young people. It would seek to re-design the system to reduce future criminal activity — and consequently the number of future victims — by appropriately responding to criminal behavior, helping young adults rebuild their lives, and it would not be overly reliant on youth detention.

#### *Aboriginal Justice Agreement*<sup>35</sup>

A key theme of the recommendations of the Royal Commission into Aboriginal Deaths in Custody was the right to self-determination. In the context of youth justice policy, that means developing policy responses *with* Aboriginal people, rather than policies *about* them.

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<sup>32</sup> Jared Sharp and Amelia Noble, ‘Glimmers of TJ hope in Australia’s north?’, *Therapeutic Jurisprudence in the Mainstream*, accessed at <https://mainstreamtj.wordpress.com/2016/02/02/glimmers-of-tj-hope-in-australias-north/>

<sup>33</sup> Patrick McCarthy, Vincent Schiraldi, and Miriam Shark, ‘The Future of Youth Justice: A Community-Based Alternative to the Youth Prison Model’, *New Thinking in Community Corrections*, No 2, October 2016, page 25, accessed at [https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc\\_the\\_future\\_of\\_youth\\_justice.pdf](https://www.hks.harvard.edu/ocpa/cms/files/criminal-justice/research-publications/ntcc_the_future_of_youth_justice.pdf)

<sup>34</sup> The Centre for Innovative Justice has used this approach in its joint project with Jesuit Social Services, The Enabling Justice Project. Approximately 44% of Victorian male prisoners and 33% of female prisoners have an acquired brain injury. This project has established a group former prisoners and offenders with experience of the justice system and acquired brain injury to give voice to recommendations for reforms designed to reduce the overrepresentation of people with cognitive impairment in the criminal justice and in Victorian prisons. See further <https://www.rmit.edu.au/about/our-education/academic-schools/graduate-school-of-business-and-law/research/centre-for-innovative-justice/what-we-do/enabling-justice-abi>

<sup>35</sup> <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/>

The Victorian Aboriginal Justice Agreement (AJA) exemplifies this approach to policy development. The AJA was established to improve justice outcomes for Koorie people in Victoria. The key to the AJA is that it sets out how government and Aboriginal people will work together to improve justice. The AJA is the result of a process that is based on, and builds, trust and engagement, leading to practical solutions that meet the community's needs.

The AJA aims to minimise Koorie over-representation in the criminal justice system by improving the accessibility, use and effectiveness of justice-related programs and services. A core principle of the AJA is maximising participation of the Koorie community in the design, development, delivery and implementation of all justice policies and programs that impact on Koories.

There have been three phases of the AJA in Victoria. Each phase builds on the previous phase. The first phase of the AJA included the development of robust partnerships and infrastructure, and putting in place a range of new Koorie justice initiatives. The second phase of the AJA focused on preventing the progression of young Koories into the justice system, reducing reoffending, and changing the justice system to be more responsive and inclusive in its approach to Koories. It has a strongly place-based approach, focussing on strengthening community justice responses to address issues locally. In 2013, the Victorian Government and the Koorie community signed the AJA phase 3, which continues to work to improve Koorie justice outcomes and reduce over-representation in the criminal justice system. This third phase of the long-term strategy is to be rolled out in stages over a generation 'until the gap is closed.'

#### *Koorie courts*

Koorie Courts – making the interaction of the justice system more meaningful and therefore more effective for Aboriginal people - are an example of an initiative which arose from the AJA. As well as a Koorie Magistrates' Court, Victoria now has a Children's Koorie Court and a Koorie County Court. These courts have been independently evaluated and have been found to be effective. For Koorie people, the experience of appearing before their Community Elders or Respected Persons and of having the Magistrate face them directly while sitting at a table with legal representatives, service providers and family, was far more confronting than the anonymity of the non-Aboriginal system.

#### *Culturally appropriate non-custodial alternatives to youth detention facilities*

Wulgunggo Ngalu Learning Place Victoria<sup>36</sup> is another example of culturally informed justice responses. While it is part of the adult criminal justice system in Victoria, it could be equally applicable to youth justice systems in other jurisdictions.

At Wulgunggo Ngalu, participants can fulfil the requirements of non custodial sentencing orders and connect with, or further strengthen, their culture. Community Corrections Victoria works closely with management and staff at Wulgunggo Ngalu Learning Place to ensure each participant's successful transition into and out of Wulgunggo Ngalu Learning Place. Staff also work to connect participants with the services they need in their home community improving transition and reintegration to reduce recidivism.

#### *Justice reinvestment*

In Victoria, Lake Tyers was another outcome of the AJA.<sup>37</sup> It is an early example of a place-based justice reinvestment program which has since been followed by justice reinvestment programs in Cowra and

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<sup>36</sup><http://www.corrections.vic.gov.au/utility/publications+manuals+and+statistics/wulgunggo+ngalu+learning+place>

Bourke.<sup>38</sup> Before the establishment of the program, Lake Tyers was a community in crisis. Police callouts for family violence incidents and alcohol related offences were rising at an exponential rate. Instead of focussing on a criminal justice response to these symptoms of community dysfunction, however, the Department of Justice supported the construction of a new medical centre, established sporting activities for adults, and established homework and breakfast clubs for children and young people. Family violence callouts fell as a result. Lake Tyers was officially the responsibility of the Victorian Department of Aboriginal Affairs, but became a whole of Victorian government collaborative response.

Lake Tyers is also a clear example for the Royal Commission of an approach where investing in fundamental services, and supporting people to live healthy and dignified lives, has made a difference to incarceration rates and the trajectory of Aboriginal people into the criminal justice system.

It is suggested that the Royal Commission explore whether user-centred design and culturally informed approaches including an Aboriginal Justice Agreement and the innovative responses it drove such as Koorie Courts and placed-based justice reinvestment could address some of the matters raised by the Terms of Reference.

## **Conclusion**

The detention of children and young people has been an abject failure. It is costly and ineffective and has produced an extraordinary overrepresentation of Aboriginal children and young people in youth detention. Even worse, it traps children and young people in an unsafe environment. It re-traumatizes children already experiencing the adverse effects of trauma. The detention of children should not be countenanced in circumstances where that detention exposes them to further trauma. If this continues to occur, children and young people will continue to be propelled into the criminal justice system, following a clearly marked trajectory from victim to offender. If we continue to persist with this approach, we should not expect to see any change in outcomes, only a depletion of the resources required for a changed approach.

However, alternative responses do exist, and demonstrate a path forward for youth justice. If approaches that are known to work can be adopted, and we are open to testing new and innovative responses, then the community will benefit. These are responses that focus on the power of education to transform young lives, disrupting the 'trauma to prison pipeline' and putting young people back on track. These are responses that reduce trauma, and are informed by the people who have the most at stake in seeing them adopted.

Innovative responses like these represent an opportunity for the community to change the existing patterns and pathways of children and young people in the Northern Territory, so that these same questions do not need to be addressed by future inquiries after another generation of young people has been lost to a system that fails to respond to their needs and the needs of the community.

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<sup>37</sup> <http://www.justice.vic.gov.au/home/your+rights/aboriginal+justice+agreement/place-based+partnership+programs/>

<sup>38</sup> <http://www.justreinvest.org.au/>