

# **Submission to NSW Legislative Council Select Committee Inquiry into Youth Justice**

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Justice and Equity Centre  
ABN 77 002 773 524  
[www.jec.org.au](http://www.jec.org.au)

Gadigal Country  
Level 5, 175 Liverpool St  
Sydney NSW 2000  
Phone + 61 2 8898 6500  
Email [contact@jec.org.au](mailto:contact@jec.org.au)



# About the Justice and Equity Centre

The Justice and Equity Centre is a leading, independent law and policy centre. Established in 1982 as the Public Interest Advocacy Centre (PIAC), we work with people and communities who are experiencing marginalisation or disadvantage.

The Centre tackles injustice and inequality through:

- legal advice and representation, specialising in test cases and strategic casework;
- research, analysis and policy development; and
- advocacy for systems change to deliver social justice.

We actively collaborate and partner in our work and focus on finding practical solutions. We work across five focus areas:

**Disability rights:** challenging discrimination and making the NDIS fairer to ensure people with disability can participate equally in economic, social, cultural and political life.

**Justice for First Nations people:** challenging the systems that are causing ongoing harm to First Nations people, including through reforming the child protection system, tackling discriminatory policing and supporting truth-telling.

**Homelessness:** reducing homelessness and defending the rights of people experiencing homelessness through the Homeless Persons' Legal Service and StreetCare's lived experience advocacy.

**Civil rights:** defending the rights of people in prisons and detention, including asylum seekers, modernising legal protection against discrimination, raising the age of criminal responsibility to 14, advancing LGBTIQ+ equality and advocating for open and accountable government.

**Energy and water justice:** working for affordable and sustainable energy and water and promoting a just transition to a zero-carbon energy system.

## Contact

Alannah Daly  
The Justice and Equity Centre  
Level 5, 175 Liverpool St  
Sydney NSW 2000

E: [adaly@jec.org.au](mailto:adaly@jec.org.au)

Website: [www.jec.org.au](http://www.jec.org.au)

The Justice and Equity Centre office is located on the land of the Gadigal of the Eora Nation.

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# Recommendations

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## **Recommendation 1**

*The age of criminal responsibility be raised in NSW to at least 14 years of age, without exception.*

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## **Recommendation 2**

*The NSW Government should increase investment in community-led, place-based early intervention and prevention programs, with a focus on young people. Aboriginal and Torres Strait Islander-controlled organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander children and their families.*

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## **Recommendation 3**

*The NSW Government should adopt a whole-of-government approach to reducing youth crime by ensuring that adequate services, including health, housing and education, are in place to meet the needs of young people and their families.*

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## **Recommendation 4**

*The NSW Government must commit to a significant, continued increase in social housing by delivering at least 5,000 new, additional social housing dwellings per year for the next 10 years.*

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## **Recommendation 5**

*The NSW Government should increase the availability of support services, as well as crisis and long-term accommodation options for young people. This must include Aboriginal designed and led solutions for young Aboriginal and Torres Strait Islander people.*

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## **Recommendation 6**

*The NSW Government should increase support services and long-term accommodation options for women, children and youth experiencing domestic and family violence.*

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## **Recommendation 7**

*The NSW Government should prioritise access to comprehensive and culturally safe disability services for young people with disabilities.*

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## **Recommendation 8**

*The NSW Government should expand diversion and early intervention programs for young people with disability.*

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## **Recommendation 9**

*The NSW Government should implement the recommendations of the Family is Culture Review and the priority reforms recommended by Absec and the Aboriginal Legal Service.*

### **Recommendation 10**

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*The NSW Police Force should cease conducting bail compliance checks on young people in the absence of a court order and reflect this approach in standard operating procedures.*

### **Recommendation 11**

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*The NSW Government should invest in bail support programs for young people, assisting them to address the root causes of offending, increase compliance with bail conditions and better realise the underlying goals of bail systems.*

### **Recommendation 12**

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*The NSW Government should reform the operation of firearm prohibition orders by amending the Firearms Act; reviewing the Firearms Regulation 2017; delivering education, training and monitoring for NSW Police, and considering a further independent inquiry into the regime.*

### **Recommendation 13**

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*The NSW Government should review their use of pre-emptive policing practices and discontinue applying any 'risk-based' policing practices to young people. This should be reflected in police standard operating procedure documents.*

### **Recommendation 14**

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*The NSW Government should improve the screening processes for disability for young people in detention.*

### **Recommendation 15**

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*The NSW Government should improve the availability of disability supports for young people in detention and ensure effective transition planning post-detention.*

### **Recommendation 16**

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*The NSW Government should amend legislation and regulations governing the use of isolation on children in Youth Justice Centres by:*

- a. Repealing provisions relating to 'segregation' and 'confinement' and replacing these with a single definition of 'isolation' which reflects conditions experienced by the child.*
- b. Prohibiting the use of isolation, except in very narrow circumstances, such as where necessary to prevent an imminent and serious threat of serious injury to the child or any other person.*
- c. Prescribing that once the imminent and serious threat of serious injury has resolved, the isolation must cease.*
- d. Prohibiting the use of isolation as punishment or behaviour management.*

- e. *Introducing a statutory time limit on the permissible length of isolation and limit consecutive periods of isolation.*
- f. *Requiring immediate notification to both the responsible Minister and an external body every time a child is placed in isolation, and subsequent notifications at regular intervals.*
- g. *Requiring that record keeping and notifications reflect actual time spent in isolation.*
- h. *Introducing additional safeguards for the use of isolation, particularly regarding access to meaningful human contact, recreation and exercise facilities, continued education, psychologist consultations and cutlery.*
- i. *Requiring that the use of instruments of restraint on a child is only ever a measure of last resort, for the shortest amount of time necessary, and is never used as a form of punishment or in a way that amounts to cruel, inhuman or degrading punishment.*

# 1. Introduction

The Justice and Equity Centre ('JEC') is pleased to provide a submission to the NSW Legislative Council's Select Committee Inquiry into Youth Justice.

Our submission makes recommendations to reduce the number of children and young people in contact with the criminal justice system in NSW and ensure better protections for young people in detention. These include recommendations to:

- raise the **age of criminal responsibility** to 14;
- adopt **community-led and designed place based approaches**;
- invest in **foundational services**, such as housing;
- stop the use of **pre-emptive policing tools** on children and young people; and
- implement better safeguards to prevent the use of **solitary confinement** in youth justice centres.

## 2. Raising the age of criminal responsibility

To reduce the number of children and young people in contact with the criminal justice system, we should raise the age of criminal responsibility to 14.

The JEC endorses the submission of Raise the Age NSW.

As that submission makes clear, criminalising young children is a failure. It does not address the causes of offending by children. It does not help children do better: it makes them more likely to offend. Because it causes crime, it does not make the community safer. This is the evidence and we urge the Committee to be guided by the evidence and the experts that will give evidence to this inquiry.

As we noted in our 2020 submission to the Council of Attorneys-General Working Group review:<sup>1</sup>

In advocating for the minimum age of criminal responsibility to be raised to at least 14, we are not arguing that actions should not have consequences. Rather, that those consequences should not be harmful, counter productive, contrary to evidence and unjust... There are many ways in which children can be effectively supported to take responsibility for their actions which avoid the blunt, harmful and criminogenic processes of the criminal justice system... We must move away from a narrative of accountability that emphasises reactive measures and the imposition of penalties and recognise the hard work involved in engagement and diversion and restorative justice processes that address the underlying causes of offending, and ultimately, improve community safety.

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<sup>1</sup> Public Interest Advocacy Centre, *Submission to Council of Attorneys-General – Age of Criminal Responsibility Working Group Review* (28 February 2020) <<https://jec.org.au/publication/submission-to-council-of-attorneys-general-age-of-criminal-responsibility-working-group-review/>>.

To effectively address the underlying drivers of crime, governments must work collaboratively, in partnership with community, to develop evidence-based early intervention strategies.<sup>2</sup> These strategies may prevent young people from entering (and re-entering) the criminal legal system and would provide the necessary infrastructure to support raising the age of criminal responsibility. This requires government agencies not only working together, but working with communities to understand community needs, aspirations and solutions. These measures are discussed further in section 3 of our submission below.

### **Recommendation 1**

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*The age of criminal responsibility be raised in NSW to at least 14 years of age, without exception.*

## **3. Reducing the drivers and root causes of youth crime**

Reducing the drivers of youth crime requires a focus on capacity building through social policy, education, health, housing and the provision of support services. This necessitates a whole-of-government response and a move away from reactive law and order responses that continue to fail communities in NSW. Governments must work collaboratively, in partnership with community, to develop evidence-based early intervention strategies.<sup>3</sup>

As explored below, insecure housing is one example of a driver of youth crime that requires the mobilisation of services that sit outside the criminal legal system.

### **3.1 The failure of top-down and police-led responses**

Aiming to reduce youth crime by prioritising policing strategies that increase interaction of young people with the criminal legal system is counterproductive and harmful.

Coercive policing approaches have a minimal impact on crime reduction and, in some cases, have been found to create or exacerbate social problems.<sup>4</sup> There is little convincing evidence that targeted or proactive policing reduces the long-term costs associated with ongoing criminal legal system contact, or is appropriate for addressing the needs of children and young people.<sup>5</sup> In fact,

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<sup>2</sup> Peter Murphy, Anthony McGinness, Andrew Balmaks, Tom McDermott and Megan Corriea, 'A strategic review of the New South Wales juvenile justice system' (Report for the Minister for Juvenile Justice, Noetic Solutions Pty Ltd, April 2010) 63.

<sup>3</sup> Ibid; Australian Human Rights Commission, *How Australia can transform child justice to improve safety and wellbeing* (June 2024) 57 ('Help Way Earlier!' report).

<sup>4</sup> Chris Cunneen, Rob White and Kelly Richards, *Juvenile Justice: Youth and Crime in Australia* (Oxford University Press, 2015) 153; Daryl S Borgquist, Timothy J Johnson and Martin A Walsh, 'Police and urban youth relations: an antidote to racial violence: A guide for police, youth and community leaders to improve police/urban relations' (Report, United States Department of Justice, Community Relations Service, 1995); John Liederbach, 'Controlling suburban and small-town hoods: an examination of police encounters with juveniles' (2007) 5(2) *Youth Violence and Juvenile Justice* 107; Rob White, 'Police practices, punishment and juvenile crime prevention', in Allan Borowski and Ian O'Connor (eds), *Juvenile crime, justice and corrections* (Addison Wesley Longman, 1997).

<sup>5</sup> Ruth McCausland, Eileen Baldry, Sarah Johnson and Anna Cohen, 'People with mental health disorders and cognitive impairment in the criminal justice system: Cost-benefit analysis of early support and diversion' (Report for Australian Human Rights Commission, UNSW and PricewaterhouseCoopers, August 2013).

in some circumstances targeted policing is shown to increase long term financial and social costs.<sup>6</sup>

Programs that focus on the individual offender rather than the family and underlying systemic causes of offending do not reduce crime. In some instances, disadvantaged children with 'challenging behaviour' borne out of mental and cognitive disability, or other indicators of social disadvantage, are left to the police to manage, when they should be being supported by social service agencies.<sup>7</sup> Intensive supervision, surveillance and early release programs which overlook health, education and housing have not been found to be effective.<sup>8</sup> These programs have a similar effect to targeted policing as they reduce trust and increase stigmatisation, while neglecting root causes of offending.<sup>9</sup> Minimising unnecessary coercive contact between police and young people will better support crime prevention.<sup>10</sup>

### 3.1.1 Place-based approaches

An effective alternative to police-led responses is to adopt community-led and designed place based approaches to reduce recidivism.<sup>11</sup>

In 2019, the Productivity Commission suggested that:<sup>12</sup>

[G]overnments need to adopt a place-based approach to the design and delivery of services and programs for families and children... [A] place-based approach involves flexible service provision to find fit-for-purpose solutions that reflect the needs of local communities .... By its nature, a place-based approach relies on engagement between governments and the community to understand the specific issues faced by the community.

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<sup>6</sup> Eileen Baldry, Leanne Dowse, Ruth McCausland and Melissa Clarence, 'Lifecourse institutional costs of homelessness for vulnerable groups' (Final Report, Australian Government, 15 May 2012); McCausland et al (n 5) 1-12.

<sup>7</sup> McCausland et al (n 5) 314.

<sup>8</sup> Steve Aos, Roxanne Lieb, Jim Mayfield, Marna Miller and Annie Pennucci, 'Benefits and costs of prevention and early intervention programs for youth' (Report No. 04-07-3901, Washington State Institute for Public Policy, 17 September 2004).

<sup>9</sup> Rob White, 'Ethnic Diversity and Differential Policing in Australia: The Good, the Bad and the Ugly' (2009) 10(4) *Journal of International Migration & Integration*, 359.

<sup>10</sup> See, eg, Shuling Chen, Tania Matruggio, Don Weatherburn, Jiuzhao Hua, NSW Bureau of Crime Statistics Research, 'The transition from juvenile to adult criminal careers' (Crime and Justice Bulletin, Number 86, 2005); Jiuzhao Hua, Joanne Baker and Suzanne Poynton, 'Generation Y and crime: a longitudinal study of contact with the NSW criminal courts before the age of 21' (Crime and Justice Bulletin, Number 96, 2006); Mark Lynch, Julianne Buckman, and Leigh Krenske, 'Youth justice: criminal trajectories' (Trends and Issues No 265, Australian Institute of Criminology, September 2003); Grace Skrzypiec and Joy Wundersitz, 'Young people born 1984: extent of involvement with the juvenile justice system' (Research Findings, Office of Crime Statistics and Research, April 2005); Don Weatherburn, Rachel Cush and Paula Saunders, 'Screening juvenile offenders for further assessment and intervention' (Crime and Justice Bulletin, Number 109, 2007).

<sup>11</sup> The NSW Implementation Plan for Closing the Gap notes that early interventions to support young people need to be community designed and driven and to support health, education and housing: NSW Government, *2022-24 NSW Implementation Plan for Closing the Gap* (Implementation Plan, August 2022) 99 ('NSW CTG Implementation Plan').

<sup>12</sup> Productivity Commission, *Expenditure on Children in the Northern Territory* (Draft Report, November 2019) 50, cited in Aboriginal Legal Service, Submission to the Council of the Attorneys-General, *Review of the Age of Criminal Responsibility* (3 March 2020) 32.

Rather than being police-led initiatives, these involve genuine partnerships with non-government organisations, police and service providers. The NSW Implementation Plan for Closing the Gap notes that early interventions to support young people need to be community designed and driven and to support health, education and housing.<sup>13</sup>

There have been many successful examples in NSW of place-based approaches to reducing recidivism. Implementation of the the Maranguka Justice Reinvestment Initiative<sup>14</sup> for example saw crime rates in Bourke fall dramatically.<sup>15</sup> Other examples of place-based approaches in NSW include:

- Dharriwaa Elders Group (Walgett) who have launched an Action Plan to be implemented in partnership with the University of NSW.<sup>16</sup>
- Deadly Connections (Sydney) which seeks to break cycles of disadvantage and trauma to directly address the over-representation of Aboriginal people in the child protection and justice systems, delivering programs including Street Smarts and Breaking the Cycle.<sup>17</sup>
- Weave Youth and Community Services (Sydney) which provides support to children, young people, families and communities facing complex situations and runs programs including Creating Futures and Kool Kids.<sup>18</sup>
- BackTrack (Armidale) which offers holistic, flexible, long-term support to young people aged between 14 and 17 years old who are having a difficult time.<sup>19</sup> A 2021 study conducted a survey of community members in Armidale and found that 75% preferred BackTrack over a greater police presence as a method to reduce youth crime.<sup>20</sup>

### 3.1.2 The need for a whole-of-government response

Community-focused early intervention programs require a whole-of-government approach. For example, the NSW Police Youth Strategy 2023 – 2025 ('Youth Strategy') sets out that NSW Police understand that youth issues must be addressed collaboratively, from a whole-of-

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<sup>13</sup> NSW CTG Implementation Plan (n 11) 99.

<sup>14</sup> Just Reinvest NSW, *Justice Reinvestment in Bourke* <<https://www.iustreinvest.org.au/community/bourke-maranguka/>>.

<sup>15</sup> Lorena Allam, 'Unique community policing sees crime rates plunge in Bourke' *Guardian Australia* (9 October 2018) <https://www.theguardian.com/australia-news/2018/oct/09/unique-community-policing-sees-rates-plunge-in-bourke>.

<sup>16</sup> Dharriwaa Elders Group, Yuwaya Ngarra-li – 'Vision' <<https://www.dharriwaaeldersgroup.org.au/index.php/yuwayangarrali>> ; UNSW Sydney, Institute for Global Development, *Dharriwaa Elders Group launches a vision for young people in Walgett* <<https://www.unsw.edu.au/news/2019/06/dharriwaa-elders-group-launches-a-vision-for-young-people-in-walgett>>; Ruth McCausland et al, 'CommUNITY-Led development: A partnership to realize Aboriginal Elders' vision for change' (2021) 52(4) *Community Development* 1, 13.

<sup>17</sup> Deadly Connections, <<https://deadlyconnections.org.au/>>. ; Centre for Crime, Law and Justice, Faculty of Law and Justice, UNSW, 'Replacing the Youth Justice System for Children aged 10 – 13 years in NSW: A 'Best Interests' Response', (September 2021) 26.

<sup>18</sup> Weave Youth and Community Services, <<https://www.weave.org.au/#>>.

<sup>19</sup> BackTrack, *What BackTrack Does* <<https://backtrack.org.au/what-we-do/>>.

<sup>20</sup> Kim Edmunds et al, 'Exploring Community-Based Options for Reducing Youth Crime' (2021) *International Journal of Environmental Research and Public Health* 18(1) 1-2.

government approach and recognises that risk factors associated with offending by youth are often beyond the direct influence of the NSW Police Force.<sup>21</sup> As the Youth Strategy sets out:

The NSW Police Force plays an important role in identifying at-risk young people, however, the way in which the NSW Police Force can assist those young people to make better choices and avoid contact with the criminal justice system is limited. The importance of building collaborative relationships with other agencies is vital to ensure a harmonious approach is taken in connecting young people with appropriate support services.<sup>22</sup>

It is only by mobilising support from all sectors of government that we can address the drivers of crime:

Despite substantial evidence of social determinants being the root causes of offending behaviour, our policies have historically focused on punishment, rather than prevention and early intervention...A holistic focus on prevention and early intervention requires the redesign of systems that address the underlying causes of offending by children, especially across health, education, social services, and child protection systems.<sup>23</sup>

Yet this approach has never been fully adopted in NSW.<sup>24</sup>

Early intervention programs which support disadvantaged households are among the most effective prevention programs in terms of their ability to reduce the number of juvenile crime outcomes and deliver substantial long-term savings to taxpayers.<sup>25</sup> The most successful programs are those that emphasise family wellbeing, likely because they focus on upskilling the adults in the best position to care for the child.<sup>26</sup>

A whole-of-government approach, developed with community, can ensure that the education, health, disability, housing, and community services systems are in place to support young people and their families and prevent involvement in the criminal justice system.

## **Recommendation 2**

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*The NSW Government should increase investment in community-led, place-based early intervention and prevention programs, with a focus on young people. Aboriginal and Torres Strait*

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<sup>21</sup> New South Wales Police Force, *Youth Strategy 2023-2025* (2023) 10  
<[https://www.police.nsw.gov.au/\\_data/assets/pdf\\_file/0010/616816/YouthStrategy\\_D17.pdf](https://www.police.nsw.gov.au/_data/assets/pdf_file/0010/616816/YouthStrategy_D17.pdf)>.

<sup>22</sup> Ibid.

<sup>23</sup> 'Help Way Earlier!' report (n 3) 14.

<sup>24</sup> Ibid 55 citing Hannah Klose and Faith Gordon, 'Public Health approaches to youth involvement in violence: Examining stakeholders' perspectives in Australia and the United Kingdom' (2023) 56(1) *Journal of Criminology* 98, 110.

<sup>25</sup> Eileen Baldry, Julian Trofimovs, Jude Brown, Nicola Brackertz and Michael Fotheringham, Springboard Evaluation Report (Evaluation Report, University of NSW and Australian Housing and Urban Research Institute, 2015) 19–21.

<sup>26</sup> PW Greenwood, 'Cost Effective Violence Prevention through Targeted Family Interventions' (2004) *Annals of the New York Academy of Sciences*, 1036(1) 201.

*Islander-controlled organisations must be at the centre of program design and delivery for Aboriginal and Torres Strait Islander children and their families.*

### **Recommendation 3**

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*The NSW Government should adopt a whole-of-government approach to reducing youth crime by ensuring that adequate services, including health, housing and education, are in place to meet the needs of young people and their families.*

## **3.2 Unmet housing needs**

It is well-recognised that insecure housing and homelessness is a driver of contact with the criminal justice system.<sup>27</sup>

As explained in the Australian Human Rights Commission's ('AHRC') report *Help Way Earlier!*:

When asked what helps children to not come into contact with police, we heard that children and young people need a 'roof over your head', having 'their accommodation and all basic needs met', and being 'safe at home'.<sup>28</sup>

### **3.2.1 Lack of affordable housing**

In the current housing crisis, more families and young people are unable to access safe, secure and stable housing.<sup>29</sup> Housing in the private market is increasingly unobtainable as rental affordability is declining,<sup>30</sup> particularly for people in regional NSW.<sup>31</sup> Young people who have an income find it extremely difficult to find affordable housing in the private rental market – and may struggle to secure a tenancy due to their age and minimal rental history.<sup>32</sup> There is also a lack of youth-specific long-term accommodation options.<sup>33</sup>

As a result, there are increasing numbers of children and young people experiencing homelessness.<sup>34</sup> In 2022-23, a total of 15,498 children presented to homelessness services in NSW, while 7,152 children sought support alone (without a parent or caregiver).<sup>35</sup> Aboriginal

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<sup>27</sup> 'Help Way Earlier!' report (n 3) 33.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid 60.

<sup>30</sup> Australian Government, National Housing Supply and Affordability Council, *State of the Housing System 2025* (Report, April 2025) 79.

<sup>31</sup> NSW Department of Planning, Industry and Environment, Regional Housing Taskforce Findings Report: Summary of Stakeholder Engagement (September 2021) 3-4.

<sup>32</sup> Tenants' Union of NSW and Youth Action, *Young Renters: We Hear You!* (Report, June 2021) 10; Multicultural Youth Affairs Network, *Policy Brief: Addressing the rental crisis for young people in NSW* (November 2023) 3.

<sup>33</sup> YFoundations, *Young, in trouble and with nowhere to go: Homeless adolescents' pathways into and out of detention in NSW* (Report, 2021) 36, 47 <<https://www.yfoundations.org.au/youth-justice-report/>>.

<sup>34</sup> In the 2021 Census, rates of homelessness increased 6.8% for children under 12 and 3.7% for youth aged 12-18 (Australian Bureau of Statistics, *Estimating Homelessness: Census (2021)* <<https://www.abs.gov.au/statistics/people/housing/estimating-homelessness-census/latest-release#cite-window2>>.

<sup>35</sup> Homelessness Australia, *2024 Child Homelessness Snapshot* (August 2024) 6 <<https://apo.org.au/sites/default/files/resource-files/2024-08/apo-nid327814.pdf>> ('2024 Child Homelessness Snapshot').

children are significantly overrepresented among these children – making up 37% of children seeking support in NSW.<sup>36</sup>

### 3.2.2 Impacts of homelessness on young people

Homelessness has traumatic and wide-ranging effects on a young person.<sup>37</sup> The Australian Institute of Family Studies explains that:

Young homeless people are often unable to support themselves, ineligible for benefits, and unlikely to find employment. Consequently, they may engage in survival behaviours—begging, theft, drug dealing and prostitution—to earn income for food and shelter. Not only are some of these behaviours illegal, they are also more visible to police due to the lack of privacy experienced by homeless people.<sup>38</sup>

The experience of homelessness can also lead to higher likelihood of mental illness, increased levels of substance abuse, and lower educational outcomes.<sup>39</sup> These effects create an additional likelihood of contact with the youth justice system.<sup>40</sup>

Young homeless people are also at risk of being charged for ‘justice procedure offences’, including breaches of bail, parole, community-based order and AVOs.<sup>41</sup> They may also be held in detention where they are homeless and cannot provide an appropriate bail address.<sup>42</sup> For youth, homelessness increases the risk of crime, and crime increases the risk of homelessness.<sup>43</sup>

### 3.2.3 Addressing unmet housing needs

Increasing the availability of affordable housing will better support young people and reduce their risk of contact with the criminal justice system.<sup>44</sup> This must include a significant, continued increase in social housing to meet current and future need.<sup>45</sup> We recommend an investment of at least 5000 new social housing homes every year for the next 10 years.<sup>46</sup>

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<sup>36</sup> 2024 *Child Homelessness Snapshot* (n 35).

<sup>37</sup> Australian Institute of Family Studies, *Children’s exposure to domestic and family violence: Key issues and responses* (Report No 26, December 2015) 5 <[https://aifs.gov.au/sites/default/files/publication-documents/cfca-36-children-exposure-fdv\\_0.pdf](https://aifs.gov.au/sites/default/files/publication-documents/cfca-36-children-exposure-fdv_0.pdf)>.

<sup>38</sup> Australian Institute of Family Studies, ‘Child maltreatment, homelessness and youth offending’ (Short article, October 2017) <<https://aifs.gov.au/resources/short-articles/child-maltreatment-homelessness-and-youth-offending>>.

<sup>39</sup> Nous Group, *Youth Homelessness Info Paper* (Report, 11 January 2023) 5 <<https://nousgroup.com/assets/docs/Australia-Nous-ESSC-Youth-Homelessness-Paper.pdf>>.

<sup>40</sup> Australian Institute of Health and Welfare, *Vulnerable young people: interactions across homelessness, youth justice and child protection* (Report, December 2016) 19-23 <<https://www.aihw.gov.au/getmedia/944d5eb5-a940-41be-b1a6-f81f95636aa5/20475.pdf?v=20230605173150&inline=true>>.

<sup>41</sup> Yfoundations (n 33) 19.

<sup>42</sup> Ibid 5, 28.

<sup>43</sup> Ibid 5.

<sup>44</sup> ‘Help Way Earlier!’ report (n 3) 61

<sup>45</sup> Tenants’ Union of NSW and Youth Action (n 32) 19.

<sup>46</sup> Thomas Writer et al, *Social Housing in New South Wales: Report 2 Future Impact* (Report, February 2022) 11 <<https://assets.csi.edu.au/assets/research/Social-Housing-in-New-South-Wales-Report-2-Future-Impact.pdf>>.

There is also a need for youth-specific solutions to address the lack of housing and support services for young people.<sup>47</sup> The NSW Government should increase the availability of supported accommodation, both long-term and crisis options, for young people.<sup>48</sup> We also recommend increased investment in services that support young people at risk of and experiencing homelessness.<sup>49</sup>

Aboriginal designed and led solutions must be a key component of these reforms to ensure that young Aboriginal people are provided with culturally safe housing and supports.<sup>50</sup>

#### **Recommendation 4**

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*The NSW Government must commit to a significant, continued increase in social housing by delivering at least 5,000 new, additional social housing dwellings per year for the next 10 years.*

#### **Recommendation 5**

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*The NSW Government should increase the availability of support services, as well as crisis and long-term accommodation options for young people. This must include Aboriginal designed and led solutions for young Aboriginal and Torres Strait Islander people.*

### **3.2.4 Domestic and family violence and insecure housing as drivers of youth crime**

Experiences of family and domestic violence are also linked with increased risk of youth offending,<sup>51</sup> and the current lack of housing options prevents women and their children from safely leaving violent situations. Often, they are forced to return to perpetrators and the risk of violence, or experience homelessness.<sup>52</sup> As a result, many dependent children, and youth who leave the home, are couchsurfing, living in unsafe or overcrowded dwellings or experiencing homelessness.<sup>53</sup>

Any measures to reduce youth crime must ensure that women and children can escape domestic and family violence safely. There must be domestic violence and homelessness services

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<sup>47</sup> Yfoundations, *Submission to NSW Homelessness Strategy* (February 2025) 30 <[https://www.yfoundations.org.au/files/yfoundations-submission-to-nsw-homelessness-strategy-february-2025.pdf?\\_cchid=8ee26db92f059879d58f55c5017bbf24](https://www.yfoundations.org.au/files/yfoundations-submission-to-nsw-homelessness-strategy-february-2025.pdf?_cchid=8ee26db92f059879d58f55c5017bbf24)>.

<sup>48</sup> Australian Human Rights Commission, *Keeping Kids Safe and Well – Your Voices* (Report, December 2021) 29 <[https://humanrights.gov.au/\\_data/assets/file/0029/46694/Ahrc\\_keeping\\_kids\\_safe\\_and\\_well\\_2022.pdf](https://humanrights.gov.au/_data/assets/file/0029/46694/Ahrc_keeping_kids_safe_and_well_2022.pdf)>.

<sup>49</sup> Yfoundations (n 47) 8, 44.

<sup>50</sup> Absec, *Housing solutions for Aboriginal and Torres Strait Islander young people exiting care in NSW* (Research Paper, December 2025) 12 <[https://absec.org.au/wp-content/uploads/2025/12/Housing-Solutions-Report\\_Dec25-LJ\\_251218\\_1510.pdf](https://absec.org.au/wp-content/uploads/2025/12/Housing-Solutions-Report_Dec25-LJ_251218_1510.pdf)>.

<sup>51</sup> Local Government Association, *The relationship between family violence and youth offending* (Report, June 2018) 6 <[https://www.local.gov.uk/sites/default/files/documents/15%2034%20-%20The%20relationship%20between%20family%20violence%20and%20youth%20offending-V4\\_1.pdf](https://www.local.gov.uk/sites/default/files/documents/15%2034%20-%20The%20relationship%20between%20family%20violence%20and%20youth%20offending-V4_1.pdf)>; Equity Economics, *Nowhere to go: The benefits of providing long-term social housing to women that have experienced domestic and family violence* (Report, July 2021) 13 <[https://everybodyshome.com.au/wp-content/uploads/2022/03/EE\\_Women-Housing\\_Domestic-Violence\\_WEB\\_SINGLES-2-compressed.pdf](https://everybodyshome.com.au/wp-content/uploads/2022/03/EE_Women-Housing_Domestic-Violence_WEB_SINGLES-2-compressed.pdf)>.

<sup>52</sup> Equity Economics (n 51) 4.

<sup>53</sup> Yfoundations, *Regional Youth Homelessness Forum Consultation Report* (October 2022) 3 <[https://www.yfoundations.org.au/files/latest-news/Regional\\_Youth\\_Homelessness\\_Forum\\_Report.pdf?\\_cchid=e1bed791671b17a206aefbe37d2b132a](https://www.yfoundations.org.au/files/latest-news/Regional_Youth_Homelessness_Forum_Report.pdf?_cchid=e1bed791671b17a206aefbe37d2b132a)>.

available to provide support, as well as long-term, stable options for housing to ensure the safety and wellbeing of women, children and youth.<sup>54</sup>

### **Recommendation 6**

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*The NSW Government should increase support services and long-term accommodation options for women, children and youth experiencing domestic and family violence.*

### **3.3 Lack of support for young people with disability**

Young people with disability, particularly First Nations people and those with cognitive and mental health impairments, have an increased likelihood of contact with the criminal justice system.<sup>55</sup> Behaviours that may be associated with disability are often criminalised by police responses.<sup>56</sup>

This overrepresentation is also driven by the systemic disadvantages experienced by many people with disability, including poverty, disrupted family backgrounds, unstable housing and homelessness.<sup>57</sup> Links such as these provide stark examples of why a whole of government approach is required to address youth crime.

Access to disability services and supports can prevent young people from becoming involved in the criminal justice system. As highlighted in the AHRC's *Help Way Earlier!* report:

Screening and assessment for health conditions such as hearing impairment, communication difficulties, neurodevelopmental disability, learning difficulties and mental ill-health have the potential to divert children away from the justice system if timely treatment is provided. Children with these undiagnosed and unsupported needs are often suspended from school and likely to become involved in negative behaviours and come to the attention of police.<sup>58</sup>

But many young people with disability face challenges accessing timely and appropriate supports. As explained in the NSW Legislative Council's report *Foundation and Disability Supports Available for Children and Young People in NSW*, these challenges include:

- Cost of living pressures on families (where relevant costs are not otherwise covered by government programs such as the health system or the National Disability Insurance Scheme ('NDIS'));
- Lack of culturally safe services;
- Limited services in rural and remote areas; and

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<sup>54</sup> Equity Economics (n 51) 8-10.

<sup>55</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Final Report, September 2023 vol 8, 41 ('Disability Royal Commission Report'); Commonwealth of Australia, Department of Social Services, *Australia's Disability Strategy 2021-2031* (2024) 66 <<https://www.disabilitygateway.gov.au/sites/default/files/documents/2025-01/5831-dss3513-ads-strategy-2021.pdf>>.

<sup>56</sup> Disability Royal Commission Report (n 55) vol 8, 4, 10.

<sup>57</sup> Ibid 33.

<sup>58</sup> 'Help Way Earlier!' report (n 3) 61.

- Long wait times for appointments.<sup>59</sup>

The report also pointed to difficulties navigating the fragmented service landscape,<sup>60</sup> including due to unclear responsibilities between state-based programs, and the NDIS:

...families [were] frustrated by unclear eligibility criteria, undefined service boundaries and confusion over NDIS interfaces that create delays and a 'location lottery' of access. Evidence showed system ambiguity leads to cost-shifting, duplicated effort and children missing critical interventions while parents navigate fragmented information across health, education and community sectors.<sup>61</sup>

Even when a young person has been able to access disability services, the levels of support they receive may not be sufficient to meet their needs and reduce the risk of contact with the criminal legal system. A recent District Court sentencing decision provides a stark example of this:

The Offender is a 24-year-old Indigenous Australian who committed these offences with the singular motivation of wanting to be arrested and returned to prison because he felt unable to cope with his life in the world while receiving NDIS funded support for only 11 of the 24 hours of the day...He was not receiving support in the evening and overnight. It is common ground that the offending occurred during the hours he was not funded for and therefore not receiving supervising support.<sup>62</sup>

In addition to the need for disability supports, diversion and early intervention programs are also crucial measures to disrupt cycles of offending and disadvantage.<sup>63</sup> However, the *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability* ('*Disability Royal Commission*') found that existing diversion and early intervention programs are not meeting the level of need and recommended that these programs be expanded.<sup>64</sup> It is important that these programs are accessible, responsive to the needs of people with disability, and culturally appropriate.<sup>65</sup>

## ***Recommendation 7***

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*The NSW Government should prioritise access to comprehensive and culturally safe disability services for young people with disabilities.*

<sup>59</sup> NSW Legislative Council, Select Committee on Foundational and Disability Supports Available for Children and Young People in New South Wales, *Foundational and Disability Supports Available for Children and Young People in New South Wales* (First Report, February 2026) 28 [3.9]

<<https://www.parliament.nsw.gov.au/tp/files/192965/Report%20No%201%20-%20SC%20-%20Disability%20support%20-%20FINAL.pdf>> ('Foundational and Disability Supports Report').

<sup>60</sup> Foundational and Disability Supports Report (n 59) 35 [3.38].

<sup>61</sup> Ibid 75 [3.182].

<sup>62</sup> *R v Conroy* [2025] NSWDC 459 [1],[6].

<sup>63</sup> Disability Royal Commission Report (n 55) vol 8, 284.

<sup>64</sup> Ibid 283.

<sup>65</sup> Ibid.

## Recommendation 8

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*The NSW Government should expand diversion and early intervention programs for young people with disability.*

### 3.4 Young people in out-of-home-care

Young people who have been placed in out-of-home care ('OOHC') are at greater risk of involvement in the criminal justice system.<sup>66</sup> In 2022-23, over 60% of the young people under Youth Justice NSW supervision had been subject to child protection intervention in the previous 10 years.<sup>67</sup>

This disproportionately impacts Aboriginal young people, who are removed from their families and placed into OOHC at more than 10 times the rate of non-Aboriginal young people.<sup>68</sup> The 2022 *Young People in Custody Health Survey Report* ('YPICHSR') highlighted that more than one in five Aboriginal young people in custody reported being placed in OOHC before the age of 16.<sup>69</sup>

Reasons for the significant overlap of Aboriginal young people in the OOHC and criminal justice systems are discussed in Chapter 15 of the landmark, Aboriginal-led *Family is Culture: Independent Review of Aboriginal Children and Young People in Out-of-Home Care in New South Wales* ('FIC Review'), released in 2019. The FIC Review spoke at length about the 'care-criminalisation' process, by which placement in OOHC 'exacerbates the existing risk that maltreated children will become involved in criminal offending', most often through behaviour that would usually result in a disciplinary response from parents and not in a criminal justice-related response from police officers:<sup>70</sup>

[The] 'care-criminalisation'[process] arises from the fact that children are often charged with offences against carers or residential home staff due to conduct that would not be criminalised if they occurred in the child's home environment. Care criminalisation also results from placement instability, a lack of cultural connection and a lack of secure accommodation for children in custody and seeking bail.<sup>71</sup>

The FIC Review further highlights that drivers of criminal offending for young people in OOHC include:

...the lack of access to support services to address a child's trauma, mental health problems or learning difficulties; the risk of trauma occurring in OOHC (for example,

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<sup>66</sup> Megan Davis, *Family is Culture Independent Review of Aboriginal Children in Out-of-Home Care* (Final Report, November 2019) xxxv ('FIC Review').

<sup>67</sup> Youth Justice NSW, *2022 Young People in Custody Health Survey Report* (2025) 25 <[https://www.nsw.gov.au/sites/default/files/noindex/2026-02/ypichs\\_report\\_final.pdf](https://www.nsw.gov.au/sites/default/files/noindex/2026-02/ypichs_report_final.pdf)>.

<sup>68</sup> National Voice for our Children (SNAICC), *Family Matters Report 2023* (2023) 16 <<https://www.snaicc.org.au/wp-content/uploads/2024/07/20240731-Family-Matters-Report-2023.pdf>>.

<sup>69</sup> Youth Justice NSW (n 67) xxix.

<sup>70</sup> FIC Review (n 66) 236.

<sup>71</sup> Ibid xxxv.

as a result of abuse by a carer); the criminalising influence of other children in residential care; failed restoration attempts; and limited support for OOHC leavers.<sup>72</sup>

...

The plight of children in OOHC involved in the criminal justice system is further compounded by the fact that they do not always receive support from the department—when the department is their ‘parent’—during police investigations or the court proceedings.<sup>73</sup>

The *FIC Review* makes recommendations to reduce the over-representation of Aboriginal children and young people in OOHC, including how to better support young people in contact with the criminal justice system.<sup>74</sup> It focuses on Aboriginal community-led approaches to supporting the rights and wellbeing of Aboriginal young people and their families, and the importance of connection to culture and community as protective factors that reduce the likelihood of Aboriginal children coming into contact with the criminal justice system.<sup>75</sup>

The *FIC Review*’s recommendations include:

- training for residential OOHC staff and police officers (including on the *Joint Protocol to reduce the contact of young people in residential OOHC with the criminal justice system*);
- judicial education to inform tailored and appropriate decision-making involving children in OOHC in the criminal jurisdiction, and
- greater data collection and research into the involvement of Aboriginal children and young people in the OOHC and juvenile justice systems.

We encourage the NSW Government to implement the comprehensive reform roadmap provided by the 126 systemic reform recommendations of the *FIC Review*.

With the Aboriginal Legal Service (NSW/ACT) (‘ALS’) and AbSec – NSW Child, Family and Community Peak Aboriginal Corporation (‘AbSec’), we urge the NSW Government to implement the following priority reforms as outlined in the *FIC ‘Five Years On’ Community Report*.<sup>76</sup> This is needed to address the ongoing over-representation of Aboriginal children in OOHC and criminal justice systems:

1. Establish a NSW Child Safety and Wellbeing Commission;
2. Appoint a NSW Commissioner for Aboriginal Children and Young People;
3. Transition funding to Aboriginal community-led supports for children and families, focusing on prevention, preservation and restoration; and

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<sup>72</sup> FIC Review (n 66) 237-228 (citations omitted).

<sup>73</sup> Ibid 238 (citations omitted).

<sup>74</sup> Ibid xlviii (see recommendations 66-70).

<sup>75</sup> Ibid 238.

<sup>76</sup> Absec and ALS NSW/ACT, *Family is Culture: ‘Five Years On’ Community Report* (November 2024) 9 <[https://absec.org.au/wp-content/uploads/2024/11/FIC-Report-Card-5-Years-On\\_Oct2024-FINAL.pdf](https://absec.org.au/wp-content/uploads/2024/11/FIC-Report-Card-5-Years-On_Oct2024-FINAL.pdf)>.

4. Properly resource AbSec and the ALS as the peak organisations for Aboriginal children, families and communities in NSW.

### **Recommendation 9**

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*The NSW Government should implement the recommendations of the Family is Culture Review and the priority reforms recommended by Absec and the Aboriginal Legal Service.*

## **4. Pre-emptive policing of young people**

The JEC has experience representing young people in NSW who have been subjected to NSW Police pre-emptive policing tools, premised on the ‘pre-crime logic of confronting and countering threats before they emerge.’<sup>77</sup> This includes bail compliance checks in the absence of a court ordered enforcement condition and searches further to firearms prohibition orders (‘FPOs’), in the absence of any firearms related offending.

Pre-emptive policing of young people is harmful and ineffective. This is because:

- It increases interaction with, instead of diverting children from, the criminal legal system. When experienced by children, this early exposure is a key predictor of future involvement with<sup>78</sup> and escalation through the criminal legal system.<sup>79</sup>
- People experience these practices as harassment and discrimination, causing feelings of antipathy and hostility toward police and the criminal legal system. This policing ‘construct[s] suspect communities’<sup>80</sup> with disproportionate impact on racial and ethnic minorities, particularly First Nations young people.
- It does not support or complement effective therapeutic and diversionary alternatives.
- There is no evidence these initiatives reduce youth crime in Australia.<sup>81</sup>

### **4.1 Bail compliance checks**

The *Bail Act 2013* (NSW) provides that a court can make ‘enforcement conditions’ to empower police to attend people’s homes to check for compliance with bail conditions,<sup>82</sup> which reflects amendments to the former *Bail Act 1978* (NSW) and gives police powers otherwise generally unavailable at law.<sup>83</sup> However, compliance checks are routinely conducted by NSW Police beyond the scope of court ordered enforcement conditions, or in the absence of any such conditions, including against children and young people on bail. For nearly a decade, the JEC

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<sup>77</sup> Jude McCulloch and Sharon Pickering, ‘Pre-Crime and Counter-Terrorism: Imagining Future Crime in the ‘War on Terror’’ (2009) 49(5) *British Journal of Criminology* 628, 633

<sup>78</sup> NSW CTG Implementation Plan (n 11) 98.

<sup>79</sup> UNSW Comparative Youth Penalty Project, *Arguments for Raising the Minimum Age of Criminal Responsibility* (Report, 2017).

<sup>80</sup> Louise Boon-Kuo et al, ‘Policing Biosecurity: Police Enforcement of Special Measures in New South Wales and Victoria during the COVID-19 Pandemic’ (2021) 33(1) *Current Issues in Criminal Justice* 76, 77; Vicki Sentas, *Traces of Terror: Counter-Terrorism, Law, Policing and Race* (Oxford University Press, 2002).

<sup>81</sup> Youth Justice Coalition, *Policing Young People in NSW: A Study of the Suspect Targeting Management Plan* (Report, November 2017) 52 .

<sup>82</sup> *Bail Act 2013* (NSW) s 30.

<sup>83</sup> See, for example, New South Wales, *Parliamentary Debates*, Legislative Council, 24 October 2012, 1 (The Hon Michael Gallacher, MP); NSW Law Reform Commission, Report 133, *Bail* (2012) at [16.22 – 16.23]

has represented clients who have been subject to these 'bail compliance checks' by NSW Police, and we continue to challenge the lawfulness of this practice.<sup>84</sup>

The experiences of our clients is that NSW Police officers regularly enter onto private property to monitor compliance with residence or curfew conditions, without first obtaining an enforcement condition from the court. These checks often occur multiple times a day, and very late at night or in the early hours of the morning. They are experienced by our clients as disruptive and as part of a pattern of targeted police harassment. Regular police attendances at our clients' homes are stigmatising and impinge on their privacy, family and home life. They are particularly disruptive for young people, trying to establish good school and life routines. This is illustrated in the experience of JEC client 'Joanne'.

#### **Case Study: Joanne\***

Joanne is a single mother of three, living in Western Sydney, who was referred to the JEC through the Aboriginal Legal Service (NSW/ACT). She and her family were subject to more than 90 police visits over 18 months. 59 of these visits appear to have been unlawful as they were in excess of the limitations specified in bail enforcement conditions. Through that time, Joanne's anxiety increased, and she had difficulty sleeping.

'Police coming around didn't only affect my son who was on bail. It also affected me and his sisters, especially when police were shining torches through the windows after midnight. It felt as though they were harassing the whole family. My youngest daughter is now scared of police.'

'The checks felt relentless. Once there were three checks in just a few hours. Police seemed to just do whatever they wanted, and completely ignored what the court said about how much they were allowed to come.'

'Sometimes my son would start behaving really well. But police continued to harass him anyway, and he'd feel like his good behaviour was pointless and end up being charged again.'

'It was very embarrassing to have the police constantly at my house. It made it hard for me with my neighbours. And I stopped inviting guests over in case the police turned up.'

'The checks often happened on school nights, which meant my youngest daughter was too tired to go to school in the morning.'

\*Client's name has been changed to protect privacy

The JEC is concerned about the ongoing practice of bail compliance checks, namely that:

- current policy is leading NSW Police officers to engage in unlawful conduct, entering or remaining on private property in excess of lawful authority to do so;

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<sup>84</sup> See, for example, Justice and Equity Centre, 'Challenge continues to excessive bail compliance checks (Web Page, 21 March 2019) <<https://jec.org.au/focus-areas/civil-rights/policing-and-detention/challenge-continues-to-excessive-bail-compliance-checks/>>.

- current practice is improperly discriminatory in its effect, with bail compliance checks being disproportionately conducted on First Nations people, particularly First Nations young people;
- the frequency and timing of bail compliance checking is often unreasonable, unjust or oppressive in its effect on the person on bail, without due regard to the purposes for which the bail conditions exist;
- by engaging in excessive bail compliance checking on young people particularly, NSW Police are prioritising policing strategies that tend towards increased interactions with the criminal justice system; and
- excessive and oppressive bail compliance checks on young people have an intrusive and disruptive impact on them and their families, impeding rehabilitation efforts.

In 2022, statistics produced during NSW Budget Estimates showed that, of all bail compliance checks conducted on young people without an enforcement condition during that financial year, 75.6% were conducted on Aboriginal and Torres Strait Islander young people.<sup>85</sup> More recent statistics broken down by Police Area Command, obtained by the JEC through freedom of information laws, are similarly alarming. In Orange, the proportion of bail checks conducted on First Nations people for FY21/22 and FY22/23 were 91.5% and 90.6% respectively.

One of the reasons for this disproportion is likely to be the broad discretion police officers are currently exercising to conduct bail compliance checks in the absence of an enforcement condition. When police officers enjoy a broad discretion to select who they target and when they target them, they regularly apply this discretion in discriminatory ways in what has been described as a reliance by police on 'racialised proxies for risk to construct suspect communities'.<sup>86</sup> The evidence with respect to bail compliance checks is consistent with the weight of evidence that, more generally, police discretionary decisions work against the interests of Indigenous people.<sup>87</sup>

The Law Enforcement Conduct Commission ('LECC') examined this police practice in 2024 and produced a report of its findings.<sup>88</sup> The LECC was concerned that statutory safeguards may be undermined if checks are occurring in the absence of a court order.<sup>89</sup> The LECC recommended that NSW Police cease conducting bail compliance checks without first getting an order from a court, and that this position be reflected in police standard operating procedures.<sup>90</sup> NSW Police have so far declined to implement these recommendations.<sup>91</sup>

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<sup>85</sup> Legislative Council, Parliament of New South Wales, Portfolio Committee No 5 – Regional NSW and Stronger Communities, *Budget Estimates 2022-2023: Responses to Supplementary Questions*, 27 September 2022, 58 <<https://www.parliament.nsw.gov.au/lcdocs/other/17796/ASQON%20-%20Hon%20Paul%20Toole%20MP%20-%20Deputy%20Premier.%20Regional%20NSW.%20Police%20-%20received%2027%20September%202022.pdf>>.

<sup>86</sup> Sentas (n 80); Boon-Kuo et al (n 80) 76, 77.

<sup>87</sup> Cunneen, White and Richards (n 4) 153.

<sup>88</sup> Law Enforcement Conduct Commission (2025) *Bail compliance checks in NSW – Final Report* <<https://www.lecc.nsw.gov.au/publications/publications/bail-compliance-checks-in-nsw-final-report.pdf/@download/file>> ('LECC bail compliance checks report').

<sup>89</sup> Ibid, ii.

<sup>90</sup> *LECC bail compliance checks report* (n 88) iv.

<sup>91</sup> As indicated by comments made during the September 2025 round of Budget Estimates (refer to pp 62-62 of the Transcript for Legislative Council Portfolio Committee No. 5 – Justice and Communities: Police and Counter-Terrorism, 3 September 2025).

A more effective way of promoting bail compliance would be to increase investment in bail support programs, which support people to comply with their bail conditions and target criminogenic risk factors. The two principle aims of bail support programs are to prevent reoffending while on bail and increase the likelihood of a person appearing in court for the hearing of their charges.<sup>92</sup> Recent research shows that bail support programs:

- reduce reoffending by 33%;<sup>93</sup>
- increase compliance with bail conditions by 95%;<sup>94</sup>
- improve a range of other social and health wellbeing measures relevant to the drivers of criminal justice system contact;<sup>95</sup> and
- achieve cost savings when compared to an absence of bail support.<sup>96</sup>

One example is the Bail Support Court Integrated Services Program in Victoria. Evaluations have found this program reduces contact with the criminal legal system and facilitates access to support and treatment.<sup>97</sup> Another example is the Caxton Legal Centre Men’s Bail Support Program in Queensland, where 95% of participants were bail compliant in 2021-2022 and were less likely to re-offend in the short to medium term.<sup>98</sup>

Supporting people to comply with their bail obligations and address the root causes of offending is more likely to serve the underlying goals of bail, than monitoring bail compliance.

### **Recommendation 10**

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*The NSW Police Force should cease conducting bail compliance checks on young people in the absence of a court order, and reflect this approach in standard operating procedures.*

### **Recommendation 11**

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*The NSW Government should invest in bail support programs for young people, assisting them to address the root causes of offending, increase compliance with bail conditions and better realise the underlying goals of bail systems.*

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<sup>92</sup> Justice Reform Initiative, *Alternatives to Incarceration in New South Wales* (2023) 43.

<sup>93</sup> Elena Marchetti, *Evaluation of the Caxton Legal Centre Bail Support Program* (Griffith University, 2021); Rohan Lulham. *The magistrates’ early referral into treatment* (Contemporary Issues in Crime and Justice, 131, July 2009); Ilya Klauzner, *An evaluation of the youth bail assistance line* (Crime and Justice Bulletin, 237, July 2021), as cited in Justice Reform Initiative (n 92) 8.

<sup>94</sup> Ibid.

<sup>95</sup> Susan Spratley, Neil Donnelly and Lily Trimboli, *Health and wellbeing outcomes for defendants entering the Alcohol-MERIT program*, (Bureau Brief No. 92, December 2013); Meredith Rossner et al, *ACT drug and alcohol sentencing list: Process and outcome evaluation final report* (June 2022), as cited in Justice Reform Initiative (n 92) 8.

<sup>96</sup> Alaina Cannon, *Evaluation of the Court Integrated Services Program: Final Report* (May 2017); Department of Justice, *Economic Evaluation of the Court Integrated Services Program (CISP): Final report on economic impacts of CISP* (November 2009), as cited in Justice Reform Initiative (n 92) 8.

<sup>97</sup> Justice Reform Initiative (n 92) 44.

<sup>98</sup> Ibid.

## 4.2 Firearms prohibition order searches

FPO searches are another form of pre-emptive policing in NSW which subjects young people to unnecessary, repeated police contact – with disproportionate impacts on Aboriginal young people.

The NSW Commissioner of Police ('Commissioner') has a broad power to make an FPO against a person under the *Firearms Act 1996* (NSW) (the 'Firearms Act') if the Commissioner is of the opinion that the person 'is not fit, in the public interest, to have possession of a firearm'.<sup>99</sup> A person does not have to be charged with, or convicted of, any offence – firearms-related or otherwise – to have an FPO made against them.<sup>100</sup>

Once made, FPOs do not expire and continue unless and until the Commissioner exercises the discretionary power to revoke the FPO 'at any time for any or no stated reason'.<sup>101</sup> A person subject to an FPO is subject to new offences and additional penalties related to firearms.<sup>102</sup>

### 4.2.1 Broad search powers

NSW Police were encouraged to use FPO searches as part of intensive policing of young people under the Suspect Targeting Management Plan ('STMP'),<sup>103</sup> until that policy was largely abolished in 2023.

NSW Police have indicated that FPOs remain 'heavily utilised' as a 'crime prevention and deterrent tool'.<sup>104</sup> This is despite data which suggests that FPO searches have a low success rate. In FY2022-23, FPO searches resulted in the location of firearms or 'firearms accessories/attachments' in just 0.09% of cases.<sup>105</sup>

We are concerned that FPO searches continue to be used against young people as an STMP style 'disruption' tool, and not for the genuine purpose of keeping the community safe from firearms related offending.<sup>106</sup>

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<sup>99</sup> *Firearms Act 1996* (NSW) s 73(1).

<sup>100</sup> As indicated by comments made during the November 2023 round of Budget Estimates (refer to p. 66 of the Transcript for Portfolio Committee No. 5 – Justice and Communities: Police and Counter-Terrorism, 7 November 2023, [available here](#)). See also, eg, *Hamid v Commissioner* [2018] NSWCATAD 43 and *Solomon v Commissioner of Police (NSW)* [2021] NSWSC 236 at [69].

<sup>101</sup> *Firearms Act 1996* (NSW) s 73(3).

<sup>102</sup> *Ibid* s 74. The NSW Sentencing Council has expressed concern about these additional penalties, finding that current laws 'offer adequate protections against individuals at higher risk of offending' and that 'NSW laws make increased maximum penalties for such persons unnecessary'. NSW Sentencing Council, [Firearms, knives and other weapons offences](#) (May 2024) at [2.50].

<sup>103</sup> Law Enforcement Conduct Commission, [Operation Tepito Final Report](#) (October 2023) 6, 68.

<sup>104</sup> Evidence to Legislative Council Portfolio Committee No 5 – Justice and Communities, New South Wales Parliament, Sydney, 30 August 2024, 45 (NSW Police Deputy Commissioner David Hudson) <[https://www.parliament.nsw.gov.au/lcdocs/transcripts/3322/CORRECTED%20Transcript%20-%20PC5%20-%2030%20August%202024%20-%20Budget%20Estimates%20\(Catley\).pdf](https://www.parliament.nsw.gov.au/lcdocs/transcripts/3322/CORRECTED%20Transcript%20-%20PC5%20-%2030%20August%202024%20-%20Budget%20Estimates%20(Catley).pdf)>.

<sup>105</sup> NSW Police Force, *FPO Statistics* (July 2024) 9 (received under the *Government Information (Public Access) Act 2009* (NSW)) ('2024 FPO Statistics').

<sup>106</sup> An illustrative example is at [61] of the decision of Conlon ADCJ in *R v Smith* [2023] NSWDC 88, where the offender was said to come 'nowhere near' the category of persons intended to be dealt with under the FPO regime.

Young people subject to an FPO experience ongoing contact with police, often in the form of frequent and intrusive searches. Young Aboriginal people are particularly impacted by these searches, with more than 53% of FPOs served against people under the age of 18 being against Aboriginal young people.<sup>107</sup> As discussed in section 3, increased interactions with the criminal justice system leads to an higher risk of future offending and creates mistrust between young people and police.

FPOs enliven broad and extraordinary search powers under s 74A of the Firearms Act.<sup>108</sup> It is not clear whether police need to have a suspicion or belief, on reasonable grounds or otherwise, that the person subject to the search has committed an offence under the Firearms Act.<sup>109</sup>

There is also no limitation on the number of times a person subject to an FPO can be detained and searched.

We are concerned that FPO search powers are unnecessarily broad and ambiguous, and lead to the overpolicing of young people. While the s 74A search powers were reviewed by the NSW Ombudsman in 2016<sup>110</sup> there has been no formal NSW Government response to the findings and recommendations of that review.

#### **4.2.2 FPOs are difficult to revoke**

We are also concerned that due to inadequate review mechanisms, FPOs can remain in place for young people when they are no longer appropriate – prolonging their exposure to invasive searches and unnecessary police contact.

FPOs do not expire. They continue unless and until the Commissioner exercises the power to revoke them.

However, it is very difficult to seek revocation of an FPO. Senior and Junior Counsel have advised us that if a request for revocation is made, a court is unlikely to find that the Commissioner could be compelled to even consider that request. The same counsel have advised that it is ‘difficult to conceive of a broader discretion’ than the one given by statute to the Commissioner, which is likely to make judicial review of a decision not to revoke ‘extremely difficult’. Only 10 FPOs were revoked between July 2019 and July 2024,<sup>111</sup> in unclear circumstances.

While the Commissioner’s exercise of powers can be reviewed in the NSW Civil and Administrative Tribunal (‘NCAT’), there are also challenges with this process. Because a person

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<sup>107</sup> NSW Police Force, *FPO Statistics* (April 2025) 6 (received under the *Government Information (Public Access) Act 2009* (NSW)).

<sup>108</sup> *Firearms and Criminal Groups Legislation Act 2013* (NSW).

<sup>109</sup> See *Solomon v Commissioner of Police* (NSW) [2021] NSWSC 236 at [88]-[93]; *DPP (NSW) v Shaba* [2018] NSWSC 811 at [17] and *Fahma v DPP* [2021] NSWDC 329 at [39]. This was a subject of concern to the NSW Ombudsman also: New South Wales Ombudsman, *Review of police use of the firearms prohibition order search powers: Section 74A of the Firearms Act 1996* (August 2016) Ch 6 <<https://cmsassets.ombo.nsw.gov.au/assets/Reports/Review-of-police-use-of-firearms-prohibition-order-search-powers.pdf>> (‘Review of FPO powers’).

<sup>110</sup> Review of FPO powers (n 109).

<sup>111</sup> *2024 FPO Statistics* (n 105) 9-10.

does not have to be charged with, or convicted of, any offence – firearms-related or otherwise – to have an FPO made against them,<sup>112</sup> it is difficult for NCAT to review whether the Commissioner has appropriately exercised their power.<sup>113</sup>

Additionally, because of the way the legislation is drafted, people who have been convicted of minor, unrelated offences are excluded from applying to NCAT for review of the decision to make an FPO against them.<sup>114</sup>

We suggest reforms are needed to better protect the rights of children and young people, primarily through amendments to the Firearms Act to:

- Prescribe factors the Commissioner must consider when making and revoking an FPO;
- Provide that FPOs automatically expire after 5 years;<sup>115</sup> and
- Provide that an FPO search can only be undertaken if reasonably required for the purposes of detecting an offence under section 74(1), (2) or (3) or require that police have a reasonable suspicion that one of those offences has been committed.<sup>116</sup>

We also recommend a review of the offences in cl 5 of the Firearms Regulation 2017 (NSW) that disqualify persons from applying to NCAT for review of the initial decision to make an FPO against them.

Legislative reform should be accompanied by NSW Police education, training and monitoring, including the development of guidelines regarding the exercise of FPO search powers on young people.<sup>117</sup> It may also be appropriate for there to be a further independent inquiry into the operation of the FPO regime and its particular impacts on young people.<sup>118</sup>

## **Recommendation 12**

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*The NSW Government should reform the operation of firearm prohibition orders by amending the Firearms Act; reviewing the Firearms Regulation 2017; delivering education, training and monitoring for NSW Police, and considering a further independent inquiry into the firearms prohibition order regime.*

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<sup>112</sup> As indicated by comments made during the November 2023 round of Budget Estimates (refer to p. 66 of the Transcript for Portfolio Committee No. 5 – Justice and Communities: Police and Counter-Terrorism, 7 November 2023, [available here](#)). See also, eg, *Hamid v Commissioner* [2018] NSWCATAD 43 and *Solomon v Commissioner of Police (NSW)* [2021] NSWSC 236 at [69].

<sup>113</sup> See, eg, *Hamid v Commissioner* [2018] NSWCATAD 43.

<sup>114</sup> See *Firearms Act 1996* (NSW) ss 75(1A), 11(5) and 29(3); and *Firearms Regulation 2017* (NSW), cl 5. Until recently, children who had an FPO made against them were also excluded from seeking review of that decision in NCAT. This was remedied in October 2025 through the insertion of s 75(1C) via the *Justice Legislation Amendment (Miscellaneous) Act (No 2) 2025* (NSW).

<sup>115</sup> In accordance with Recommendation 8 of Review of FPO powers (n 109).

<sup>116</sup> In accordance with Recommendation 3 (Ibid).

<sup>117</sup> In accordance with Recommendations 4 and 5 (Ibid).

<sup>118</sup> As recommended by NSW Legal Aid, in its submission to the NSW Sentencing Council Review of firearm, knife and other weapon offences (Legal Aid NSW, *Submission to NSW Sentencing Council Review of firearm, knife and other weapon offences* (December 2023) <<https://sentencingcouncil.nsw.gov.au/documents/our-work/firearms-knives-and-other-weapons/submissions-to-cp-and-ip/WE11.pdf>>).

## Recommendation 13

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The NSW Government should review their use of pre-emptive policing practices and discontinue applying any 'risk-based' policing practices to young people. This should be reflected in police standard operating procedure documents.

## 5. Practices in Youth Justice Centres

### 5.1 Lack of support for young people with disability in detention

Although there are challenges obtaining an accurate estimate of disability among people in detention,<sup>119</sup> it is well-established that people with disability are broadly overrepresented in the criminal legal system.<sup>120</sup> The NSW Bureau of Crime Statistics and Research reports that among young people in detention between 2009 and 2018 in NSW, over 40% were identified as people with disability.<sup>121</sup> The *YPICHSR* reported that almost half of those surveyed had a potential intellectual disability.<sup>122</sup>

We are concerned that young people with disability are often denied vital services and assistance at a variety of stages of detention. These issues lead to young people with disability being held in harmful conditions of detention<sup>123</sup> which often exacerbates their existing vulnerabilities<sup>124</sup> and inhibits their chances of rehabilitation.

#### 5.1.1 Screening processes

As highlighted in the *Disability Royal Commission*, mechanisms for screening disability needs upon entry to detention are often inadequate and ineffective.<sup>125</sup> Poor screening practices can mean that young people miss out on disability supports.<sup>126</sup>

For instance, while correctional centres are directed to support persons to apply for NDIS once it becomes apparent they may be eligible, the lack of identification means such support is not given.<sup>127</sup> When disability needs are not identified, it also increases the risk that custodial staff misinterpret features of disability as bad behaviour.<sup>128</sup> We support the *Disability Royal*

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<sup>119</sup> Disability Royal Commission Report (n 55) vol 8, 34; Justice Reform Initiative, *Disability and the Criminal Justice System* (Briefing Paper, October 2025) 9 <[https://assets.nationbuilder.com/justicereforminitiative/pages/2610/attachments/original/1770263944/JRI\\_Position\\_Paper\\_Disability.pdf?1770263944](https://assets.nationbuilder.com/justicereforminitiative/pages/2610/attachments/original/1770263944/JRI_Position_Paper_Disability.pdf?1770263944)>.

<sup>120</sup> NSW Bureau of Crime Statistics and Research, *people with disability and offending in NSW: Results from the National Disability Data Asset Pilot* (Bureau Brief no. 164, January 2023) 2.

<sup>121</sup> NSW Bureau of Crime Statistics and Research, 'Custodial contact for people with disability' (Web page, June 2025) <<https://bocsar.nsw.gov.au/topic-areas/disability/custodial-contact-for-people-with-disability.html>>.

<sup>122</sup> This is based on self-reported responses. Assessment results later in the report suggest that young people in custody are significantly under-reporting the level and impact of their disabilities (Youth Justice NSW (n 117) 135).

<sup>123</sup> Disability Royal Commission Report (n 55) vol 8, 283.

<sup>124</sup> *Ibid* 81.

<sup>125</sup> Disability Royal Commission Report (n 55) vol 8, 177-178; 180; 185, 194, 195.

<sup>126</sup> *Ibid* 11.

<sup>127</sup> NSW Government, [Operational Guidance for NSW Mainstream Services on the Interface with the NDIS](#) (November 2016) 67.

<sup>128</sup> Disability Royal Commission Report (n 55) vol 8, 7.

*Commission's* recommendation to ensure timely screening and expert assessment for young people with cognitive disability involved in the criminal justice system.<sup>129</sup>

Youth Justice NSW has recognised the need to conduct better routine screening for disability and committed to improvements under its *2021-2024 Disability Action Plan*.<sup>130</sup> Nevertheless, further progress is needed – including to ensure there are culturally appropriate disability screening tools available.<sup>131</sup>

### 5.1.2 Access to disability supports in detention

We are also concerned by the inadequate provision of disability supports for young people in detention. The AHRC's *Help Way Earlier!* report highlights the lack of access to ongoing treatment and support for young people with disability in the criminal justice system,<sup>132</sup> including due to difficulties accessing the NDIS.<sup>133</sup>

In their 2022 report investigating all NSW youth justice centres, the NSW Inspector of Custodial Services<sup>134</sup> identified service gaps for young people with disabilities. It made recommendations to address these gaps, including by ensuring that all centres provide occupational and speech pathology services<sup>135</sup> and expand the use of sensory tools and spaces.<sup>136</sup>

In line with recommendations from the *Disability Royal Commission*,<sup>137</sup> Youth Justice NSW must ensure that young people with cognitive disability in detention receive appropriate responses to meet their needs.

### 5.1.3 Transition-planning

There is also a need for Youth Justice NSW to improve the transition-out services for young people with disability leaving detention.<sup>138</sup> We support the *Disability Royal Commission's* recommendation that community-led and co-designed approaches should be adopted to meet the

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<sup>129</sup> See recommendation 8.4: Disability Royal Commission Report (n 55) vol 8, 19.

<sup>130</sup> NSW Government, Youth Justice NSW, *Disability Action Plan 2021-2024* (May 2021) 21 <[https://www.nsw.gov.au/sites/default/files/2022-03/Youth\\_Justice\\_Disability\\_Action\\_Plan.pdf](https://www.nsw.gov.au/sites/default/files/2022-03/Youth_Justice_Disability_Action_Plan.pdf)> ('NSW Disability Action Plan').

<sup>131</sup> Australian Government, Department of Health, Disability and Ageing, 'Disability Royal Commission Progress Report 2025: Recommendation 8.4 – Screening and assessment for disability in youth detention' (Web Page, November 2025) <<https://www.health.gov.au/resources/publications/disability-royal-commission-progress-report-2025/volume-8-criminal-justice-and-people-with-disability/recommendation-84-screening-and-assessment-for-disability-in-youth-detention?language=en#new-south-wales>>.

<sup>132</sup> 'Help Way Earlier!' report (n 3) 62.

<sup>133</sup> Ibid.

<sup>134</sup> NSW Inspector of Custodial Services, *Inspection of Six Youth Justice Centres (2022)* (Report, March 2024) <[https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/Inspection\\_of\\_Six\\_Youth\\_Justice\\_Centres\\_2022\\_Report.pdf](https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/Inspection_of_Six_Youth_Justice_Centres_2022_Report.pdf)>.

<sup>135</sup> Ibid 13.

<sup>136</sup> Ibid 13, 15, 43.

<sup>137</sup> See recommendation 8.4: Disability Royal Commission Report (n 55) vol 8, 19.

<sup>138</sup> NSW Disability Action Plan (n 149) 17.

needs of people with disability leaving prison, including young people.<sup>139</sup> Planning for post-detention disability supports is a crucial measure to support the rehabilitation of young people and prevent reoffending.

#### **Recommendation 14**

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*The NSW Government should improve the screening processes for disability for young people in detention.*

#### **Recommendation 15**

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*The NSW Government should improve the availability of disability supports for young people in detention and ensure effective transition planning post-detention.*

## **5.2 Use of segregation, separation and confinement in Youth Justice Centres**

### **5.2.1 Concerns regarding solitary confinement-like practices**

We are concerned that Youth Justice NSW relies on solitary confinement-like practices including segregation, separation and confinement as forms of punishment, behaviour management or as a response to staffing shortages, when they should be prioritising therapeutic and rehabilitative approaches.

NSW legislation permits isolation practices that may amount to the solitary confinement of children. Under international law, solitary confinement is defined as the confinement of people for 22 hours or more a day without meaningful human contact<sup>140</sup> and is prohibited for children.<sup>141</sup> NSW legislation<sup>142</sup> provides for three types of isolation in detention – segregation<sup>143</sup> (to protect the personal safety of the detainee or another person), separation<sup>144</sup> (to manage groups of young people separately to the general population, for the safety, security or good order of the centre) and confinement<sup>145</sup> (as punishment for misbehaviour). Orders for different types of isolation can be made consecutively, without restriction, and have different statutory conditions attached.

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<sup>139</sup> Commonwealth, Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *People with disability transitioning from prison and their pathways into homelessness* (Research Report, May 2023) 3 <<https://disability.royalcommission.gov.au/system/files/2023-05/Research%20Report%20-%20People%20with%20disability%20transitioning%20from%20prison%20and%20their%20pathways%20into%20homelessness.pdf>>.

<sup>140</sup> United Nations Standard Minimum Rules for the Treatment of Prisoners (*Mandela Rules*) UN Doc E/CN.15/2015/L.6/Rev, Rule 44 (*'Mandela Rules'*).

<sup>141</sup> *Ibid*, 45(2).

<sup>142</sup> *Children (Detention Centres) Act 1987* (NSW).

<sup>143</sup> *Ibid* s 19(1).

<sup>144</sup> *Children (Detention Centres) Act 1987* (NSW) s 16.

<sup>145</sup> *Ibid* s 21.

In 2025, the Australian Human Rights Commission released the *Left Alone* report which reviewed solitary confinement and similar practices in Australia's youth detention systems.<sup>146</sup> It found that these practices are widely used, with inconsistent levels of regulation and oversight.<sup>147</sup> In its view, 'Australia's youth justice system is failing both children and the broader community.'<sup>148</sup> The report makes 24 recommendations, including to prohibit solitary confinement, strengthen safeguards, and ensure youth justice systems adopt trauma-informed, rights-based approaches.

This builds on earlier findings from the NSW Inspector of Custodial Services ('ICS'), which in 2018 published a report on the use of force, separation, segregation and confinement in NSW juvenile justice centres. The ICS found that:

'confinement is the most prevalent punishment in all [Youth Justice Centres] in NSW. This is despite there being no evidence that supports the use of confinement to effect positive behavioural change.'<sup>149</sup>

The ICS found evidence that:

- Some periods of segregation and confinement were scheduled to end after bedtime, meaning that a young person spent a longer period than prescribed locked in their room.<sup>150</sup>
- Some young people reported that they were woken during the night to be moved from a holding room back to their own room.<sup>151</sup>
- Meals were required to be eaten alone.<sup>152</sup>
- Young people placed in separation, segregation or confinement are sometimes not provided with cutlery because of a risk of self-harm, and had to eat rice and curry with their fingers.<sup>153</sup>
- Exercise facilities are generally not available to young people in separation, segregation or confinement, although the ICS reported that some facilities adopt a more flexible approach and allow young people to access exercise facilities, for example, an indoor gym, an oval, basketball courts or a pool.<sup>154</sup>
- Young people placed in separation, segregation or confinement will generally not attend school.<sup>155</sup> They may receive an 'education pack', consisting of some educational activities

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<sup>146</sup> Australian Human Rights Commission, '*Left Alone*: A Review of Solitary Confinement and Similar Practices in Australia's Youth Justice Systems' (Report, December 2025) <[https://humanrights.gov.au/data/assets/pdf\\_file/0034/78748/2511-REPORT\\_Solitary\\_ACC\\_FINAL2.pdf](https://humanrights.gov.au/data/assets/pdf_file/0034/78748/2511-REPORT_Solitary_ACC_FINAL2.pdf)> ('*Left Alone*' Report).

<sup>147</sup> Ibid 5.

<sup>148</sup> Ibid 6.

<sup>149</sup> New South Wales Inspector of Custodial Services ('NSWICS'), *Use of force, separation, segregation and confinement in NSW juvenile justice centres* (Report, November 2018) 16 <<https://inspectorcustodial.nsw.gov.au/documents/inspection-reports/use-of-force-separation-segregation-and-confinement-in-nsw-juvenile-justice-centres.pdf>> ('*NSWICS report on confinement practices*').

<sup>150</sup> Ibid 16.

<sup>151</sup> Ibid 121.

<sup>152</sup> Ibid.

<sup>153</sup> Ibid 122.

<sup>154</sup> *NSWICS report on confinement practices* (n 149) 123.

<sup>155</sup> Ibid 125.

they are expected to complete on their own while in their room. The ICS observed, however, that some 'education packs' consisted of only magazines and a stress ball.<sup>156</sup>

- While visits with family members are usually not disrupted by periods of isolation,<sup>157</sup> visits are sometimes required to be non-contact given the often complex needs of young people held in isolation.<sup>158</sup> These visits can be experienced as 'shameful and humiliating.'<sup>159</sup>

Solitary confinement interferes with child development and can traumatise young people, potentially causing permanent psychological damage which may lead to self-harm, psychosis, and suicide. In *Left Alone*, the AHRC raised its concerns about the profound harm of these practices, which perpetuate cycles of trauma and disadvantage for young people and undermine their rehabilitation.<sup>160</sup>

Our concerns about the use of isolation practices in NSW Youth Justice centres are as follows:

- Isolation interferes with development and can traumatise children, potentially causing permanent psychological damage which may lead to self-harm, psychosis, and suicide.<sup>161</sup>
- NSW has fallen behind other states and territories for safeguards on the use of isolation.
- Extended periods of isolation (exceeding 22-24 hours) which are particularly harmful, are increasing - from 101 times in 2019/20<sup>162</sup> to 139 times in 2024/25.<sup>163</sup>
- The mean length of segregation has increased for most age groups between 2018/19 and 2023/24.<sup>164</sup> In FY23/24 the longest period of segregation was 23.6 days.<sup>165</sup>
- Aboriginal children are disproportionately subject to isolation even taking into account the disproportionate representation of Aboriginal children in Youth Justice Centres. In December 2023 Aboriginal children were 61.5% of the population in NSW youth detention centres<sup>166</sup> but 73.9% of the children subject to segregation in 2023/24.<sup>167</sup>
- Young people placed in isolation generally do not attend school and are unable to access exercise facilities,<sup>168</sup> negatively impacting their wellbeing and development.
- Record keeping obligations are minimal and the only publicly available information is the number of notifications the NSW Ombudsman receives for segregation exceeding 24 hours.

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<sup>156</sup> Ibid.

<sup>157</sup> Ibid 131.

<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> 'Left Alone' Report (n 146) 6.

<sup>161</sup> Australian Human Rights Commission, *Follow Up Procedures to Australia's Sixth Periodic Review Submission to the Committee Against Torture* (15 September 2023) 77; Juan E Mendez *Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, UN Doc A/HRC/28/68 (5 March 2015) 16-44.

<sup>162</sup> NSW Ombudsman, *Annual Report 2020-2021* (Report, 25 October 2021) 58.

<sup>163</sup> Legislative Council – Budget Estimates 2024-2025, *Portfolio Committee No. 8 - Questions and Answers No. 479* (16 April 2025) 5054.

<sup>164</sup> New South Wales Department of Communities and Justice, *Youth Justice NSW Response to GIPA24/22411 - 24/3207* ('Youth Justice GIPA').

<sup>165</sup> Legislative Council - Budget Estimates 2024-2025, *Portfolio Committee No. 8 – Questions on Notice Transcript pages 9-10* (9 September 2024) 11.

<sup>166</sup> BOSCAR, *NSW Closing the Gap Target 11 Quarterly Report* (December 2023)

[https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/target-11-young-people/Closing\\_the\\_Gap\\_Target\\_11\\_-\\_Dec\\_2023.pdf](https://bocsar.nsw.gov.au/documents/topic-areas/aboriginal-over-representation/target-11-young-people/Closing_the_Gap_Target_11_-_Dec_2023.pdf).

<sup>167</sup> Youth Justice GIPA (n 164) 4.

<sup>168</sup> NSWICS *report on confinement practices* (n 149) 121-131.

- Some periods of isolation are scheduled to end after night-time lockdown. This means that centre records may show that a child has been isolated for less than 6 hours, when they have experienced confinement for over 24 hours. This does not trigger the 24-hour statutory notification to the NSW Ombudsman.<sup>169</sup>
- Confinement is the most prevalent form of punishment in all Youth Justice Centres,<sup>170</sup> despite its prohibition as a form of punishment under international law.<sup>171</sup>
- While in isolation, children are required to eat alone, and cutlery might not be provided because of a perceived risk of self-harm, requiring children to eat meals with their fingers.<sup>172</sup>
- Contact between children in isolation and staff from the Mental Health Unit and correctional officers usually takes place in handcuffs, through an opening in a door.<sup>173</sup> These are not meaningful forms of human contact for an isolated child.
- Contrary to legislation, confinement has been given as punishment for minor misbehaviour such as disobedience or bad language.<sup>174</sup>

We currently represent a person who was seventeen years old when subjected to solitary confinement in Cobham Youth Justice Centre in 2016, locked in a cell for 25 days and only allowed half an hour out each day while handcuffed and ankle-cuffed, forced to eat all meals with his hands and punished for trying to communicate with other young people in the centre.<sup>175</sup> Similar concerning practices have been identified in other states and territories, including recently in Western Australia at the Banksia Hill Detention Centre,<sup>176</sup> and in Queensland at the Cleveland Youth Detention Centre.<sup>177</sup>

## 5.2.2 Suggested reforms to solitary confinement-like practices

Drawing on the reports by the AHRC and ICS and the experiences of our clients, the JEC in collaboration with the Aboriginal Legal Service has identified a number of policy and regulatory improvements we believe should be implemented by Youth Justice NSW to avoid the harmful effects of segregation on young people.

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<sup>169</sup> Ibid.

<sup>170</sup> Ibid 16.

<sup>171</sup> *Mandela Rules* (n 156) Rule 43.

<sup>172</sup> *NSWICS report on confinement practices* (n 149) 121.

<sup>173</sup> Ibid 131 citing James Ogloff, *Separation, Segregation and Confinement of Juvenile Detainees: Towards Best Practice*, report prepared for the Inspector of Custodial Services (March 2017) 13.

<sup>174</sup> Inspector of Custodial Services, *Inspection of Six Youth Justice Centres* (Report, March 2024) 41.

<sup>175</sup> Georgina Mitchell 'It broke my mind': Former youth detainee sues after being held in solitary confinement' *Sydney Morning Herald* (online, 15 August 2022) <<https://www.smh.com.au/national/nsw/it-broke-my-mind-former-youth-detainee-sues-after-being-held-in-solitary-confinement-20220812-p5b9dk.html>>.

<sup>176</sup> Western Australia Office of the Inspector of Custodial Services, *2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Casuarina Prison (Part One)* (Report No. 148, May 2023) 15–16.

<sup>177</sup> Ellen Fanning, 'Queensland government may have broken own laws by locking 13yo in detention cell for up to 24 hours a day', *ABC News* (online, 15 March 2023) <<https://www.abc.net.au/news/2023-03-15/qld-youth-crime-human-rights-watch-house-detention/102093378>>.

The use of solitary confinement on young people should be prohibited, in line with international law.<sup>178</sup> This was recommended in the AHRC's report on solitary confinement<sup>179</sup> as well as three other recent reports:

- Recommendation 8.3 of the *Disability Royal Commission*, that 'states and territories should introduce legislation to prohibit solitary confinement in youth justice settings'.<sup>180</sup>
- The United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment recommended that '[Australia] ensure that persons under the age of 18 years are never subject to solitary confinement, as this constitutes a form of ill-treatment and in some cases may amount to torture'.<sup>181</sup>
- Recommendation 19 of the AHRC's *Help Way Earlier!* report, that 'Australian Governments legislate to prohibit solitary confinement practices in child detention facilities, and prohibit the use of isolation as punishment in any circumstance'.<sup>182</sup>

The *Children (Detention Centres) Act 1987* (NSW), and accompanying regulations should be amended as follows:

- Repeal provisions relating to 'segregation' and 'confinement' and replace these with a single definition of 'isolation' which reflects conditions experienced by the child.
- Prohibit the use of isolation, except in very narrow circumstances, such as where necessary to prevent an imminent and serious threat of serious injury to the child or any other person.
- Prescribe that once the imminent and serious threat of serious injury has resolved, the isolation must cease.
- Prohibit the use of isolation as punishment or behaviour management.
- Introduce a statutory time limit on the permissible length of isolation and limit consecutive periods of isolation.
- Require immediate notification to both the responsible Minister and an external body every time a child is placed in isolation, and subsequent notifications at regular intervals.
- Require that record keeping and notifications reflect actual time spent in isolation.
- Introduce additional safeguards for the use of isolation, particularly regarding access to meaningful human contact, recreation and exercise facilities, continued education, psychologist consultations and cutlery.
- Require that the use of instruments of restraint on a child is only ever a measure of last resort, for the shortest amount of time necessary, and is never used as a form of punishment or in a way that amounts to cruel, inhuman or degrading punishment.

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<sup>178</sup> United Nations General Assembly, *Rules for the Protection of Juveniles Deprived of their Liberty* (UN Doc GA/RES/45/113, 14 December 1990) ('Havana Rules') 8 [67] <[https://www.ohchr.org/sites/default/files/res45\\_113.pdf](https://www.ohchr.org/sites/default/files/res45_113.pdf)>; see also Committee on the Rights of the Child *General comment No. 24 (2019) on children's rights in the child justice system* (UN Doc CRC/C/GC/24, 18 September 2019) 95(h) <<https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-24-2019-childrens-rights-child>>.

<sup>179</sup> 'Left Alone' Report (n 146) 18.

<sup>180</sup> Disability Royal Commission Report (n 55) vol 8, 18.

<sup>181</sup> United Nations Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *Visit to Australia undertaken from 16 to 23 October 2022: recommendations and observations addressed to the State party* (Report, 20 December 2023) [74].

<sup>182</sup> 'Help Way Earlier!' report (n 3) 90-91.

While it is critical to ensure robust safeguards for children who are already in detention, a human rights compliant approach is best achieved by reducing the number of children being incarcerated in the first place, as discussed earlier in this submission.

Therapeutic supports in the community, entirely separate to the criminal legal system, are the most effective means of keeping both communities and children safe. Resourcing should be diverted away from what does not work – policing and youth prisons – to what does. For Aboriginal and/or Torres Strait Islander children, this means culturally appropriate, wrap-around supports developed and delivered by Aboriginal communities and adequately, sustainably funded Aboriginal Community Controlled Organisations.

### **Recommendation 16**

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*The NSW Government amend legislation and regulations governing the use of isolation on children in Youth Justice Centres by:*

- a. Repealing provisions relating to 'segregation' and 'confinement' and replacing these with a single definition of 'isolation' which reflects conditions experienced by the child.*
- b. Prohibiting the use of isolation, except in very narrow circumstances, such as where necessary to prevent an imminent and serious threat of serious injury to the child or any other person.*
- c. Prescribing that once the imminent and serious threat of serious injury has resolved, the isolation must cease.*
- d. Prohibiting the use of isolation as punishment or behaviour management.*
- e. Introducing a statutory time limit on the permissible length of isolation and limit consecutive periods of isolation.*
- f. Requiring immediate notification to both the responsible Minister and an external body every time a child is placed in isolation, and subsequent notifications at regular intervals.*
- g. Requiring that record keeping and notifications reflect actual time spent in isolation.*
- h. Introducing additional safeguards for the use of isolation, particularly regarding access to meaningful human contact, recreation and exercise facilities, continued education, psychologist consultations and cutlery.*
- i. Requiring that the use of instruments of restraint on a child is only ever a measure of last resort, for the shortest amount of time necessary, and is never used as a form of punishment or in a way that amounts to cruel, inhuman or degrading punishment.*