

**Submission  
No 147**

## **COMMUNITY SAFETY IN REGIONAL AND RURAL COMMUNITIES**



**Organisation:** New South Wales Council for Civil Liberties

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## **NSWCCL SUBMISSION**

### **NEW SOUTH WALES LEGISLATIVE ASSEMBLY COMMITTEE ON LAW AND SAFETY**

### **COMMUNITY SAFETY IN REGIONAL AND RURAL COMMUNITIES**

**31 May 2024**

**NSWCCL**

## **Acknowledgement of Country**

In the spirit of reconciliation, the NSW Council for Civil Liberties acknowledges the Traditional Custodians of Country throughout Australia and their connections to land, sea and community. We pay our respect to their Elders past and present and extend that respect to all First Nations peoples across Australia. We recognise that sovereignty was never ceded.

## **About NSW Council for Civil Liberties**

NSWCCL is one of Australia's leading human rights and civil liberties organisations, founded in 1963. We are a non-political, non-religious and non-sectarian organisation that champions the rights of all to express their views and beliefs without suppression. We also listen to individual complaints and, through volunteer efforts, attempt to help members of the public with civil liberties problems. We prepare submissions to government, conduct court cases defending infringements of civil liberties, engage regularly in public debates, produce publications, and conduct many other activities.

CCL is a Non-Government Organisation in Special Consultative Status with the Economic and Social Council of the United Nations, by resolution 2006/221 (21 July 2006).

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The NSW Council for Civil Liberties (**NSWCCL**) welcomes the opportunity to make a submission to the New South Wales Legislative Assembly Committee on community safety in regional and rural communities (the **Inquiry**).

## 1 Introduction

1.1 The Inquiry is focused on investigating drivers of youth crime in regional and rural NSW and how community safety can be improved. It has been launched as a result of NSW experiencing 'worrying increases in specific forms of regional crime, such as motor vehicle offences and break and enter offences' over the past five years.<sup>1</sup>

1.2 We present the following submissions in response to this Inquiry:

- (a) **Contextualising the Narrative:** The data does not support the notion of 'worrying increases' in crime. Youth crime generally has declined over the past 5 years and data on youth crime in regional NSW specifically is inconclusive. Additionally, while motor vehicle offences have increased (and the majority are attributed to youth offenders), property crimes in regional NSW (including incidences of breaking and entering) have decreased between 2019 and 2023. As such, measures taken need to be proportionate to the need for concern – i.e., rather than pandering to the public “law and order” demands through tougher laws and policies, which have historically had adverse consequences, focus should be on addressing underlying issues that cause youth crime.
- (b) **Over-incarceration of First Nations people:** One cannot speak of youth crime in a rural/regional NSW context without focusing on one of the main underlying drivers - overrepresentation of First Nation's people in the criminal justice process in comparison to the general population. This is a well-documented issue supported by a range of data showing that First Nations youth are overrepresented in the criminal justice system and remain so in adulthood, including in regional communities. Resources should be devoted to resolving this issue.
- (c) **Crime occurs in context:** Context and background are the most critical factors to understanding the causes of, and reducing rates of, youth crime. Many youth offenders have similar stories, e.g., a history of parental incarceration, being of a lower socioeconomic background or otherwise lacking resources, experiencing child abuse or neglect, witnessing domestic violence, having a history of drug or alcohol abuse either personally or in the home, and sometimes even in vitro, having lower levels of education and having some form of disability. Additionally, the outrageously low minimum age of criminal responsibility in NSW results in children being incarcerated at an early age, which leads to mixing with poor influencers, recidivism and further offending. These are the underlying issues that need to be remedied.
- (d) **Incarceration leads to further offending:** The impact of incarceration, especially remand, on offenders aged 10 – 17 years old (**Juveniles**) is significant, leading to higher rates of re-offending. There is also a worrying increase in Juveniles held on remand, partly due to legal changes and court delays. Addressing these issues is crucial for breaking the cycle of re-offending. In particular, amendments to the Bail Act almost a decade ago have

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<sup>1</sup> Committee on Law and Safety (NSW), 'Community safety in the regions' (Media Release, 20 March 2024) 1 <<https://www.parliament.nsw.gov.au/ladocs/other/19256/Inquiry%20announcement%20-%20Community%20safety%20in%20regional%20and%20rural%20communities%20-%202020%20March%202024.pdf>>.

led to an increase of individuals held on remand, especially in regional and rural areas with insufficient judicial infrastructure.

- (e) **Alternatives to incarceration:** In order to break the cycle of re-offending, evidence-based solutions should be favoured over incarceration. We urge the Inquiry to explore allocating further resources to expand these successful programs, which will assist in addressing the root causes of youth crime.

## 2 Putting the Inquiry in perspective

- 2.1 There is often a misconception that youth crime is growing and 'out-of-control' when the reality in NSW is that youth crime in NSW is generally declining and insofar as youth crime is a growing concern in regional NSW, this does not relate to all crimes generally.

### Trends in NSW broadly

- 2.2 In 2022/23 in Australia, there was a 6% increase from the previous year for Juveniles proceeded against by police.<sup>2</sup> Specifically in NSW and for that same time period, there was a 2% increase from the previous year in Juveniles proceeded against by the police.<sup>3</sup>
- 2.3 Given there is such a small increase in NSW, it raises the question as to how this narrative has appeared. The reasoning for this is two-fold:
- (a) these increases were widely reported by the media; and
  - (b) the number of Juveniles proceeded against by police in NSW hit a 10 year low of 16,084<sup>4</sup> in 2021, which coincided with COVID-19 lockdowns, thereby naturally resulting in lower numbers.
- 2.4 This has led to a false narrative that youth crime has suddenly risen exponentially, particularly given the increase from 2021, when numbers were abnormally low due to COVID-19.
- 2.5 However, the broader trend over several years should be regarded as more determinative and reflects the reality that youth crime and imprisonment have both been decreasing steadily for over a decade in NSW.

#### (1) Alleged youth offending<sup>5</sup>

- (a) In NSW in 2023, the police commenced court proceedings against Juveniles at a rate of 1,415 per 100,000 people.
- (b) In NSW in 2011, the police commenced court proceedings against Juveniles at a rate of 1,818 per 100,000 people.

<sup>2</sup> Australian Bureau of Statistics, *Recorded Crime – Offenders: New South Wales* (Catalogue No 4519.0, 8 February 2024) <<https://www.abs.gov.au/statistics/people/crime-and-justice/recorded-crime-offenders/latest-release#new-south-wales>>.

<sup>3</sup> Ibid.

<sup>4</sup> This number consists of 9,339 cases which proceeded to court and 6,745 incidents that resulted in a warning.

<sup>5</sup> NSW Bureau of Crime Statistics and Research, *Youth offending* (4 April 2024) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Young-people.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Young-people.aspx)>.

## (2) Youth detention<sup>6</sup>

- (a) In NSW in 2022/23, the number of Juveniles in detention on an average night was 160. This was a 22% decrease from 2018/19 statistics.<sup>7</sup>
- (b) The rate of incarceration of children of this age bracket in NSW was 2.0 per 10,000, a decrease by 26% from 2018/19.<sup>8</sup>

### **Trends in regional and rural NSW**

- 2.6 The youth crime trends in regional and rural NSW particularly are not as positive, and increases in certain types of offences committed by youth offenders are apparent from the data. The disparity between the rates of certain crimes in metropolitan centres vs regional/rural areas is also concerning, although, as we argue in this submission, we believe major causal factors for such disparities are under-resourcing and lack of alternatives to incarceration which focus on minimising the harm caused by youth crime rather than punishing people who have committed a crime.
- 2.7 While media reporting on crime in regional NSW has emphasised the large gap between crime rates in regional NSW compared to Greater Sydney,<sup>9</sup> it has failed to reflect nuances like the decline in the majority of crimes compared to five years prior. BOCSAR statistics actually indicate that breaking and entering into dwellings and non-dwellings in regional NSW declined by 17% and 12% respectively from 2019 to 2023, contrary to the perception created by these media articles. Nevertheless, in line with media reporting, the data does note an increase in motor vehicle thefts in regional NSW.<sup>10</sup>

### **Media narratives lead to bad policy**

- 2.8 Whilst youth crime certainly exists and can have devastating effects for individuals and communities, particularly in regional NSW, we submit that implementing harsher laws and increasing youth detention is not the solution (see section 6). NSWCCCL is concerned that, with apparent growing public anxiety about youth crime in regional NSW fuelled by the media, there will be political pressure to appease the public, resulting in hasty, harsh and harmful measures aimed at easing public fears rather than addressing the causes of youth crime.
- 2.9 We have seen examples of counterproductive 'tougher' laws which are hastily drafted and ultimately lead to adverse outcomes. Examples include the *Bail Act 2013* (NSW) which led to an increase in individuals being held on remand,<sup>11</sup> in addition to the 'wandering powers' which give NSW Police the power to search individuals for knives without a warrant in designated areas, despite the fact that knife crime is declining.

<sup>6</sup> Justice Reform Initiative, *Children's Imprisonment in Australia 2023* (Report) <[https://assets.nationbuilder.com/justicereforminitiative/pages/410/attachments/original/1713851456/JRI\\_Children\\_Imprisonment\\_Overview\\_April24.pdf?1713851456](https://assets.nationbuilder.com/justicereforminitiative/pages/410/attachments/original/1713851456/JRI_Children_Imprisonment_Overview_April24.pdf?1713851456)>.

<sup>7</sup> Ibid 7-8.

<sup>8</sup> Ibid 12-13.

<sup>9</sup> See for example Romy Stephens, 'Gap widens between Sydney and regional NSW crime rates amid calls for greater intervention', *Australian Broadcasting Corporation* (Newcastle, 14 March 2024) <<https://www.abc.net.au/news/2024-03-14/sydney-and-regional-crime-rate-gap-grows/103576526>>.

<sup>10</sup> NSW Bureau of Crime Statistics and Research, *Crime in Regional and Rural NSW in 2023: Trends and Pattern* (Report 169, March 2024) <<https://www.bocsar.nsw.gov.au/Publications/BB/BB169-Report-Crime-in-Regional-and-Rural-NSW-2023.pdf>>.

<sup>11</sup> NSW Bureau of Crime Statistics and Research, 'Big increase in bail refusals' (Media Release, 21 May 2018)

<[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2018/mr-bail-act-evaluation.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2018/mr-bail-act-evaluation.aspx)> ('NSW Bureau, Big increase in bail refusals').

2.10 Please refer to our previous comments on the amendments to the Bail Act<sup>12</sup> and our letter outlining our concerns regarding the new wandering laws<sup>13</sup> for further detail on these examples.

### 3 Overincarceration rate of First Nations people

3.1 The issue of the over-incarceration of First Nations peoples in Australia is well documented.<sup>14</sup>

3.2 The following statistics highlight the gravity of the issue in Australia using current statistics from the 2021 official national census and more recent updates from 2023. Despite the comparatively minute population of First Nations people overall in Australia and NSW specifically, First Nations people (including Juveniles) have a significantly higher rate of detention or imprisonment and make up a particularly concerning proportion of the prison populations.

#### (1) Population of First Nations persons in Australia and New South Wales<sup>15</sup>

- (a) 812,728 people identified as being First Nations, which is approximately 3.2% of the total Australian population.
- (b) 278,043 of those people who identified as First Nations were from NSW, which is approximately 3.4% of the NSW population.<sup>16</sup>

#### (2) Incarcerated persons<sup>17</sup>

- (a) As at June 2023, there were 41,929 people in custody across Australia (3% increase from June 2022). 13,852 of them identified as First Nations people (7% increase from June 2022) i.e. they made up 33% of Australia's prison population.
- (b) 12,316 in total were incarcerated in NSW. 3,510 of them identified as First Nations people i.e. they made up approximately 28% of the NSW prison population.

#### (3) Average imprisonment rates<sup>18</sup>

- (a) The average imprisonment rate of the total population is 202 persons per 100,000 people. In NSW, the average imprisonment rate of the total population is 190 persons per 100,000 people and specifically for non-First Nations people, it is 139 per 100,000 people.
- (b) However, the average imprisonment rate of First Nations people in NSW is 1,839 per 100,000 people – *that is almost 10 times the rate for the total population and almost 14 times the rate for non-First Nations people.*

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<sup>12</sup> NSW Council for Civil Liberties, *NSW Council for Civil Liberties Comments on Bail Amendment Bill 2014* (Letter, 9 September 2014) <[https://d3n8a8pro7vnm.cloudfront.net/nswccl/pages/556/attachments/original/1410317803/NSWCCL\\_comments\\_Bail\\_Bill\\_2014\\_fnl.pdf?1410317803](https://d3n8a8pro7vnm.cloudfront.net/nswccl/pages/556/attachments/original/1410317803/NSWCCL_comments_Bail_Bill_2014_fnl.pdf?1410317803)>; NSW Council for Civil Liberties, *NSW Council for Civil Liberties condemns unjust detention of innocent people, urges return to 2013 bail law reforms* (Website, 17 June 2019) <[https://www.nswccl.org.au/nsw\\_council\\_for\\_civil\\_liberties\\_condemns\\_unjust\\_detention\\_of\\_innocent\\_people\\_urges\\_return\\_to\\_2013\\_bail\\_law\\_reforms](https://www.nswccl.org.au/nsw_council_for_civil_liberties_condemns_unjust_detention_of_innocent_people_urges_return_to_2013_bail_law_reforms)>.

<sup>13</sup> NSW Council for Civil Liberties, *RE: New Wandering Laws to be Introduced in New South* (Letter, 17 June 2019) <[https://assets.nationbuilder.com/nswccl/pages/6823/attachments/original/1715057870/2024.05.07\\_NSWCCL\\_Attorney\\_General\\_re\\_Wandering\\_Laws.pdf?1715057870](https://assets.nationbuilder.com/nswccl/pages/6823/attachments/original/1715057870/2024.05.07_NSWCCL_Attorney_General_re_Wandering_Laws.pdf?1715057870)>.

<sup>14</sup> For more information, please refer to section 3 of NSW Council for Civil Liberties, *United Nations Subcommittee on the Prevention of torture and other Cruel, Inhuman or degrading treatment or punishment (SPT)* (Submission, 2 September 2022) <[https://assets.nationbuilder.com/nswccl/pages/6421/attachments/original/1664846540/2022.09.02\\_NSWCCL\\_Submission\\_SPT\\_Australia\\_Visit.pdf?1664846540](https://assets.nationbuilder.com/nswccl/pages/6421/attachments/original/1664846540/2022.09.02_NSWCCL_Submission_SPT_Australia_Visit.pdf?1664846540)>.

<sup>15</sup> Australian Bureau of Statistics, *Aboriginal and Torres Strait Islander people: Census* (29 June 2022) <<https://www.abs.gov.au/statistics/people/aboriginal-and-torres-strait-islander-peoples/aboriginal-and-torres-strait-islander-people-census/2021>>.

<sup>16</sup> Australian Bureau of Statistics, *New South Wales: Aboriginal and Torres Strait Islander population summary* (1 July 2022) <<https://www.abs.gov.au/articles/new-south-wales-aboriginal-and-torres-strait-islander-population-summary>>.

<sup>17</sup> Australian Bureau of Statistics, *Prisoners in Australia* (25 January 2024) <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>>.

<sup>18</sup> Australian Bureau of Statistics, *Prisoners in Australia* (25 January 2024) [Table 17] <<https://www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release#data-downloads>>.

#### (4) Youth incarceration<sup>19</sup>

- (a) In the June quarter 2023, there were 812 young Australians aged 10 and over in detention on an average night. 59% of them were First Nations Juveniles.
- (b) In NSW alone, 186 young Australians were in detention on an average night in the June quarter of 2023. 106 of them were First Nations Juveniles (i.e. 57%).<sup>20</sup> More recently, in March 2024, 66.4% of the Juveniles in detention in NSW were First Nations.<sup>21</sup>
- (c) Of Juveniles in detention, First Nations children made up 63% in the June quarter 2023, yet, they form only 5.7% of the total population of Juveniles in Australia.
- (d) In fact, First Nations Juveniles were 29 times as likely as non-First Nations Juveniles to be in detention in Australia and NSW specifically in the June quarter 2023. Numbers and rates of First Nations Juveniles in detention have been rising since 2020.

#### (5) Regional and rural NSW<sup>22</sup>

- (a) In regional and rural NSW, out of a total of 11,335 proceedings commenced against people for property crimes in 2023, 33% were against First Nations adults (compared to 38% against non-First Nations adults) and 21% were against First Nations Juveniles (compared to 7% against non-First Nations Juveniles).
- (b) For violent crimes in those regions, out of a total of 13,633 proceedings commenced in 2023, 27% were against First Nations adults (compared to 55% against non-First Nations adults) and 10% were against First Nations Juveniles (compared to 8% against non-First Nations Juveniles).

3.3 There is a gross over-representation of First Nations Juveniles, not to mention First Nations adults, in the prison population, particularly considering how little of the population they make up. As the data shows, this extends to regional NSW. The NSWCCCL is deeply concerned about the disproportionately and unacceptably high level of First Nations people in custody. As the Uluru Statement from the Heart declares, First Nations people 'are not an innately criminal people',<sup>23</sup> yet First Nations people and Juveniles are incarcerated, policed and criminalised at a significantly higher rate than non-First Nations people.<sup>24</sup>

3.4 We therefore submit that the Parliament should focus its attention on reviewing and remedying the over-incarceration of First Nations people, including First Nations Juveniles in regional NSW.

## 4 Context of youth crime and imprisonment

4.1 Juveniles in rural and regional communities do not come into contact with the criminal justice system in a vacuum. Rather than being inherently bad children, Juvenile offending and detention

<sup>19</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2023* (Web Report, 13 December 2023) <<https://www.aihw.gov.au/getmedia/d4bcdae4-4263-4cba-9d5e-67c08cdcdef6/youth-detention-population-in-australia-2023.pdf?v=20240114143309&inline=true>> ('AIHW, *Youth detention population*').

<sup>20</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2023: First Nations young people in detention* (Web Report, 13 December 2023) [Figure 2.4] <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/first-nations-young-people>>.

<sup>21</sup> NSW Bureau of Crime Statistics and Research, *NSW Custody Statistics* (Online at 10 May 2024)

<<https://www.bocsar.nsw.gov.au/Publication%20Supporting%20Documents/custody/Custody%20Infographic%202024-03.pdf>>.

<sup>22</sup> NSW Bureau of Crime Statistics and Research, *Crime in Regional and Rural NSW in 2023: Trends and Pattern* (Report 169, March 2024) <<https://www.bocsar.nsw.gov.au/Publications/BB/BB169-Report-Crime-in-Regional-and-Rural-NSW-2023.pdf>>.

<sup>23</sup> First Nations National Constitutional Convention, *Uluru Statement from the Heart* (2017) <<https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>>.

<sup>24</sup> For more information on this and its impacts, please see NSW Council for Civil Liberties, *United Nations Subcommittee on the Prevention of torture and other Cruel, Inhuman or degrading treatment or punishment (SPT)* (Submission, 2 September 2022) <[https://assets.nationbuilder.com/nswccl/pages/6421/attachments/original/1664846540/2022.09.02\\_NSWCCCL\\_Submission\\_SPT\\_Australia\\_Visit.pdf?1664846540](https://assets.nationbuilder.com/nswccl/pages/6421/attachments/original/1664846540/2022.09.02_NSWCCCL_Submission_SPT_Australia_Visit.pdf?1664846540)>.



often occurs as a consequence of a range of factors including social contexts as well as the ease of incarceration due to the low minimum age of criminal responsibility in NSW.

## **Social Factors**

- 4.2 Juveniles from regional and remote areas were significantly more likely to be under supervision in Australia in 2022/23 than juveniles from major cities.<sup>25</sup> The Councils of Social Services state that Juvenile offending is closely linked to disadvantage in the form of 'child abuse and neglect, disability, mental illness, drug and alcohol abuse, exposure to crime and violence and homelessness'.<sup>26</sup> A James Cook University study also showed a strong correlation between adverse childhood experiences and youth crime, finding experiencing domestic violence, incarceration of a household member, and emotional abuse to be of particular significance.<sup>27</sup> These factors affect children in regional NSW.

## **Parental Incarceration**

- 4.3 Parental incarceration is a recognised pathway to Juvenile detention and adult offending.<sup>28</sup> It can cause financial hardship, compromise the attachment relationships between incarcerated parents and their children, and become a source of stigmatisation and shame.<sup>29</sup> This is detrimental to the social, emotional, cognitive and communicative development of children,<sup>30</sup> placing them at a greater risk of alcohol and drug abuse, poor education outcomes and exhibiting aggressive and/or antisocial behaviour.<sup>31</sup>
- 4.4 Parental incarceration can also have the unintended consequence of 'normalising' imprisonment in the eyes of young people. Rather than becoming a deterrent to crime, it incentivises conviction as a 'rite of passage'.<sup>32</sup> The Australian Institute of Criminology published survey data from 2015 indicating that 52.6% of young people in Juvenile detention had at least one parent that had been imprisoned.<sup>33</sup>
- 4.5 Furthermore, the imprisonment of a parent or caregiver disrupts children's care and living arrangements,<sup>34</sup> with many children subsequently placed in out-of-home care. This is especially common where the incarcerated parent is the mother.<sup>35</sup> In its Pathways Report,<sup>36</sup> the ALRC stated that young people in out-of-home care are 19 times more likely than the equivalent general population to be under youth justice supervision in the same year.<sup>37</sup> This is of particular danger in regional

<sup>25</sup> Australian Institute of Health and Welfare, *Characteristics of young people under supervision* (Media Release, 28 March 2024) [Figure 3.5] <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-annual-report-2022-23/contents/characteristics-of-young-people-under-supervision>>.

<sup>26</sup> Councils of Social Services, *Review on Raising the Age of Criminal Responsibility: Joint Council of Social Service Network statement to the Council of Attorneys-General* (Report, March 2020) <[https://vcoss.org.au/wp-content/uploads/2020/03/SUB\\_Joint-COSS\\_Age-of-Criminal-Responsibility-FINAL.pdf](https://vcoss.org.au/wp-content/uploads/2020/03/SUB_Joint-COSS_Age-of-Criminal-Responsibility-FINAL.pdf)>.

<sup>27</sup> James Cook University, *Abuse and neglect put kids on fast track to crime* (Media Release, 17 May 2023) <<https://www.jcu.edu.au/news/releases/2023/may/abuse-and-neglect-put-kids-on-fast-track-to-crime#:~:text=%E2%80%9CExposure%20to%20childhood%20maltreatment%20in,between%2010%20and%2019%20years>>.

<sup>28</sup> Australian Law Reform Commission, *Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* (ALRC Report 133, 22 December 2017) <[https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)> (ALRC, *Pathways Report*).

<sup>29</sup> Bugmy Bar Book Committee, *Incarceration of a Parent or Caregiver* (The Bar Book Project, November 2019) 1 [2] <[https://www.publicdefenders.nsw.gov.au/Pages/public\\_defenders\\_research/bar-book/pdf/BBP\\_ParentalIncarceration\\_chapter-Nov2019.pdf](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book/pdf/BBP_ParentalIncarceration_chapter-Nov2019.pdf)> ('*The Bar Book Project*').

<sup>30</sup> *Ibid* [12].

<sup>31</sup> Senate Legal and Constitutional Affairs References Committee, *Parliament of Australia, Inquiry into the Value of a Justice Reinvestment Approach to Criminal Justice in Australia* (Report, June 2013) 22 [3.17] <[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Senate/Legal\\_and\\_Constitutional\\_Affairs/Completed\\_inquiries/2010-13/justicereinvestment/report/index](https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Legal_and_Constitutional_Affairs/Completed_inquiries/2010-13/justicereinvestment/report/index)>.

<sup>32</sup> *Ibid* [4.29].

<sup>33</sup> Australian Institute of Criminology, *Trends & issues in crime and criminal justice* (Report 663, February 2023) <[https://www.aic.gov.au/sites/default/files/2023-02/ti663\\_intergenerational\\_incarceration\\_in\\_new\\_south\\_wales.pdf](https://www.aic.gov.au/sites/default/files/2023-02/ti663_intergenerational_incarceration_in_new_south_wales.pdf)>.

<sup>34</sup> *The Bar Book Project* (n 29).

<sup>35</sup> *The Bar Book Project*, (n 29) [17].

<sup>36</sup> ALRC, *Pathways Report* (n 28).

<sup>37</sup> *Ibid* 74 [2.73].

NSW. As at June 2022, the rate of children living in out-of-home care from regional and remote areas in NSW was more than twice than for children from major cities in NSW.<sup>38</sup>

### **Lower socioeconomic background and lack of resources**

- 4.6 On an average day in 2022/23, Juveniles from the lowest socioeconomic areas were about 7 times as likely as those from the highest socioeconomic areas to be under supervision.<sup>39</sup> Children from lower socioeconomic areas in regional and rural NSW are therefore more likely to contribute to youth crime rates in these areas.
- 4.7 Economic disadvantage and inadequate resources can adversely affect children's social and educational opportunities, and the stability of their care.<sup>40</sup> Poverty, and the resulting homelessness, lack of education and opportunity and exposure to constant policing leads to more criminalisation of Juveniles from disadvantaged communities.<sup>41</sup>
- 4.8 For example, Juveniles in regional and rural NSW rely heavily upon public transport but can often not afford public transport fares in areas with fewer concessions, longer travel distances, and less travel service options. Such children are therefore more likely to have negative interactions with law enforcement due to fare evasion and misuse of motor vehicles.<sup>42</sup>

### **Child abuse and neglect**

- 4.9 Administrative data has indicated associations between child maltreatment and Juvenile offending, with particularly strong associations for those who experience maltreatment into adolescence.<sup>43</sup> More than half of the Juveniles (53%) under youth justice supervision during 2020/21 had received a child protection service in the 5 years from 1 July 2016 to 30 June 2021.<sup>44</sup>
- 4.10 Australian Institute of Health and Welfare data from 2021/22 shows that children in regional and remote areas of NSW experienced substantiated maltreatment at a much higher rate than in major cities of NSW, with children in remote areas being over 3 times more likely to be maltreated.<sup>45</sup> In 2023, the domestic violence assault rate was 1.6 times higher in regional NSW than Greater Sydney.<sup>46</sup> Therefore, to the extent that there are children witnessing, or being subject to, domestic violence in regional NSW, this child abuse also likely contributes to Juvenile offending.

### **Drug and alcohol abuse**

- 4.11 The Australian Institute of Health and Welfare found that Juveniles under youth justice supervision at any time between June 2012 and July 2016 in Australia were 30 times as likely as the general population to have received alcohol and other drug treatment services during that period (33%

<sup>38</sup> Australian Institute of Health and Welfare, *Child protection Australia 2021–22* (Web report, 7 May 2024) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/insights/supporting-children>>.

<sup>39</sup> Australian Institute of Health and Welfare, *Youth Justice* (Web report, 28 March 2024) <<https://www.aihw.gov.au/reports/australias-welfare/youth-justice>> ('AIHW, Youth Justice').

<sup>40</sup> Australian Institute of Health and Welfare, *Australia's children* (Web report, 25 February 2024) <<https://www.aihw.gov.au/reports/children-youth/australias-children/contents/income-finance-employment/family-economic-situation>> ('Australia's children').

<sup>41</sup> Justice Reform Initiative, *Jailing is failing the most disadvantaged* (Website) <<https://www.justicereforminitiative.org.au/disadvantaged>>.

<sup>42</sup> Office of the Advocate for Children and Young People, Submission to Independent Pricing and Regulatory Tribunal (NSW), *Review of Rural and Regional Bus Fares 2021 – 2022* (7 August 2020) <<https://www.ipart.nsw.gov.au/sites/default/files/documents/online-submission-advocate-for-children-and-young-people-t.-shifroni-11-aug-2020-120000000.pdf>>.

<sup>43</sup> Australian Institute of Criminology, *Child maltreatment and criminal justice system: involvement in Australia: Findings from a national survey* (Report 681) <[https://www.aic.gov.au/sites/default/files/2023-12/ti681\\_child\\_maltreatment\\_and\\_criminal\\_justice\\_system\\_involvement\\_in\\_australia.pdf](https://www.aic.gov.au/sites/default/files/2023-12/ti681_child_maltreatment_and_criminal_justice_system_involvement_in_australia.pdf)>.

<sup>44</sup> AIHW, *Youth Justice* (n 39).

<sup>45</sup> Australian Institute of Health and Welfare, *Child protection Australia 2021-22* (Web article, 7 May 2024) [Figure 1] <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2021-22/contents/insights/how-is-child-maltreatment-determined>>.

<sup>46</sup> NSW Bureau of Crime Statistics and Research, *NSW Trends in Domestic & Family Violence – Quarterly Report* (Report, December 2023) 3 <<https://www.bocsar.nsw.gov.au/Documents/RCS-Quarterly/NSW%20Trends%20in%20Domestic%20n%20Family%20Violence%20-%20Quarterly%20report%202023Q4.pdf>>.

compared with just over 1%).<sup>47</sup> This may indicate a correlation between young children engaging in drug and alcohol abuse and Juvenile offending. Research has shown that compared with other Juveniles, the offenders tend to have engaged in substance abuse earlier in their lives and more frequently.<sup>48</sup> Specific to regional Australia, a recent study has shown that people in regional and rural areas of Australia are more likely to engage in alcohol abuse than in major cities and about as likely to use illicit drugs.<sup>49</sup>

### **Disability**<sup>50</sup>

- 4.12 Children with disability are overrepresented in the juvenile justice system.<sup>51</sup>
- 4.13 Research by New South Wales Health and New South Wales Juvenile Justice indicates that 83% of Juveniles in custody in New South Wales exhibit symptoms consistent with a psychological disorder,<sup>52</sup> with the prevalence of Foetal Alcohol Spectrum Disorder being of particular concern.<sup>53</sup> Further, 17% of Juveniles were found to have an intellectual disability (IQ <70) and 39% were found to have a borderline intellectual disability (IQ 70-79).<sup>54</sup> These populations have limited access to appropriate support while in prison and when they are released back into the community they lack strong enough supports to prevent reoffending.<sup>55</sup>
- 4.14 The Australian Institute of Health and Welfare has reported 2015 and 2018 data indicating that there are higher proportions of children aged 0 – 14 in regional areas of Australia with severe or profound disability than in major cities.<sup>56</sup> According to 2013/14 statistics, this extends also to prevalence of mental illness in children ages 12 – 17 years old in regional areas in Australia compared to major cities.<sup>57</sup>

### **Age of Criminal Responsibility**

- 4.15 The term 'minimum age of criminal responsibility' refers to the legal age at which a child is considered to have understood that their actions were seriously wrong and can be held criminally responsible.<sup>58</sup> In Australia, the minimum age is 10 in all jurisdictions other than the Northern Territory and ACT, where it is currently 12 years old.<sup>59</sup> The ACT has planned to increase the

<sup>47</sup> AIHW, *Youth Justice* (n 39).

<sup>48</sup> Jeremy Prichard and Jason Payne, *Alcohol, drugs and crime: a study of juveniles in detention* (Research and Public Policy Series Report No 67, 2005) xi <<https://www.aic.gov.au/sites/default/files/2020-05/rpp067.pdf>>.

<sup>49</sup> Alcohol and Drug Foundation, *Alcohol and drug use in regional and remote Australia* (Web Page, 4 January 2023) <<https://adf.org.au/insights/regional-remote-aod/>>.

<sup>50</sup> NSW Council for Civil Liberties, 'NSWCCL Submission', Submission to the United Nations Committee Against Torture in *Sixth Periodic Report of Australia*, 3 October 2022

<[https://assets.nationbuilder.com/nswccl/pages/6426/attachments/original/1665030609/20221003\\_Submission\\_UN\\_Committee\\_against\\_Torture\\_75\\_Session\\_no\\_sig.docx.pdf?1665030609](https://assets.nationbuilder.com/nswccl/pages/6426/attachments/original/1665030609/20221003_Submission_UN_Committee_against_Torture_75_Session_no_sig.docx.pdf?1665030609)>.

<sup>51</sup> Law Council of Australia, *The Justice Project Final Report – Part 1: People with Disability* (Final Report, August 2018)

<[https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20\\_%20Final%20Report%20in%20full.pdf](https://lawcouncil.au/files/web-pdf/Justice%20Project/Final%20Report/Justice%20Project%20_%20Final%20Report%20in%20full.pdf)>.

<sup>52</sup> Justice Health & Forensic Mental Health Network and Juvenile Justice NSW, '2015 Young People in Custody Health Survey: Full Report' (Final Report, November 2017) 65 ('*Justice Health, Young People in Custody*')

<[https://www.ics.act.gov.au/\\_data/assets/pdf\\_file/0019/1323523/2015YPICHSReportwebreadyversion.pdf](https://www.ics.act.gov.au/_data/assets/pdf_file/0019/1323523/2015YPICHSReportwebreadyversion.pdf)>.

<sup>53</sup> Australian Human Rights Commission, Submission to Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (20 March 2022) 20 [96], 29-39 [147]-[153].

<sup>54</sup> *Justice Health, Young People in Custody* (n 52) 81.

<sup>55</sup> Justice Reform Initiative, *Mental Illness and Cognitive Disability* (Web Page)

<[https://www.justicereforminitiative.org.au/mental\\_illness\\_and\\_cognitive\\_disability](https://www.justicereforminitiative.org.au/mental_illness_and_cognitive_disability)>.

<sup>56</sup> Australian Institute of Health and Welfare, *Australia's children: Children with disability* (Web Page, 25 February 2022)

<<https://www.aihw.gov.au/reports/children-youth/australias-children/contents/health/children-disabilities>>.

<sup>57</sup> Australian Institute of Health and Welfare, *Mental Illness* (Web Page, 25 June 2021) <<https://www.aihw.gov.au/reports/children-youth/mental-illness>>.

<sup>58</sup> Amnesty International, 'Explainer: Why we need to raise the age of criminal responsibility', 25 January 2022

<[https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/?cn=trd&mc=click&pli=23501504&PluID=0&ord={timestamp}&gad\\_source=1&gclid=EAlalQobChMI9rqhxeGxhgMV8qdmAh09AQ6AEAYASAAEgJYU\\_D\\_BwE](https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/?cn=trd&mc=click&pli=23501504&PluID=0&ord={timestamp}&gad_source=1&gclid=EAlalQobChMI9rqhxeGxhgMV8qdmAh09AQ6AEAYASAAEgJYU_D_BwE)>.

<sup>59</sup> *Children (Criminal Proceedings) Act 1987* (NSW), s 5; *Young Offenders Act 1993* (SA), s 5; *Criminal Code Act 1899* (Qld) subs 29(1); *Children, Youth and Families Act 2005* (Vic), s 344; *Criminal Code Act Compilation Act 1913* (WA), s 29; *Criminal Code Act 1924* (Tas), subs 18(1); *Criminal Code Act 1983* (NT), s 38; *Criminal Code 2002* (ACT), s 25; *Crimes Act 1914* (Cth), s 4M.

minimum age further to 14 with the legislation expected to be implemented in 2025, and Victoria has similarly announced that it will raise the minimum age to 12 in 2024 and 14 in 2027.<sup>60</sup> The minimum age of 10 in NSW is one of the lowest in the world and below the global standard.<sup>61</sup>

- 4.16 The United Nations Committee on the Rights of the Child has consistently said that countries should be working towards a minimum age of 14 years or older.<sup>62</sup> Australia has been repeatedly criticised by the United Nations for failing to raise the minimum age. The impact of a low minimum age is clear.<sup>63</sup> At the age of 10, children's brains are still developing and they do not fully understand the consequences and severity of their actions, with the parts of the brain responsible for decision-making being the last and slowest to develop.<sup>64</sup> By imprisoning such children, the system is likely to generate juveniles that reoffend into adulthood.<sup>65</sup> In fact, approximately 94% of children imprisoned between 10 and 12 receive another prison sentence before they reach adulthood,<sup>66</sup> and it is widely recognised that incarceration leads to recidivism.<sup>67</sup>

## **Summary**

- 4.17 As highlighted above, youth crime does not occur in a vacuum. This low minimum age has the effect of treating children as criminals, despite the fact that these crimes were not committed in isolation but often as a result of extenuating circumstances. Such factors, as above, are prevalent in regional and rural communities in NSW.

## **5 Impact of incarceration on Juvenile offenders**

### **Recidivism**

- 5.1 Being held on remand, especially for a first-time offence, can significantly heighten the risk of Juveniles committing further and more serious offences later in life. Statistics reveal that Juveniles held on remand are more likely to become entangled in the criminal justice system again, with a substantial increase in recidivism rates compared to those who receive non-custodial interventions.
- 5.2 Of the young people aged 10–16 released from sentenced supervision in 2020–21, a concerning pattern emerged: 2 in 5 released from sentences of community-based supervision received another supervised sentence within 6 months, escalating to almost 3 in 5 within 12 months.<sup>68</sup> Similarly, about two-thirds released from sentence detention received another supervised

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<sup>60</sup> Australian Institute of Health and Welfare, *Youth detention population in Australia 2023: Raising the age of criminal responsibility* (Web Report, 13 December 2023) <<https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2023/contents/understanding-youth-detention-in-australia/raising-the-age-of-criminal-responsibility>>.

<sup>61</sup> Amnesty International, 'Explainer: Why we need to raise the age of criminal responsibility', 25 January 2022 <<https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/#:~:text=The%20age%20of%20criminal%20responsibility%20is%20the%20age%20in%20which,at%20only%2010%20years%20old>> ('Amnesty International, Why we need to raise the age').

<sup>62</sup> Committee on the Rights of the Child, General Comment No 24: Children's rights in juvenile justice, 44th sess, UN Doc CRC/C/GC/10 [33]. (25 April 2007) <<https://www.ohchr.org/sites/default/files/Documents/HRBodies/CRC/GC24/GeneralComment24.pdf>>.

<sup>63</sup> For more information on the reasons to increase the minimum age, see NSWCCCL, Submission 30 to Senate Standing Committees on Legal and Constitutional Affairs, Inquiry into the Application of the United Nations Declaration on the Rights of Indigenous Peoples in Australia (2 June 2022) <[https://assets.nationbuilder.com/nswccl/pages/6367/attachments/original/1655425007/Submission\\_30.pdf?1655425007](https://assets.nationbuilder.com/nswccl/pages/6367/attachments/original/1655425007/Submission_30.pdf?1655425007)>.

<sup>64</sup> Meg Perkins, 'Science and Raising the Age of Criminal Responsibility', *Amnesty International* (2019) <<https://www.amnesty.org.au/science-raising-age-criminal-responsibility/>>.

<sup>65</sup> National Institute of Justice, 'From Youth Justice Involvement to Young Adult Offending', (Report, 2014), <<https://nij.ojp.gov/topics/articles/youth-justice-involvement-young-adult-offending>>; Kimberly A Rhoades et al, 'Predicting the Transition from Juvenile Delinquency to Adult Criminality: Gender Specific Influences in Two High-Risk Samples', *Criminal Behaviour and Mental Health* (2016) <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4624625/>>.

<sup>66</sup> *Amnesty International, Why we need to raise the age* (n 61).

<sup>67</sup> Kelly Richards, *What makes juvenile offenders different from adult offenders?* (Trends & issues in crime and criminal justice Paper No. 409, February 2011), 6–7 <<https://www.aic.gov.au/sites/default/files/2020-05/tandi409.pdf>>.

<sup>68</sup> Australian Institute of Health and Welfare, *Young people returning to sentenced youth justice supervision 2021–22* (Report, 2023) <<https://www.aihw.gov.au/getmedia/4c4147a4-b243-4021-a9e1-6a3bda4f8cc7/aihw-juv-141.pdf?v=20230801105939&inline=true>>

sentence within 6 months, and more than 4 in 5 within 12 months.<sup>69</sup> This alarming rate of recidivism underscores the ineffectiveness of incarceration as a deterrent for Juvenile offenders. Moreover, it underscores a failure in addressing the underlying issues that lead to criminal behaviour in the first place. Instead of providing avenues for rehabilitation and addressing root causes, incarceration often exacerbates existing problems, pushing Juveniles deeper into cycles of criminality.

- 5.3 The impact of being held in custody goes beyond immediate consequences, shaping the trajectory of a Juvenile's future involvement in crime. In regional areas of NSW, where resources for rehabilitation and support services may be limited, the effects of remand can be particularly pronounced. Lengthy periods of pre-trial detention disrupt educational opportunities, exacerbate social isolation, and increase the likelihood of exposure to negative influences within correctional facilities. These factors create a fertile ground for the escalation of criminal behaviour among Juveniles, perpetuating cycles of offending and hindering opportunities for positive intervention.
- 5.4 Recognising the detrimental effects of remand on Juvenile offenders, there is a growing emphasis on early intervention and non-penal alternatives to incarceration. Programs such as Drug Court, Circle Sentencing and Justice Reinvestment (as detailed in section 6 below), have shown promising results in reducing recidivism rates among Juveniles and promoting positive behavioural change. By addressing the underlying factors contributing to delinquency and providing tailored support and guidance, these alternatives offer a more effective and socially responsible approach to youth justice. Investing in such initiatives not only helps break the cycle of offending but also fosters the rehabilitation and reintegration of Juveniles into society, ultimately contributing to safer communities and better outcomes for Juveniles.

### **Increase in Juveniles held on remand**

- 5.5 There is a concerning trend emerging in Australia, particularly in New South Wales, where despite the fall in offending noted at section 2 above, there has been a notable increase in the number of Juveniles being held on remand. Statistics from the March quarter of 2023 highlight this trend, with almost 4 in 5 Juveniles in detention being unsentenced.<sup>70</sup> The rate of Juveniles in unsentenced detention stood at 2.3 per 10,000, significantly higher than those in sentenced detention at 0.5 per 10,000.<sup>71</sup> This marks a substantial increase over recent years, as evidenced by data showing that from the June quarter of 2019 to the March quarter of 2023, the proportion of individuals in unsentenced detention rose from 63% to 77%.<sup>72</sup>
- 5.6 This surge in individuals being held on remand can be partly attributed to legislative changes, notably the *Bail Act 2013* (NSW). This legislation introduced stricter bail conditions and criteria, resulting in more individuals being denied bail and subsequently held in custody while awaiting trial.<sup>73</sup> Furthermore, increased waiting times for trial, particularly in regional areas of NSW, exacerbate this issue.<sup>74</sup> Overburdened court systems, insufficient resources, and funding constraints contribute to delays in the legal process, prolonging the time individuals spend in custody awaiting resolution of their cases.

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<sup>69</sup> Ibid.

<sup>70</sup> AIHW, *Youth detention population* (n 19).

<sup>71</sup> Ibid.

<sup>72</sup> Ibid.

<sup>73</sup> NSW Bureau, *Big increase in bail refusals* (n 11).

<sup>74</sup> Casey Briggs and Maani Truu, "Like being suspended in mid-air": The enduring impact of ongoing delays in Australia's courts', *Australian Broadcasting Corporation* (4 March 2023) <<https://www.abc.net.au/news/2023-03-04/court-delays-not-meeting-national-benchmarks/102044662>>; NSW Bureau of Crime Statistics and Research, *COVID hangover causes jump in court delay - NSW Criminal Courts Statistics Jul 2017 - Jun 2022* (Media Release, 15 December 2022) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2022/mr-NSW-Criminal-Courts-Statistics-Jun-2022.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2022/mr-NSW-Criminal-Courts-Statistics-Jun-2022.aspx)>.

- 5.7 The impact of this trend is particularly acute for Juvenile offenders, whereby prolonged periods spent in custody can have severe consequences on their well-being and future prospects. Incarceration, even on a temporary basis, disrupts educational opportunities, social development, family relationships and access to support services crucial for rehabilitation.<sup>75</sup> Moreover, the heightened stress and trauma associated with prolonged detention can exacerbate mental health issues and increase the likelihood of re-offending upon release.<sup>76</sup> Therefore, addressing the underlying factors driving the increase in remand populations and implementing measures to mitigate the adverse effects of incarceration on Juvenile offenders is essential for promoting positive outcomes and breaking the cycle of re-offending.

## 6 Alternative solutions

- 6.1 As highlighted earlier, there is a need to avoid being caught up in the media narrative and pursue solutions which are statistically proven to provide better outcomes for the individual and society, by increasing prevention, interrupting the pattern of re-offending and ultimately resulting in safer communities and enhanced prospects for Juveniles. Set out below are some key examples of these alternative solutions. We would encourage the committee to provide the resources to extend these or similar programs which have a proven track-record of addressing the underlying causes of youth crime, as discussed above.

### Drug Court

- 6.2 The Drug Court of NSW offer an alternative approach to justice, focusing on rehabilitation rather than punishment for drug-related offenses.<sup>77</sup> They provide eligible offenders with the opportunity to participate in intensive treatment programs as an alternative to traditional sentencing. The aim is to address the underlying issues of substance abuse and addiction that contribute to criminal behaviour, ultimately reducing recidivism rates and promoting long-term positive outcomes for participants.
- 6.3 The effectiveness of the Drug Court is statistically proven, with participants in the program significantly less likely to re-offend compared to similar offenders who went through the traditional court process.<sup>78</sup> Specifically, participants had lower rates of reconviction, re-imprisonment, and re-arrest over a five-year follow-up period.<sup>79</sup>
- 6.4 The success of the Drug Court lies in their holistic approach to addressing substance abuse issues.<sup>80</sup> Participants receive comprehensive support, including access to drug treatment programs, counselling, and social services.<sup>81</sup> By addressing the root causes of criminal behaviour and providing tailored interventions, the individual is empowered to overcome addiction and make positive changes in their lives.

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<sup>75</sup> The Bugmy Bar Book Project Committee, *Impacts of Imprisonment and Remand in Custody* (Report, November 2022) <[https://www.publicdefenders.nsw.gov.au/Pages/public\\_defenders\\_research/bar-book/pdf/BBB\\_Imprisonment\\_Chapter-Nov2022.pdf](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book/pdf/BBB_Imprisonment_Chapter-Nov2022.pdf)>.

<sup>76</sup> Ibid.

<sup>77</sup> Drug Court of New South Wales, 'About Us' (Web page, 11 May 2023) <https://drugcourt.nsw.gov.au/about-us.html#:~:text=The%20Drug%20Court%20of%20NSW%20is%20a%20specialist%20court%20that,for%20a%20Drug%20Court%20program.>

<sup>78</sup> Don Weatherburn et al., 'The long-term effect of the NSW Drug Court on recidivism' (2020) 232 *Crime and Justice Bulletin* <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_publication/Pub\\_Summary/CJB/cjb232-The-long-term-effect-of-the-NSW-Drug-Court-on-recidivism.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_publication/Pub_Summary/CJB/cjb232-The-long-term-effect-of-the-NSW-Drug-Court-on-recidivism.aspx)>.

<sup>79</sup> Ibid.

<sup>80</sup> Drug Court New South Wales, What is the Drug Court program? (Information Sheet, 30 November 2022) <[https://drugcourt.nsw.gov.au/documents/Factsheet\\_-\\_What\\_is\\_the\\_Drug\\_Court\\_program.pdf](https://drugcourt.nsw.gov.au/documents/Factsheet_-_What_is_the_Drug_Court_program.pdf)>.

<sup>81</sup> Ibid.

## **Circle sentencing**

- 6.5 Circle Sentencing is an innovative approach to sentencing that aims to incorporate First Nations cultural values and community involvement into the justice system. Under Circle Sentencing, the presiding judge or magistrate sits with members of the local First Nations community, known as the Circle, to determine the appropriate sentence for an offender.<sup>82</sup> The Circle includes respected community members, Elders, and sometimes the victim or their representative. Together, they discuss the offender's circumstances, the impact of the crime on the community and potential ways to address the underlying issues contributing to the offender's behaviour.<sup>83</sup> The goal is to reach a consensus on a sentence that promotes healing, accountability, and rehabilitation, while also respecting First Nations cultural traditions and restoring harmony within the community.<sup>84</sup>
- 6.6 By involving the local First Nations community in the sentencing process, Circle Sentencing promotes a sense of ownership and accountability among offenders, as well as community members. This collaborative approach fosters trust and cooperation between the justice system and First Nations communities, leading to more effective outcomes for both offenders and the broader community.
- 6.7 Circle Sentencing helps address the overrepresentation of First Nations people in the criminal justice system by offering alternative sentencing options that prioritise cultural understanding and community support.

## **Justice Reinvestment (JR)**

- 6.8 JR is a community-led initiative focused on diverting resources from the criminal justice system towards early intervention, prevention, and rehabilitation programs in disadvantaged communities.<sup>85</sup> The program seeks to address the underlying factors driving crime, particularly among First Nations Juveniles, by investing in community-driven solutions and alternatives to incarceration.<sup>86</sup>
- 6.9 Key components of JR include community-led justice reinvestment projects, which aim to identify and implement locally tailored strategies to reduce crime and improve social outcomes. These projects involve collaboration between government agencies, community organisations, and First Nations leaders to develop holistic approaches that address the root causes of offending and promote community safety. It prioritises investment in education, employment, housing, and healthcare services to address the social determinants of crime and improve outcomes for individuals and communities.
- 6.10 This represents a promising approach to addressing the complex challenges facing disadvantaged communities by shifting the focus from punitive measures to prevention and rehabilitation, thereby creating safer and more resilient communities for all.

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<sup>82</sup> Emily Doak, 'Wagga Wagga's move to circle sentencing benefits Indigenous offenders, community', ABC News (online, 13 October 2023) <<https://www.abc.net.au/news/2023-10-13/wagga-wagga-circle-sentencing-benefits-indigenous-offender/102951528>>.

<sup>83</sup> Ibid.

<sup>84</sup> Ibid.

<sup>85</sup> Australian Institute of Criminology, *Justice reinvestment in Australia: A review of the literature* (Research Report No 9, 2018) 2–3 <[https://www.aic.gov.au/sites/default/files/2020-05/rr09\\_justice\\_reinvestment\\_in\\_australia\\_160518\\_0.pdf](https://www.aic.gov.au/sites/default/files/2020-05/rr09_justice_reinvestment_in_australia_160518_0.pdf)>.

<sup>86</sup> Ibid.

## 7 Response to submissions by the Country Mayors Association of NSW (CMA)

We note the CMA submissions to the Inquiry dated 20 May 2024<sup>87</sup> which make a number of counterproductive recommendations. Whilst our submissions to the Inquiry directly address and deconstruct most points raised by the CMA, we wish to explicitly challenge certain recommendations which would further inflame the issues identified in section 5 above. We challenge recommendations 6, 8, 9 and 17, each of which adheres to a media narrative on youth crime which is not supported by the data. The CMA submission offers superficial 'tough on crime' solutions, despite statistics and empirical evidence demonstrating their ineffectiveness and harm. Their submission also fails to consider the social and statistical benefits of non-custodial intervention, such as the examples identified at section 6 above. We would welcome the opportunity to be called as a witness to this Inquiry to further address their submissions. It is profoundly disappointing that elected representatives have taken this important opportunity to make such a non-serious contribution to an important public policy debate. Instead of identifying policies and projects that have worked to reduce harm caused in their communities they have taken this opportunity to lend their voices in support of measures which further sow division and cause harm.

## 8 Conclusion

- 8.1 When taking into account the broader context and statistics related to regional youth crime in NSW, the evidence shows that more punitive laws can often be counterproductive as they not only fail to address the root causes of the issue, but also result in increased levels of repeat offending. We encourage the Inquiry to take such context and statistics into account, and look to solutions which have a proven record of providing beneficial outcomes to both the Juvenile and the broader community. We encourage you to take a longer term view of the issues and the way to best address them, for the sake of both the Juveniles and the community.
- 8.2 Rather than empowering the Government to criminalise more conduct, increase sentences, and more easily incarcerate people, we urge the Inquiry to look to solutions which, rather than resulting in heightened risk of reoffending, instead focus on the causes of crime, harm minimisation and creating connected and inclusive communities where Juveniles can thrive.
- 8.3 We further urge the Inquiry to be bold in recommending that the age of criminal responsibility be raised to fourteen years. The Inquiry also ought to give serious consideration to implementing a prohibition on all incarceration of Juveniles for drug uses and possession, breach of bail offences and traffic offences, as the research clearly shows that incarceration increases a Juvenile's chances of causing further harm to their communities.
- 8.4 Breaking the cycle of youth crime is not easy, even if there is not the epidemic that the media warns of, but we must continue to work towards breaking the cycle to ensure that all Juveniles feel safe and can thrive in communities of care without causing harm.

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<sup>87</sup> Country Mayors Association of NSW, *Community Safety in Regional and Rural Communities* (Submission, 20 May 2024) <<https://nswcountrymayors.com.au/wp-content/uploads/2024/05/CMA-Submission-Community-Safety-in-Regional-and-Rural-Communities.pdf>>.



We hope this submission is of assistance to the committee.

Yours sincerely,



**Timothy Roberts**  
**Secretary**  
**NSW Council for Civil Liberties**

Contact in relation to this submission: Anne Charlton

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