

Submission to the Productivity Commission

Inquiry into mental health

CCYPD/19/2629

The Commission respectfully acknowledges and celebrates the Traditional Owners of the lands throughout Victoria and pays its respects to their Elders, children and young people of past, current and future generations.

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Overview

The Commission for Children and Young People

The Commission for Children and Young People (the Commission) is an independent statutory body that promotes improvement in policies and practices for the safety and wellbeing of vulnerable children and young people in Victoria.

The Commission consists of Liana Buchanan, Principal Commissioner, and Justin Mohamed, the Commissioner for Aboriginal Children and Young People. The Commission's work includes:

- provision of independent scrutiny and oversight of services for children and young people, particularly those in out-of-home care, child protection and youth justice custody
- advocacy for best practice policy, program and service responses to meet the needs of children and young people
- support and regulation of organisations that work with children and young people to prevent abuse and ensure these organisations have child-safe practices.

The Commission's functions and powers are set out in the *Commission for Children and Young People Act 2012* and the *Child Wellbeing and Safety Act 2005*. In delivering these functions, the Commission aims to:

- provide advice and advocacy strongly grounded in evidence, on behalf of children and young people
- hear and highlight the views and experiences of children and young people to ensure these are central to planning and decision making
- apply a rights-based approach to our work drawing on the Victorian Charter of Human Rights and Responsibilities (2006) (the Charter)
- focus on the rights, safety and wellbeing of vulnerable children and young people and Aboriginal children and young people
- work in a way that is inclusive, culturally sensitive and respectful of the diversity of children and young people.

The Commission also works to bring the experiences of children and young people to government and the community, and promote the rights, safety and wellbeing of children and young people.

The Commission accesses information about the mental health issues and experiences of children known to child protection, children in out-of-home care and children in youth justice custody in the following ways.

1. Monitoring of serious incidents of children in out-of-home care and youth justice custody

The Commission is advised of most serious incidents recorded involving a child in out-of-home care and incidents involving children and young people in youth justice centres (custodial facilities). Incidents include allegations of physical and sexual abuse, self-harm and attempted suicide, which directly relate to the mental health of these groups of children and young people.

2. Individual or group inquiries

Inquiries can be undertaken into the circumstances of a child or a group of vulnerable children in child protection, out-of-home care or youth justice centres. Inquiries typically include review of the provision of mental health services and supports in place. For example, in 2018 the Commission completed a group inquiry into issues of cumulative harm and

suicide in child deaths, in which it examined the services provided to 26 children who were involved with Child Protection and died as a result of suicide.

3. Child death inquiries

Child death inquiries are undertaken in respect of every child who has died in Victoria, who was known to Child Protection in the twelve months before their death. These enable insight into the child's interaction with a range of services including Child Protection, education and health, and can provide insight into service provision across the system.

4. Systemic inquiries

The Commission can conduct systemic inquiries when it identifies persistent or recurring issues in delivery of services to children. For example, the group inquiry *Always was, always will be Koori children* examined services provided to Aboriginal children in out-of-home care.

5. Approaches from the community

In addition, though the Commission does not have a complaints handling function, members of the public regularly contact the Commission with requests for support. The Commission provides information and referrals to appropriate agencies. Patterns and trends in approaches received are an additional source of intelligence for the Commission about systemic issues.

6. Reportable conduct

The Commission is responsible for administering the Victorian Reportable Conduct Scheme, which seeks to improve organisations' responses to allegations of child abuse and neglect by their workers and volunteers. The Commission supports organisations that receive allegations in order to promote fair, effective, timely and appropriate responses, and provides independent oversight of the scheme. The Commission monitors patterns and trends in reportable conduct allegations, and this is also a source of information that informs the Commission's policy and advocacy work.

The Productivity Commission Inquiry into Mental Health

The Commission is pleased to make a submission to the Productivity Commission's Inquiry into Mental Health. The Inquiry provides a valuable opportunity to consider the effectiveness of mental health services through an economic lens. The Commission commends the Inquiry's focus on young people, disadvantaged groups, and suicide prevention, alongside its broad focus on how to improve population mental health.

The Issues Paper refers to research that shows that mental ill-health is widespread among children and young people in the Child Protection system, and that mental ill-health is associated with physical ill-health and lifelong mental health disorders. In addition, research suggests that childhood maltreatment is associated with impairment in areas of personal functioning (including autonomy, clarity about personal identity and ability to plan).¹

We note that the Royal Commission into Victoria's Mental Health System—the terms of reference for which were announced in February 2019²—may be a valuable source of evidence for the Productivity Commission's ongoing work, as the Royal Commission is likely to report on:

- how to most effectively prevent mental illness and suicide and support people to recover from mental illness
- how to improve access to Victoria's mental health system for people of all ages
- how to improve mental health outcomes, taking into account best practice and person-centred treatment and care models, for those in the Victorian community, especially

those at greater risk of experiencing poor mental health, including but not limited to people:

- from Aboriginal and Torres Strait Islander backgrounds
- living with a mental illness and other co-occurring illnesses, disabilities, multiple diagnoses or dual disabilities
- from rural and regional communities
- in contact, or at greater risk of contact, with the forensic mental health system and the justice system.

The Royal Commission will be providing its interim report by 30 November 2019 and final report by 31 October 2020. It is directed to have regard to the Productivity Commission's Inquiry.

The Productivity Commission Inquiry is timely in light of the increasing costs of mental health issues and will provide a valuable perspective that can guide government decision making on system reform.

This submission

This submission is informed by information held by the Commission about the mental health of children and young people known to child protection, children in out-of-home care and children and young people in youth justice custody. This includes data and findings from the Commission's inquiries.

Acknowledging that Koori children and young people are overrepresented in Victoria's out-of-home care and youth justice systems, we have sought to ensure that their experiences are highlighted. We recommend that the Productivity Commission view mental health broadly to include the Aboriginal understanding and experience of mental health and social and emotional wellbeing. In particular, we encourage the Productivity Commission to:

- understand the significant effects of historical, social, economic, political and environmental factors on Aboriginal children and young people's mental health
- consider the specific needs of Aboriginal children and young people through the Aboriginal Social and Emotional Wellbeing framework
- ensure its recommendations are culturally safe and appropriate.

As the Commission has previously noted, 'the service system must work in a more holistic way with Aboriginal children and their families, recognising the Aboriginal concept of health and the need for Aboriginal-specific trauma responses'.³

This submission:

- provides the Commission's evidence-informed view of the mental health vulnerabilities of children in different parts of the child protection and out-of-home care systems
- provides an overview of barriers to accessing appropriate mental health services for children and young people in out-of-home care
- highlights the over-representation of children and young people with mental health needs in youth justice systems; the importance of addressing those needs to support children and young people's rehabilitation; issues and gaps identified in recent youth justice reviews in Victoria; and relevant recommendations of the Royal Commission into the Protection and Detention of Children in the Northern Territory.

The Commission is currently working on an inquiry into children's experiences of out-of-home care titled '*In our own words*'. This inquiry includes children's own voices on issues including mental health and will be provided to the Productivity Commission after it is tabled in Victorian Parliament.

The Commission has chosen not to include recommendations in this submission. Recommendations will be developed in response to the Victorian Royal Commission into Mental Health and will be shared with the Productivity Commission as a supplementary submission.

Mental health vulnerabilities of children known to Child Protection

The Commission has undertaken three inquiries relating to children who died within 12 months of their last contact with Child Protection. These inquiries provide insight into the harm—and trauma—that had been experienced by children who had come to the attention of child protection, most of whom had not been removed at the time of their death. They also provide insight into the systemic failures of Child Protection to intervene in a timely and coordinated way to reduce harm.

The incidence of trauma is relevant to mental health because research shows that people who experience trauma during childhood or adolescence have double the risk of experiencing a range of mental health disorders.⁴ Research in the UK—based on a sample of more than 2000 young people—found that one in four young people exposed to trauma developed post-traumatic stress disorder (PTSD). Young people who had directly experienced violence, such as physical or sexual assaults, were much more likely to develop PTSD (57 percent) than those exposed to other trauma types.

Inquiry into cumulative harm

The Commission's 2018 group inquiry into cumulative harm and suicide in child deaths⁵ examined the services provided to 26 children who were involved with Child Protection and died as a result of suicide between 2007 and 2015. The inquiry found these children were often exposed to significant risks and persistent harm from an early age, however the system did not intervene to provide adequate support or protection.

The inquiry allowed a detailed examination of Child Protection's response to children, young people and families with respect to mental health. It found that mental health problems were prevalent for the children who died: 19 of the 26 children had received a diagnosis of depression, and 17 had been prescribed medication for the treatment of mental illness. All 26 children had experienced multiple sources of harm. Twenty-five of the 26 children had experienced family violence, 20 had experienced one or more elements of neglect during their childhood, 16 had experienced emotional abuse, and half of the children had experienced sexual abuse.

The risks of harm to children were compounded by the parents' own challenges; 18 of the 26 children had a parent with a mental illness, 17 had a parent with problematic alcohol or other drug use, and 15 had a parent with their own history of childhood abuse, showing the existence of intergenerational trauma.

All of the 26 children who died had contact with multiple service providers and authorities—including mental health services, Child Protection services and educational services—over their lifetime. Child Protection received multiple notifications for each child, with an average of seven reports for each child. Of the notifications made, more than 90 percent of the reports were closed at intake or investigation and two thirds were closed without any further action. Despite the complexity of the children's risk factors and vulnerabilities, approximately ten percent of reports resulted in some level of protective intervention.

As a result of Child Protection's failure to adequately identify and respond to the risk of cumulative harm and its impact and the voluntary service system's inability to engage these children's parents, children continued to experience trauma, which continued to adversely impact their mental health.

Neither Seen nor Heard

The Commission's 2017 *Neither Seen nor Heard* inquiry into issues of family violence in child deaths also focussed on children who were known to child protection but, despite multiple reports, had not met the threshold for Child Protection protective intervention. Of the 20 cases reviewed in this inquiry, one child was in kinship care, and 17 children were living with a parent (the other two children were in hospital).⁶

Key findings in this inquiry included:

- the impact of family violence on the children was grossly underestimated and was not addressed, and the children received no therapeutic or other assistance to recover from the trauma of family violence
- allegations of sexual abuse were frequently overlooked, and there was inadequate information gathering, investigation, risk assessment, safety planning, counselling and psychological support
- family violence is a cause of trauma in children's lives, and a consequence of trauma in the lives of their parents. There is a need for more specialist help to address the intergenerational nature of family violence.

These inquiries demonstrate that children known to Child Protection who are not removed from the care of their parents and who receive no other meaningful intervention often have significant mental health vulnerabilities as a result of cumulative harm from multiple traumas.

Mental health vulnerabilities of children entering out-of-home care

According to the 2017-18 Report on Government Services (ROGS), in 2018 Victoria had a relatively low rate of children on care and protection orders, tying with the ACT for the fifth highest rate of children on care and protection orders (a rate of 9.7 children per 1000, 13,303 children in total). However, Victoria had the highest rate of Aboriginal children on care and protection orders in the country, with 123.7 Aboriginal children per 1000 children in care, compared to 7.8 non-Aboriginal children per 1000 children in care.⁷

Most children in Victoria are removed into out-of-home care as a result of abuse or neglect where there is an unacceptable risk of harm to the child (*Children, Youth and Families Act 2005* (Vic), section 10(g)). Australian Institute of Health and Welfare research showed that in 2017-18 emotional abuse was the most common type of substantiated abuse for both Indigenous and non-Indigenous children. Indigenous children had a higher percentage of substantiations for neglect (30 percent) than non-Indigenous children (12 percent), and a lower percentage of substantiations for emotional and sexual abuse.⁸

The Commission's 2016 inquiry, *Always was, always will be Koori children*, found that most Aboriginal children in Victoria are removed from their families because of family violence, in combination with parental drug and alcohol abuse.⁹

When children are removed into out-of-home care, they may be disconnected from siblings, extended family and community. As outlined in the section above, children who are entering the out-of-home care system have frequently experienced one or more types of trauma, and as a result are likely to have suffered one or more types of harm. These include:

- physiological impacts that are a direct consequence of parental abuse or neglect, including acquired brain injuries and fetal alcohol syndrome
- cognitive and neurological impacts of trauma and cumulative harm from repeated maltreatment (including exposure to family violence), which research shows can lead to life-long psychological and behavioural difficulties

- the impact of children’s own stress responses, which are themselves causes of harm, including substance abuse and risk-taking behaviour.¹⁰

The trauma history of the children and young people entering care means they are among the most medically and developmentally vulnerable population in Victoria.

Trauma related to placement in out-of-home care

The Commission’s work in monitoring and inquiries indicates that there are multiple potential sources of trauma after children enter out-of-home care that can exacerbate children’s existing trauma and mental health issues, including:

- instability arising from frequent changes in placement, which leads to disconnection from protective factors, including education
- the lack of safety in out-of-home care, including sexual abuse and physical assault, including from other children
- for children in residential care, placement in residential care units that do not provide a ‘home-like’ environment
- for Koori children, separation from cultural and community connections, which adds to cumulative trauma arising from past treatment of Aboriginal people.

Instability of out-of-home care placements

There is broad recognition that placement instability has an adverse effect on children and young people in out-of-home care. For example, the 2019 Department of Health’s Draft Action Plan for Children and Young People states:

Placement instability can have significant adverse effects on children and young people. Continued instability is associated with poor educational, employment, social, psychological, behavioral and emotional outcomes. Experiencing multiple placements can also affect a young person’s capacity to develop and maintain relationships.¹¹

Victoria’s Child Protection Manual also outlines the risks associated with placement change:

With every placement comes the possibility of the child experiencing further trauma. The care team is required to make every effort to minimise the number of placement changes a child may experience and ensure the child is supported where a placement change is required.¹²

Despite the recognition of possible harms, some children are moved frequently in out-of-home care. Changes in care can be a result of lack of available accommodation, at the request of carers, or to manage safety in residential care.

As well as the number of placements children and young people experience while in care being correlated with feelings of instability, interaction with many different key support people in their daily lives, such as multiple caseworkers, is an additional source of instability. The CREATE Foundation’s most recent survey of children in out-of-home care showed more than 40 percent of children had been allocated between three and six caseworkers during their time in out-of-home care. More than 10 percent of children had had 10 or more case workers.¹³

The Commission’s 2017 ‘... safe and wanted...’ inquiry into the implementation of the *Children, Youth and Families Amendment (Permanent Care and Other Matters) Act 2014* identified that the Victorian Department of Health and Human Services (DHHS) does not monitor the total number of placement changes experienced by a child in out-of-home

care.¹⁴ The inquiry found that, while 47.7 percent (4,196 children) of the total out-of-home care population for which data was provided (8,784) experienced no placement changes in the period from March to August 2016,

- almost a thousand children experienced two placement changes
- more than 500 experienced three placement changes
- 400 experienced four placement changes
- more than 170 children experienced between 11 and 20 changes
- 21 children experienced more than 20 placement changes in this six-month period.¹⁵

The inquiry recommended that DHHS introduce measures to monitor the total number of placement changes children experience in out-of-home care, review the circumstances of children who have experienced high levels of placement changes and develop tailored strategies to minimise future placement instability for those children. These recommendations were accepted in principle by DHHS, 'in the context of current out-of-home care reform design'.

Disruption and frequent movement between placements can limit a child's ability to engage with new support services such as mental health services, or to continue existing engagement. The placement changes often mean a change of schooling and a network of new support people, including new caseworkers. This can be very upsetting for children and young people.

Not surprisingly, our monitoring work shows that children experience particular anxiety and distress when their placements change with little or no notice, or if they have been in a placement for an extended period of time. In the Commission's current ongoing inquiry, *In our own words*, children expressed frustration at the lack of information they were given about placement changes and, in some cases, indicated a sense of rejection because of the placement change.

Lack of safety in out-of-home care

The Commission's monitoring work indicates that out-of-home care—particularly residential care—continues to be an environment in which there are frequent incidents of self-harm, physical abuse and sexual abuse, which are sources of additional trauma.

The Commission's 2015 inquiry, '*...as a good parent would*' undertook an analysis of sexual abuse incident reports and detailed file reviews for 32 children. The report identified at least three sources of harm to children in residential care:

- sexual abuse of children in residential care by external predators
- sexual abuse in residential care between children (child-to-child abuse)
- sexual abuse in residential care by staff to children (staff-to-child abuse).¹⁶

Confirming these trends, the Commission's 2016-2017 Annual Report outlined the receipt of more than 350 physical assault incidents and 132 reports relating to sexual assault/rape in out of home care in the twelve-month period.¹⁷

In its first full year of operation, Victoria's Reportable Conduct Scheme received 366 mandatory notifications relating to people working in the out-of-home care sector (43 per cent of all notifications). The 366 notifications included 599 separate allegations, including 332 allegations of physical violence and 103 allegations of behaviour that causes significant emotional psychological harm. Across all sectors, 30 per cent of all allegations were substantiated in 2017-2018.¹⁸

Outside of the Commission's work:

- ROGS reports that in 2017-18, 128 children in Victoria were the subject of a substantiation of abuse or neglect where the person responsible was living in the household providing out-of-home care.
- The recent CREATE report on out-of-home care includes children's descriptions of bullying, abuse and neglect, mismatched placements and negative treatment.¹⁹

Each of these sources demonstrate that as a source of trauma, an unsafe environment can be a contributing factor to mental health issues.

Lack of a home-like environment

The '...as a good parent would' inquiry undertook inspections of 21 residential care units to determine whether they provided a 'home-like' environment. The report stated:

*The physical environment of care offered to traumatised children has a profound impact on their wellbeing. A warm, appealing environment that offers safety and protection is likely to provide a reparative setting for healing, for children who have experienced trauma, abuse or neglect.*²⁰

The inquiry found:

*The home environment of some residential care units visited by the Commission was deplorable, they were stark and derelict and some punitive practices were observed. Such environments do not reflect community expectations of a 'home', nor do they create an atmosphere where children feel safe and supported.*²¹

The lack of a home-like environment, in itself, can have a deleterious impact on wellbeing and mental health. The Commission is satisfied that DHHS has made substantial progress on a number of issues raised in the inquiry. In the interests of continuing to monitor the environment in residential care, from April 2019, the Commission will commence a rolling series of inspections in residential care homes. Each inspection series will focus upon a specific right, or group of similar rights, from the *Charter of Rights for children in out-of-home care*. Importantly, Commission staff will be able to see first-hand the extent to which residential care provides a home-like environment and engage directly with children to get their views about how particular Charter right/s are being protected and supported.

Lack of a home-like environment may also be an issue in foster care. The CREATE survey provided a number of comments from children on the characteristics of a good foster care placement, but also provided comments on 'not good' placements, some of which suggest the lack of a 'home like' environment:

Being accused of things I haven't done and wrongfully punished. (Male, 16 years)

They told me I was no good and swore at me. (Female, 12 years)

Carers threatening to kick you out because of problems/arguments in the home. (Female, 16 years)

Having the biological kids of your foster parents not liking you because you are a foster kid, they made it very uncomfortable. (Female, 17 years)

*Being treated differently from the carer's birthchildren. (Female, 16 years).*²²

Lack of cultural connection

The United Nations Convention on the Rights of the Child²³ and the DHHS Charter of rights for children in out-of-home care both provide rights for all Aboriginal children and young people to be looked after properly by people who respect their religion, culture and language, be supported to feel proud and strong in their culture, take part in family traditions,

and be able to learn about and be involved with cultural and religious groups that are important to them.²⁴

The Commission has a commitment to monitoring the *Children, Youth and Families Act 2005* Best Interests Principles, which include a specific section relevant to protecting the cultural rights and identity of children and young people:

*the need, in relation to an Aboriginal child, to protect and promote his or her Aboriginal cultural and spiritual identity and development by, wherever possible, maintaining and building their connections to their Aboriginal family and community.*²⁵

Research shows that maintaining a positive spiritual, physical and emotional connection to country, culture and community is inherent in many Aboriginal beliefs about mental, social and emotional wellbeing.²⁶ Research on Indigenous young people worldwide has long identified cultural affiliation as an important factor in supporting resilience and wellbeing.²⁷

A strong cultural identity has been found to 'promote resilience, enhance self-esteem, engender pro-social coping styles and has served as a protective mechanism against mental health symptoms'.²⁸

And yet, the Commission's 2016 systemic inquiry, *Always was, always will be Koori children* found:

*significant departures from existing requirements to promote and preserve the cultural rights of Aboriginal children in care. Limited access to culturally appropriate education services and supports and widespread non-compliance with cultural planning – alongside a failure to adequately engage Aboriginal families, communities and organisations in decision-making – are exacerbating upheaval and distress for Aboriginal children in the child protection system.*²⁹

When an Aboriginal child enters out-of-home care, DHHS is obliged to develop a cultural support plan under section 176 of the *Children, Youth and Families Act 2005*. The Child Protection manual provides a guide to cultural plan timeliness, which indicates that a cultural plan should be drafted within 16 weeks from the date of entry into out-of-home care.³⁰ The Commission's *safe and wanted* inquiry found that most Aboriginal children in out-of-home care (81 per cent) had no cultural support plans in place.³¹

Lack of cultural connection can constitute a source of further trauma and exacerbate mental health vulnerabilities, and the absence of a connection removes its potential protective effects. To enable positive outcomes, cultural support plans must be completed in a way that is meaningful to the child or young person. As one of the Commission's 2018-2019's strategic priorities, staff are currently reviewing the quality, compliance and timeliness of cultural support plans for 200 Aboriginal children in out-of-home care. Following that work, the Commission will be auditing a further sample set of cultural support plans for quality and timeliness as part of the Wungurilwil Gagapduir Aboriginal Children and Families Agreement Strategic Action Plan.³²

Unresolved trauma on exiting care

Many children in out-of-home care have unresolved mental health issues when they turn 18 and exit the system. Research has shown that young people leaving care are at higher risk of mental illness (as well as homelessness and early parenthood), perpetuating the cycle of disadvantage.³³

In interviews with professionals, children and their carers for *Always was, always will be Koori children*, the Commission was told that unresolved trauma from abuse was one of the issues that contributed to children's vulnerability when leaving care.

The recent CREATE survey found that more than 35 percent of young people exiting out-of-home care as they turn 18 report they are not receiving adequate assistance to prepare for adult life.

Mental health vulnerability and continuity of service provision for children leaving out of home care is an issue that the Productivity Commission may wish to consider as an opportunity for early intervention.

Access to mental health services for vulnerable children

Despite their vulnerability and high needs, the out-of-home care system in Victoria, for the most part, relies 'on the routine engagement of universal health services for children by parents, carers and/or child protection or CSO case managers.'³⁴

A recent report by the Victorian Auditor General's Office (VAGO) suggests that the state's universal mental health services are not able to meet the existing need for mental health services in the general population:

*the mental health system in Victoria lags significantly behind other jurisdictions in the available funding and infrastructure, and the percentage of the population supported.*³⁵

A recent Victorian research paper provides an overview of additional barriers to the provision of high-quality health care to children in out-of-home care through universal services, including:

- the lack of financial support provided to carers for medical services
- lack of clarity about who has responsibility for authorising medical treatment
- the lack of agreed national administrative measures for monitoring child health and wellbeing for children in out-of-home care
- the lack of availability of health records for children in out-of-home care.³⁶

Some efforts to afford priority access to universal health services for children in out-of-home care have been negotiated, such as DHHS's *Community health integrated program guidelines* (2015) and the Chief psychiatrist's guideline *Priority access for out-of-home care*. It is not clear to what extent these guidelines have been implemented and to what extent they result in better access to mental health services for vulnerable children.³⁷

To complement the above policies, children and young people in out-of-home care in Victoria are supported by the 'Take Two' program, provided by Berry Street. The service, funded by DHHS, provides intensive therapeutic supports for infants, children and young people who have suffered trauma, neglect and disrupted attachment. Take Two is involved in partnership with therapeutic foster care, Aboriginal therapeutic home-based care, therapeutic residential care and the Stronger Families service.³⁸

Experts on the health of children and young people in care stress 'the need for highly specialised trauma and attachment informed, multi-agency approaches' to meet the health needs of this cohort.³⁹ In addition, research suggests that universal services may not be able to screen, assess, and provide appropriate treatment to manage trauma:

Clinical tools for screening and assessing for trauma among young people presenting to primary care services (e.g. GPs and headspace centres) are often not practical to administer in the consultation time available. However, clinically appropriate

*processes to assess for adverse childhood events are needed in these settings so as to provide appropriate referrals and/or tailor interventions... Due to adverse childhood experiences being associated with negative health consequences, one systematic review concluded that nurse practitioners in primary care settings should incorporate a routine assessment of the patient's childhood history in order to provide appropriate care.*⁴⁰

At present there are very few health services specifically for children and young people in care in Victoria. It would be appropriate for the Inquiry to consider this issue across all jurisdictions.

Barriers to accessing mental health services

The Commission draws the Inquiry's attention to the multiple barriers to accessing services for vulnerable people.⁴¹

Structural barriers

Service level or structural barriers to access for children and young people include limited availability of services, inability of services to respond promptly to requests for help, inaccessible locations, lack of public transport, limited hours of operation, inflexible appointment systems, and the absence of an outreach capacity.

The Commission's work suggests that most children are required to attend mental health services onsite and that there are very few mobile mental health services that will visit children in out-of-home care. These are significant barriers for children to access services, in light of the fact that they are often dependent on others for transport and do not have access to private funds.

Children from out-of-home care have told Commission staff that they experience long wait times for appointments. Children have also expressed frustration that they are limited to ten sessions with a psychologist per year, given that it often takes several appointments to find the 'right' psychologist—one who has some understanding of out-of-home care, trauma and cumulative harm—and may also take several appointments to tell their story. Without access to private funds to continue the service, children in out-of-home care may be unable to receive the support they require.

Young consultants at CREATE, an organisation that advocates for the rights and needs of children in out-of-home care, have found a lack of appropriate mental health services for young people:

*Current mental health services do not cater to the types of trauma that young people in care can experience, and young people who reach out for help are often turned away until emergency intervention is necessary.*⁴²

Individual reflections included the following:

'I waited a long time to get mental health support, and in the meantime my mental health became much worse... I learned that it is only if I was in crisis that I would be able to access help. Only if I said that I was suicidal would the mental health services do much to help'— Ella

*'...we really need support when we are doing well, so that we don't reach crisis point as readily'— Victor.*⁴³

CREATE's recommendation to government was to 'design an out-of-home care specific mental health service that can be tailored to the needs of each individual accessing it.'⁴⁴

Relational barriers

Relational barriers include beliefs, attitudes and skills that can compromise the ability of service providers to engage families successfully, or the ability of children to seek out and make use of support services. In the case of service providers, relational barriers include:

- insensitive or judgmental attitudes and behaviour
- lack of awareness of cultural sensitivities
- poor listening and helping skills
- inability to put children at ease.

Our monitoring and inquiries work shows that some children in out-of-home care experience mental health issues that are associated with multiple issues and diagnoses, including intellectual, behavioural, psychiatric, and psychological issues.

Community Service Organisations (CSOs) providing residential care and the mental health system often appear to be challenged as how to respond to a child or young person with multiple diagnoses and complex behavioural issues. At times, CSOs characterise a child's actions, such as self-harm or absconding, as behavioural issues, rather than signs of an underlying mental health issue. This confusion or uncertainty from a practice perspective may result in services providing inappropriate or ineffective services that are not appropriate to the child's mental health diagnosis. In addition, some CSOs focus on a reactive response to behaviour, rather than addressing the underlying causes of mental health and trauma. The system's episodic focus can mean the 'bigger picture' is missed.

Illustrating this issue, the Commission has seen evidence, through its oversight functions, that misattributing a child's presenting issues to behavioural causes, rather than an underlying mental health condition, can result in a child being denied access to urgently needed mental health treatment. The Commission's inquiry into cumulative harm and suicide similarly found that children who had reached the point of adolescence were rarely assessed or described as 'vulnerable'. Instead, they were frequently characterised as 'self-protective' and/or 'difficult to engage.'

The mischaracterisation of issues arising from trauma and mental health diagnoses as 'behavioural issues' that can be controlled by the child, is likely to result in inappropriate treatment of the child and a failure to address their mental health issues appropriately. For example, the individual inquiry referred to above shows that units use emergency services to manage children's behaviours in a way that would be highly unlikely in a home. The use of an emergency response to a mental health crisis (e.g. calling an ambulance after a child self-harms, or calling police in response to behaviour) does not address the reasons for escalating mental health issues or the underlying need for treatment.

There are also client-side relational barriers, including

- lack of trust in services
- misperceptions of what services offer
- lack of the social skills and confidence to negotiate with professionals
- being easily intimidated or put off by perceived attitudes of staff.

A recent report by Orygen, The National Centre of Excellence in Youth Mental Health (Orygen) analysed comments and posts made by young people on youth mental health online forums in Australia and summarises some of the relational barriers to help seeking. These include:

- *a lack of trust, feeling misunderstood, or negative previous experiences with professionals.*
- *a view that health professionals may pathologise normal reactions to distressing events.*
- *experiences of frustration or lack of trust with the health system.*
- *thinking they will be unable to cope with the consequences of disclosure.*

- *having difficulty or not wanting to remember the trauma experience.*
- *minimising or not understanding the impact the trauma is having on them.*
- *feeling deeply ashamed or embarrassed about the experience.*⁴⁵

Since 1 July 2017, nine child death inquiries undertaken by the Commission have involved adolescents with formal mental health diagnoses. The themes are in many respects similar to the ones identified in the inquiry into cumulative harm and suicide and illustrate the relational barriers to accessing services, including:

- young people having difficulty accessing mental health services
- young people being asked to re-explain their story many times
- mental health issues going unaddressed due to poor coordination and information sharing by services
- poor mental health stemming from cumulative harm and childhood trauma which had gone unaddressed.

The Commission's incident monitoring suggests that children in out-of-home care are often reluctant to engage with mental health services, with a range of factors influencing their capacity to be 'treatment ready'. Unwillingness to engage is sometimes perceived by services as resistant, and an attempt to engage a child is terminated, when a trauma informed approach to continue to try to engage with the child would be more appropriate.

Family level barriers

Family level barriers may be relevant to foster carers or kinship carers and may constitute significant limitations to facilitating timely access to mental health services for children in their care.

Family level barriers include limited income, lack of social support, lack of private transport and unstable housing or homelessness. Other barriers include low literacy levels, physical or mental health issues or disability, and personal preferences and beliefs about the necessity and value of services.

Barriers to system reform

Lack of data on mental health outcomes for children in out-of-home care

The Victorian government developed a ten-year mental health plan and outcomes measurement framework in 2015. A key focus area is that 'Victorians have good mental health and wellbeing,' and a corresponding outcome relates to:

*Equality in emotional and social wellbeing—the gap in social and emotional wellbeing is reduced for at-risk groups, particularly for people from culturally and linguistically diverse backgrounds, refugees and asylum seekers, children in out-of-home care, and people who are same-sex attracted, trans, gender diverse or intersex.*⁴⁶

It is encouraging that equitable access has been identified as a desirable outcome in the ten year plan, however to date, no data regarding the degree of equity in service provision has yet been reported.⁴⁷ A lack of data on the health outcomes, including mental health, of children in out-of-home care, children in youth justice and children transitioning from out-of-home care, is still a significant barrier to development of evidence-based policy and interventions.

As noted by the recent VAGO report, there is a lack of data on the number of children and young people who attempt to access mental health services but are turned away.⁴⁸ This data, and the reasons why people are turned away, could provide valuable insight into structural barriers to services.

Commonwealth and state interaction and data

Seamless interaction of state-funded and Commonwealth-funded services is crucial to meet the need for mental health services for people who are vulnerable, particularly for children in out-of-home care who are in care under a state-managed Child Protection system yet are likely to seek assistance from universal Commonwealth-funded health services for early intervention. Under the current National Health Reform Agreement, states are responsible for 'system management of public hospitals' and 'taking a lead role in managing public health', while the Commonwealth is responsible for 'system management, policy and funding for GP and primary health care services.' The Heads of Agreement between the Commonwealth and the States and Territories on public hospital funding and health reform (February 2018) states that the existing division of responsibilities between states and Commonwealth will continue in the next Agreement (2020-25).

Lack of data makes it difficult to ascertain to what extent state and Commonwealth are well-coordinated. We note that the Productivity Commission web site includes performance data under the National Healthcare Agreement from 2008-9 or 2013-14, at which point the reports cease, apparently because the COAG Reform Council ceased operation on 30 June 2014.

The National Health Agreement includes several outcomes and performance indicators, including one outcome relating to social inclusion and indigenous health. Unfortunately, while the performance indicator under this outcome does require national data to be disaggregated 'by Indigenous status, disability status, remoteness area and socio-economic status to assess whether these social inclusion groups achieve comparable health outcomes and service delivery outcomes to the broader population', it does not require specific data collection or reporting on health outcomes for children in out-of-home care. The Productivity Commission may wish to consider whether this would be valuable. As noted by the Australian Medical Association, while there is theoretical value in the shift to funding distribution based on outcomes, outcome-based funding will require substantial new government investment in data infrastructure to collect and measure robust clinical patient outcome data, and this capacity does not yet exist.⁴⁹

Lack of appropriate planning for mental health service delivery

As noted earlier, the recent VAGO audit *Access to Mental Health Services*⁵⁰, which sought to determine 'if people with mental illness have timely access to appropriate treatment and support services' found a lack of system planning and investment means the mental health system in Victoria lags significantly behind other jurisdictions. The VAGO report reviewed the existing 10-year plan for mental health and stated:

the 10-year plan outlines few actions that demonstrate how DHHS will address the demand challenge that the 10-year plan articulates:

- *there are no clear targets or measures to monitor progress in improving access*
- *there are no forward plans for the capital infrastructure needed*
- *the workforce strategy does not address the particular issues in regional and rural areas and fails to articulate specific targets*
- *there is no work to address barriers to access created by geographic catchment areas.*⁵¹

The audit also found that in 2015-16, Victoria's per capita recurrent expenditure on specialist mental health services was \$197.30, the lowest in Australia, against a national average of \$226.52.⁵² Funding has been increased in the two budgets since then, but the report states:

Despite mental health system growth funding allocation over the last three state budgets, the lack of funding for more than 10 years has forced AMHSs [Area Mental

Health Services] to focus on acute and crisis treatment at the expense of earlier intervention services in the community.⁵³

The report recommended that DHHS:

1. complete a thorough system map that documents its capacity, including capital and workforce infrastructure, geographical spread of services, and estimated current and future demand, including current unmet demand
2. use this map to inform a detailed, public, statewide investment plan that integrates service, capital and workforce planning; setting out deliverables and time frames
3. set relevant access measures with targets, which reflect the intended outcomes of the investment plan, and routinely report on these internally and to the public
4. undertake a price and funding review for mental health services, which includes assessing funding equity across area mental health services, and provide detailed advice to the Minister for Mental Health on the results and use this information to inform funding reforms.

These recommendations have each been accepted or accepted in principle by DHHS, which noted that its implementation of some of VAGO's recommendations will be informed by recommendations arising from the Royal Commission.

Children and young people in youth justice custody

The Commission monitors the safety and wellbeing of children and young people in Victoria's two youth justice centres and advocates for evidence-based responses to children and young people who come into contact with the justice system.⁵⁴ The Victorian Government's 2017 independent systemic review of Youth Justice (Victorian Youth Justice Review) found that children and young people 'with mental health needs are significantly over-represented in youth justice systems'.⁵⁵

In 2017, the Chairperson of the Victorian Youth Parole Board highlighted the increased prevalence of mental health issues among child and young people in youth justice custody.⁵⁶ The same report detailed the Board's annual survey of the population in custody, that found:

- more than half of the 226 young people presented with a mental health issue (53 per cent)
- 30 per cent had a history of self-harm or suicidal ideation.⁵⁷

Involvement with the justice system can exacerbate a child or young person's mental health issues, if they are 'not identified, treated and managed appropriately'.⁵⁸ Addressing a child or young person's mental health needs is critical to their rehabilitation and, in turn, prospects of successful reintegration into the community and engagement in economic and social participation.⁵⁹ If the mental health needs are not addressed, rehabilitation efforts are less likely to succeed.⁶⁰

Mental health needs cannot be considered in isolation: children and young people involved in justice systems are among the most vulnerable in the community, typically experiencing a range of other complex needs which must also be addressed to help them rehabilitate. As demonstrated in the Youth Parole Board's annual survey, their circumstances may include involvement with child protection (37 per cent), experiences of abuse, trauma or neglect (70 per cent), cognitive difficulties that affect daily functioning (41 per cent), disability (11 per cent) and/or alcohol and drug misuse (82 per cent).

Alcohol and drug misuse is of particular relevance, as the Issues Paper notes that the Productivity Commission is assessing the extent to which substance use disorders are within the scope of the Inquiry.⁶¹ The Commission encourages the Productivity Commission to consider these disorders, given alcohol and drug misuse is 'a significant factor' in the lives

and offending of the vast majority of children and young in youth justice custody.⁶² A 'rising number of young people' have entered Victoria's youth justice system 'with a substance dependency'.⁶³ This is a 'major obstacle to effective rehabilitation'.⁶⁴

Issues and gaps in mental health services

Orygen has noted '[y]oung offenders have the highest rates of mental ill-health among the community, yet they are the worst served by clinical services'.⁶⁵

The Victorian Youth Justice Review found that children and young people in the youth justice system (both in custody and under community-based orders) were not receiving the mental health care they needed.⁶⁶ It identified issues and gaps, including:

- inadequate screening and assessment, which meant that the number of children and young people in Victoria's youth justice system with a mental health issue was likely to be higher than the number reported⁶⁷
- inadequate children and adolescent mental health services
- extended waiting lists and children and young people often missing out on services
- lack of dedicated forensic mental health facilities for children and young people, with the consequence that 'young offenders with serious mental health issues [were] often held in custody, perhaps inappropriately'
- lack of continuing care after a child or young person returned to the community.⁶⁸

The review's recommendations included:

- strengthening the focus on identifying and intervening with young people to address their mental health needs in custody and supporting referral to mental health services in the community⁶⁹
- embedding a systems approach to identifying and meeting needs⁷⁰
- establishing priority access to mental health (and other) services for children and young people in youth justice.⁷¹

The Commission's 2017 *The Same Four Walls* inquiry into isolation, separation and lockdown practices found issues including use of isolation rooms to manage children and young people at risk of self-harm contrary to therapeutic principles; inadequate involvement of clinical staff; failures of youth justice staff to intervene when children and young people were self-harming; and inappropriate detention of a number of children and young people in custody who were deemed 'unfit to plead' due to mental illness or intellectual disability.⁷² The Victorian Youth Justice Review also identified this as a significant issue and recommended that the practice cease immediately and the children and young people be housed in appropriate rehabilitative facilities.⁷³

The Victorian Government's 2017-18 budget provided funding for a two-bed secure adolescent inpatient unit, a Custodial Forensic Youth Mental Health Service and Community Forensic Mental Health Service. The new youth justice facility being constructed will include a 12-bed mental health unit.⁷⁴

There has also been recent examination of issues relating to the mental health of children and young people in youth justice custody in other jurisdictions, including by the Royal Commission into the Protection and Detention of Children in the Northern Territory (Northern Territory Royal Commission)⁷⁵ and the 2016 Queensland *Independent Review of Youth Detention*.⁷⁶

What youth justice systems can do to improve children and young people's mental health

The Issues Paper asks, in essence, what justice systems can do to 'improve mental health and have flow-on benefits to individuals' economic or social participation and contribution'. In the youth justice context, we suggest the Productivity Commission consider the current approach to youth justice given the strong evidence, presented by the Northern Territory Royal Commission, that:

1. The current model of youth justice detention—the 'youth prison model'⁷⁷—is not a good environment for children and young people's mental health and wellbeing;⁷⁸ children and young people are 'damaged by entry into detention'.⁷⁹
2. Youth justice detention has a poor record of rehabilitating children and young people and helping them to live positive and productive lives: 'There is evidence that young people who have been institutionalised get into worse trouble, are more likely to commit worse crimes, are less employable, are more likely to be on a path toward lifelong failure and are more likely to pass their problems on to their children'.⁸⁰
3. Children and young people are therefore often left worse off after periods in youth justice detention. They leave detention likely to return; many go on to offend in adulthood; and sometimes the results of detention are tragic: 'the majority reoffend and a disproportionate die from preventable causes, including drug overdose, suicide, homicide and accidents and injury'.⁸¹

The Northern Territory Royal Commission stated:

*The youth prison model is a demonstrated failure. It has proved to be damaging to young people, dangerous for staff, expensive to the state and detrimental to public safety. The problems experienced in the Northern Territory detention centres are similar to those that arise in comparable institutions across Australia and internationally.*⁸²

Given this evidence, we suggest it is necessary to look more broadly than the provision of mental health services and support to children and young people in youth justice custody and the Productivity Commission's Inquiry should be guided by the Northern Territory Royal Commission's findings and recommendations.⁸³

In particular, we encourage the Productivity Commission to consider the alternative, therapeutic model the Northern Territory Royal Commission recommended, based on best practice models from around the world, to achieve better outcomes for children and young people and reduce youth offending rates.⁸⁴ The model involves:

- keeping as many children and young people out of detention as possible, through use of diversion at every reasonable opportunity⁸⁵
- using a model of 'secure residential accommodation'—not youth detention—for children and young people for whom this is necessary,⁸⁶ with small, 'home like' facilities focussed on providing education and rehabilitative and therapeutic services, including 'mental health and trauma counselling' and 'drug, alcohol and other substance abuse services and medical and dental services'.⁸⁷

The Northern Territory Royal Commission found the 'evidence overwhelmingly' showed this approach had 'the best prospect of reducing youth offending and supporting [children and young people] to become productive members of society'.⁸⁸ Modelling also showed it would produce significant cost-savings.⁸⁹ The evidence presented by the Royal Commission strongly suggests the alternative model is more likely than the current approach to improve children and young people's mental health and have flow-on economic and social benefits.

At the least, the evidence indicates that the Productivity Commission's Inquiry may wish to consider the various ways the current approach to youth justice detention harms and undermines mental health, rehabilitation and social and economic participation, and consider the various changes justice systems could make to best protect and improve children and young people's mental health and increase their prospects of rehabilitation and economic and social participation after release. Relevant issues include (for example):

- strong diversion, community supervision and bail options, so that detention of children and young people can be minimised and its adverse effects can be avoided to the greatest extent⁹⁰
- ensuring involvement with the justice system is used as an opportunity to comprehensively address children and young people's mental health needs, other complex needs and rehabilitation needs—including identifying children and young people with undiagnosed mental health conditions⁹¹
- ensuring all children and young people receive comprehensive mental health (and physical health) assessment
- strong links between community mental health services and youth justice facilities to ensure effective exchange of information about children and young people's conditions and treatment and a co-ordinated, integrated approach to services
- ensuring that children and young people receive specialised mental health services, including inpatient services, providing the best evidence-based treatment⁹²
- ensuring children and young people receive a co-ordinated, integrated response that addresses all their mental health needs, overlapping complex needs and rehabilitation and education needs,⁹³ including multi-disciplinary case management with individualised case plans which include a plan for a child or young person's release⁹⁴
- providing safe and therapeutic environments which promote children and young people's rehabilitation, rather than punitive custodial environments that harm their mental health and wellbeing,⁹⁵ and include appropriate facilities for therapeutic and medical care for all children and young people who require it
- ensuring services are culturally safe and appropriate for Aboriginal children and young people,⁹⁶ and that their cultural rights, including connection to culture, country and community, are protected. As discussed in the Commission's recent joint report with the Victorian Equal Opportunity and Human Rights Commission:⁹⁷
 - culture is an important protective and rehabilitative factor for Aboriginal children and young people, central to their social and emotional wellbeing
 - 'lack of protection of cultural rights' may 'exacerbate emotional trauma of young people in custody'⁹⁸
 - there must be a holistic approach to supporting Aboriginal young people's social and emotional wellbeing
 - youth justice staff must have a good awareness and understanding of the importance of Aboriginal cultural rights
- having highly trained and professional staff skilled in trauma-informed practice and in responding appropriately to children and young people with complex needs, including when they engage in challenging behaviour, are under stress and are experiencing distress and mental ill-health, including self-harming and suicidal behaviour.⁹⁹ The Commission has seen serious issues of inadequate staff response¹⁰⁰
- using behaviour management and security approaches which are not harmful to children and young people's safety and wellbeing and eliminating to the greatest extent possible practices which are detrimental to children and young people's mental health and undermine their rehabilitation, such as solitary confinement, excessive use of isolation and inappropriate use of restraints¹⁰¹
- ensuring that, in the limited circumstances where separation or restraints need to be used as a last resort, these practices are carried out in accordance with strict controls and safeguards that protect children and young people's mental health and wellbeing

- ensuring that the quality and effectiveness of mental health services provided to children and people are evaluated at appropriate intervals¹⁰²
- ensuring that, when children and young people return to the community, they will continue to receive the mental health care they need.¹⁰³

Preventing involvement with justice systems: prevention, early intervention and diversion

Preventing children and young people from becoming involved with the justice system in the first place must be ‘the highest priority’,¹⁰⁴ to avoid detrimental effects on vulnerable children’s mental health and wellbeing and enhance economic and social participation. The Northern Territory Royal Commission stressed the importance of prevention, early intervention and diversion.¹⁰⁵

The Issues Paper asks about ‘mental health supports earlier in life’ that ‘are most effective in reducing contact with the justice system’. Effective early mental health intervention is essential:

- Mental ill-health is a risk factor, along with a range of others—including low engagement in school or work, substance misuse, intellectual disability, anger, poor coping or problem-solving skills, poor impulse control, boredom, peer group pressure, prior victimisation and child abuse, neglect and exposure to family violence—that can increase the risk that a child or young person may become involved with the justice system.¹⁰⁶
- Children and young people involved with justice systems ‘are far less likely to have accessed mental health services’.¹⁰⁷
- In some cases, a child or young person’s offending may be associated with a mental illness (‘externalising disorders’ such as ‘conduct disorders, antisocial personality disorder and attention deficit and hyperactivity disorder’).
- While the most common disorders, depression and anxiety, ‘do not cause a person to offend’ they ‘are often present in young people who do offend’, possibly due to ‘several factors’:

First, the effects of living with some mental disorders—social isolation, relationship management concerns, work/education disengagement and exclusion—may reduce factors that protect young people from offending and contribute to factors that increase the likelihood of offending (e.g. substance use, antisocial attitudes and antisocial peer associations). Second, environmental factors (e.g. possible overpolicing of young people with mental health issues) may further elevate the risk of young people with a mental health condition coming into contact with the criminal justice system.¹⁰⁸

This speaks to the range of factors relevant to prevention and early intervention. We suggest prevention and early intervention should be considered more broadly than mental health supports given that in many cases, a child or young person experiencing mental ill-health who is at risk of offending will be experiencing multiple, overlapping risk factors. The various risk factors affecting a child or young person—such as lack of engagement in school; cognitive difficulties; unstable housing; involvement with child protection due to violence, abuse or neglect at home—need to be addressed to prevent involvement with justice systems. As the Northern Territory Royal Commission found, ‘early intervention efforts must involve the full spectrum of services engaged with young people’.¹⁰⁹

This need is reinforced by comments by the Chairperson of the Victorian Youth Parole Board, Judge Michael Bourke, who highlighted the wider socio-economic dimension to detained children and young people’s circumstances. In 2017, he said:

*... it must be recognised, and confronted, that likely well over 50 per cent of the young people detained in our system come from those parts of our community which are disadvantaged, dislocated and often excluded... there is risk of an entrenched underclass within our young which feels no connection or aspiration to being part of a functional and hopeful community.*¹¹⁰

In 2018, Judge Bourke put the proportion of children and young people in these circumstances at ‘well over sixty per cent’, and saw the prevalence of mental health issues in the youth justice population as part of this broader picture of disadvantage and disconnection from social and economic life.¹¹¹ Family violence is a common feature of this picture, with consequences for children and young people often including ‘an increased risk of aggression and criminal behaviour, homelessness, disrupted schooling and unemployment’ and ‘complex issues such as substance use, lack of life skills and poor mental health outcomes, including post-traumatic stress disorder and intergenerational effects’.¹¹²

The Northern Territory Royal Commission outlined prevention and early intervention measures to reduce the risk a child or young person will become involved with justice systems.¹¹³ As well as noting the essential role of health services, the Royal Commission referred to:

- the ‘strong evidence’ for ‘family-based programs, including behavioural parent training’, including as part of a public health approach
- the importance of children and young people’s engagement in school.

It pointed out that early intervention aimed at preventing children’s involvement with the child protection system will also have benefits in reducing the risk of their involvement with justice systems, given the overlap between these groups.¹¹⁴

Diversion was also a central part of the Northern Territory Royal Commission’s recommended approach to reducing children and young people’s contact with the justice system.¹¹⁵

Understanding, addressing and ending over-representation of Koori children and young people in youth justice

Work that the Commission is undertaking over the next year to address the chronic, tragic and unacceptable over-representation of Koori children and young people in Victoria’s youth justice system, may be relevant to the Productivity Commission’s Inquiry:

- The Koori Youth Justice Taskforce—joint work with the Department of Justice and Community Safety—is examining the wellbeing and care of all Koori children and young people currently in Victoria’s youth justice system (both those subject to community-based orders and in custody). It will consider all aspects of the support provided to Koori children and young people, including health and connection to culture.
- The Commission will also, simultaneously, be investigating the systemic issues affecting Aboriginal children and young people within the youth justice system, in an independent ‘own-motion inquiry’.

These projects aim to improve the care and wellbeing of Koori children and young people currently in youth justice and bring about systemic reform that reduces the number of Koori children and young people in contact with the youth justice system. The Taskforce and inquiry reports will be published in early 2020; if they may assist the Productivity Commission’s Inquiry, the Commission would be pleased to provide copies.

It is already well-understood that Aboriginal communities’ marginalisation from social and economic participation, historically and continuing, is one of the causes of the over-

representation of Aboriginal children and young people in youth justice systems.¹¹⁶ Poverty is a fundamental overarching issue, contributing to Aboriginal children and young people's over-representation in youth justice (and child protection), poorer mental and physical health and higher rate of suicide. Suicide prevention researcher Gerry Georgatos has written that poverty is the key to understanding and stopping the national suicide crisis affecting Aboriginal people and in particular, tragically, Aboriginal children and young people. We encourage the Productivity Commission to consider these issues.¹¹⁷

Conclusion

The Commission would be pleased to discuss any of the issues raised in this submission. If we can assist further, please contact Julie Nesbitt (Manager, Analysis and Strategy) on (03) 8601 5818 or julie.nesbitt@ccyp.vic.gov.au.

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- ⁴⁵ Bendall, S. et al, above n 39 at page 32.
- ⁴⁶ Victoria's 10-year mental health plan, page 2 at <https://www2.health.vic.gov.au/about/publications/policiesandguidelines/victorias-10-year-mental-health-plan>.
- ⁴⁷ Victoria's Mental Health Services Annual Report 2017-18 provides data on some outcomes but does not provide any data on the social and emotional wellbeing of children in out-of-home care. See <https://dhhs.vic.gov.au/sites/default/files/documents/201901/Victoria%27s%20mental%20health%20services%20annual%20report%202017-18.pdf> at page 59.
- ⁴⁸ Ibid at 46.
- ⁴⁹ Neuhaus, Susan, 'What will the next health reform agreement bring', Australian Medical Association, 14 November 2017 at <https://ama.com.au/ausmed/what-will-next-health-reform-agreement-bring>.
- ⁵⁰ VAGO, above n 34.
- ⁵¹ Ibid at page 8.
- ⁵² Ibid at page 40.
- ⁵³ Ibid at page 41.
- ⁵⁴ The Commission's statutory oversight of youth justice focuses on children and young people in custody and does not extend to community youth justice and children and young people in the community. As well as having oversight of treatment of children and young people in youth justice centres, the Commission also monitors the safety and wellbeing of children under the age of 18 detained in Victoria's adult correctional facilities.
- ⁵⁵ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, page 157. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, available at: https://www.orygen.org.au/Policy-Advocacy/Policy-Areas/Youth-justice/Inquiry-into-youth-justice-centres-in-Victoria/Orygen-Submission_Inquiry-into-Youth-Justice-Centres?ext=.
- ⁵⁶ Youth Parole Board Annual Report 2017-18, page x.
- ⁵⁷ Ibid, page 15. This is consistent with the observation in the 2017 independent review of Victoria's youth justice system that 'studies reliably indicated that more than 50 per cent of young offenders have mental health concerns': *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, pages 156-7.
- ⁵⁸ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, page 181. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55.
- ⁵⁹ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, executive summary, page 11; part 1, page 157.
- ⁶⁰ Ibid, executive summary, page 13. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55.
- ⁶¹ Issues Paper, page 5. The Issues Paper also notes the Productivity Commission is assessing the extent to which autism spectrum disorders are within the scope of the inquiry. The review of Victoria's youth justice system cited evidence that autism spectrum disorder is present in 15 per cent of young people in custody, compared with a reported prevalence rate of 0.6 to 1.2 per cent among young people in the general population: *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, page 158.
- ⁶² Youth Parole Board Annual Report 2017-18, page 18.
- ⁶³ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, page 160. Also see pages 161-2.
- ⁶⁴ Ibid, page 161.
- ⁶⁵ Submission to Inquiry into Youth Justice Centres in Victoria, above n55.
- ⁶⁶ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 2, pages 45-6.
- ⁶⁷ Ibid, part 1, page 157.
- ⁶⁸ Ibid, part 2, pages 45-46. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55, and its Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, available at: https://www.orygen.org.au/Policy-Advocacy/Policy-Areas/Youth-justice/Double-Jeopardy/Orygen_Double-Jeopardy_policy_brief?ext=.
- ⁶⁹ Recommendation 6.9.
- ⁷⁰ Recommendation 6.13.
- ⁷¹ Recommendation 6.13. Other relevant recommendations include recommendation 6.10, 6.14 and 8.42.
- ⁷² *The Same Four Walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system*, pages 61-3.
- ⁷³ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 2, page 308.
- ⁷⁴ See the Government response to the Parliamentary Inquiry into Youth Justice Centres in Victoria, pages 14-15, available at https://www.parliament.vic.gov.au/images/stories/committees/SCLSI/Youth_Justice_System/GovernmentResponse_SCLSI_Youth_justice_centres_in_Victoria.pdf. Also see page 3.
- ⁷⁵ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2A, chapter 15.
- ⁷⁶ See, for example, chapters 15 and 19.
- ⁷⁷ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 28, page 442.

- ⁷⁸ Ibid, volume 2A, chapter 9, page 43. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55.
- ⁷⁹ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 1, page 28; also see volume 2B, chapter 28, page 428.
- ⁸⁰ Ibid, volume 2B, chapter 28, page 444. Also see *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 2, pages 51-2, 136 and 227.
- ⁸¹ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2A, chapter 15, page 350. Also see *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 2, pages 136 and 227.
- ⁸² *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 28, page 442.
- ⁸³ In particular, chapters 27 and 28.
- ⁸⁴ Ibid, volume 2B, chapter 28, pages 429, 446. Also see volume 1, chapter 3, page 123.
- ⁸⁵ Ibid, volume 2B, chapter 27, pages 410-416; chapter 28, pages 429 and 432.
- ⁸⁶ Ibid, volume 2B, chapter 28, pages 429, 433, 441, 456.
- ⁸⁷ Ibid, volume 2B, chapter 28, pages 429-431.
- ⁸⁸ Ibid, volume 2B, chapter 28, page 431. Also see pages 428 and 444.
- ⁸⁹ Ibid, volume 2B, chapter 28, page 429.
- ⁹⁰ Ibid, volume 2B, chapter 27, pages 410-416; chapter 28, pages 432-3 and 441. Also see *Youth Justice Review and Strategy: Meeting needs and reducing offending*, executive summary, pages 8 and 15; part 2, pages 51-5; Orygen, The National Centre of Excellence in Youth Mental Health's Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ⁹¹ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2A, chapter 15, page 349; also see Orygen, The National Centre of Excellence in Youth Mental Health's Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ⁹² See the recommendations of the Victorian Youth Justice Review in 'Issues and gaps in mental health services' above. Also see Orygen, The National Centre of Excellence in Youth Mental Health Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ⁹³ See the recommendations of the Victorian Youth Justice Review in 'Issues and gaps in mental health services' above. Also see Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55, and its Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ⁹⁴ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 28, page 458.
- ⁹⁵ Ibid, volume 2A, chapter 10 and volume 2B, chapter 28.
- ⁹⁶ Commission for Children and Young People and Victorian Equal Opportunity and Human Rights Commission, *Aboriginal cultural rights in youth justice centres* (2018) page 9; also see Orygen, The National Centre of Excellence in Youth Mental Health's Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ⁹⁷ *Aboriginal cultural rights in youth justice centres*, above, n96.
- ⁹⁸ *Aboriginal cultural rights in youth justice centres*, above, n96, pages 2, 6.
- ⁹⁹ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 28, 457.
- ¹⁰⁰ For details, see the Commission's 2017-18 Annual Report, pages 10 and 25, and *The Same Four Walls* report, above n72, page 62.
- ¹⁰¹ See *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2A, chapter 14; volume 2B, chapter 28; *The Same Four Walls*, above n72.
- ¹⁰² See the Victorian Parliament's Legal and Social Issues Committee's *Inquiry into youth justice centres in Victoria – Final Report*, recommendation 16, page 96.
- ¹⁰³ See, for example, Youth Parole Board Annual Report 2017-18, page xii; and Orygen, The National Centre of Excellence in Youth Mental Health's Policy Briefing, *Double Jeopardy: Developing specialised mental health care for young people engaging in offending behaviours*, above n68.
- ¹⁰⁴ *Aboriginal cultural rights in youth justice centres*, above n96, page 5.
- ¹⁰⁵ See *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 27 and chapter 28, page 429.
- ¹⁰⁶ Ibid, volume 2B, chapter 27, page 411; *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 2, page 36.
- ¹⁰⁷ Orygen, The National Centre of Excellence in Youth Mental Health, Submission to Inquiry into Youth Justice Centres in Victoria, above n55.
- ¹⁰⁸ *Youth Justice Review and Strategy: Meeting needs and reducing offending*, part 1, page 157.
- ¹⁰⁹ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 27, page 412.
- ¹¹⁰ Youth Parole Board Annual Report 2016-17, page xv.
- ¹¹¹ Youth Parole Board Annual Report 2017-18, page x.
- ¹¹² Ibid, page 19.
- ¹¹³ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 27, page 411.
- ¹¹⁴ Ibid, page 412. As to the connection between child protection and youth justice involvement, also the Youth Parole Board Annual Report, pages x and 16.
- ¹¹⁵ *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 27, pages 410-416; chapter 28, page 429.
- ¹¹⁶ See, for example, *Report of the Royal Commission and Board of Inquiry into the Protection and Detention of Children in the Northern Territory*, volume 2B, chapter 27, page 412.
- ¹¹⁷ See <https://www.sbs.com.au/nitv/the-point/article/2019/03/27/understanding-suicide-crisis-raising-people-out-poverty-prevention-2> [viewed 28 March 2019].