

# Justice

An Investigation into NSW State Programs in  
Reducing Youth Crime

Committee Investigating Justice

# An Investigation into NSW State Programs in Reducing Youth Crime

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The Hon. Ethan Zhu, Youth Shadow Minister for Justice

The Hon, Dexter Bradley, Sponsoring Youth MLC

The Hon. Edward Bellsmith, Refuting Youth MLC

## Terms of reference

That the Legislative Council Committee on Justice inquire into and refer to:

1. Youth rates of recidivism in the state of NSW
2. Judicial processes and decision making factors in sentencing young offenders
3. Improving youth targeted programs such as Youth NSW, Youth Justice and community based initiatives by providing state guidance and support
4. Increasing Indigenous participation and support
5. Increasing state disciplinary measures
6. Prevalent offences committed by young people in NSW
7. Young offenders and their reintegration into the education system

# Table of Contents

Terms of reference .....	1
Table of Contents .....	2
Chairperson’s Foreword .....	3
Introduction .....	4
Background .....	4
Section 1: Rates of Recidivism within the State .....	4
Section 2: Youth Justice and Youth Justice Conferencing .....	5
Recommendations .....	7
Recommendation 1: Raising the age of criminal responsibility .....	7
Recommendation 2: Trial the New Zealand model.....	7
Recommendation 3: Create independent body to choose jurors.....	7
Recommendation 4: Increase funding for rehabilitation programs around the state	8
Recommendation 5: Supporting Youth Programs and grassroots by improving existing state programs that deal with young offenders .....	8
Recommendation 6: Launch investigation into the demographics that can jeopardise a case against an individual.....	8
Recommendation 7: Implementing Crime Prevention Awareness in Schools .....	8
Final recommendations .....	10
Recommendation 1 - Supporting Grassroots and Existing Youth Programs .....	10
Recommendation 2 - Raising the Age of Criminal Responsibility .....	10
Recommendation 3 - Crime Prevention Education and Awareness in Schools ....	11
Dissenting statements .....	12

## Chairperson's Foreword

As an honourable member of the Youth Legislative Council and the minister for the Committee on Justice, I am delighted to present these chambers with the committee's report investigating into the efficacy of state programs in reducing youth crime in New South Wales.

When compared internationally, this nation, in particular the state of New South Wales has alarming rates of youth recidivism. Of young people aged between 10 to 17 in NSW in 2019, 63.9 percent reoffended after a 12 month period and 46 per cent for convicted offenders who received a penalty order other than prison. These alarming rates of youth recidivism urge these chambers to recognise the importance of reducing the rates of young people recommitting offences by enhancing community based youth engagement by improving existent state programs and establishing grassroots focusing on the wellbeing of young people; with a specific approach to reduce rates of youth recidivism in this state.

Through extensive research, this committee has recognised the requirement for state support regarding the promotion of community based youth organisations to widen the accessibility of these programs to young people as well as urging the government to equip the organisations with the relevant facilities required to function. This committee believes that providing fellowship to young people, especially in disadvantaged communities across the state is an effective preventive measure to committing offences and can effectively be achieved through the support of the state's education system and embedding such organisations and a state disciplinary ethos by partnering with the state's education sector.

By these means, this committee aims to provide young people, especially from disadvantaged communities or circumstances the same opportunities as other young people in New South Wales through education and engagement as a preventative measure to reduce youth crime and recidivism. We believe that every young person in New South Wales should have the ability and opportunity to have a fair go, to be heard and be contributing members of society.

The recommendations within this report provide effective solutions to enhance the effectiveness of existing state programs as well as proposed measures to reduce rates of youth recidivism as suggested by the members of this committee as well as international models.

With sincerity, this committee believes that when a fair go is given to people, in particular the disadvantaged members of our youth, it is then that justice can and will be achieved.

**The Hon. Wasim Michael Farah, Youth MLC**

**Youth Minister for Justice**

## Introduction

In 2019 in the state of New South Wales, the percentage of re-offending sentenced juvenile prisoners was 63.9% and 46.0%<sup>1</sup> for convicted offenders who received a penalty other than prison who re-offended over a 12 month period<sup>2</sup>. These alarming rates of recidivism has urged this committee to conduct an investigation into the effectiveness of existing state programs in sentencing disadvantaged youth and aims to understand how rates of youth recidivism can be reduced by enhancing community and state programs for offences relating to larceny and the destruction of property.

By addressing issues relating to young offenders and the role of state programs in influencing their rehabilitation, this report seeks to analyse the social and economic effects reduced rates of recidivism can have and enable the community to have a substantial influence on young offenders and their rehabilitation in order to reflect community standards. The proposed solutions aim to integrate community values and state facilitated programs in an attempt to nurture the rehabilitative needs of disadvantaged youth as well as establishing grassroots organisations to connect young people to the legal system as a preventative measure to committing and/or re-committing offences.

Ultimately, this report seeks to understand the effectiveness of state programs in New South Wales by recommending various ways existing state programs can be enhanced through community engagement and seeks to understand strategies to reduce rates of youth recidivism by addressing the causes and 'mens rea' of young people committing certain crimes that negatively impact the community, enabling for a fairer and more equitable system to be achieved with an ultimate aim to reduce youth crime rates in New South Wales. This will allow the legal system to connect with disadvantaged youth by upholding and engaging community standards.

## Background

### Section 1: Rates of Recidivism within the State

Within Australia and New South Wales, youth crime is an increasing issue. In 2018-2019, police proceeded against around 124,000 young individuals, who were aged from 15 to 24 years of age, for 1 or more criminal offences. This number equates to roughly 3,800 offenders per 100,000 young people.

Out of these offenders, approximately 93,200 were male, roughly 75% of all offenders in those years. The most common offences committed related to illicit drugs, with around 805 per 100,000 people committing them, while acts to do with fraud were the least committed, with less than 100 offenders per 100,000.<sup>3</sup>

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<sup>1</sup> (Australia's youth: Crime and Violence - Australian Institute of Health and Welfare, 2022) Available at: <https://www.aihw.gov.au/reports/children-youth/crime#perpetrators>

<sup>2</sup> Re-offending statistics for NSW (BOCSAR) Available at: [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Re-offending.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx)

<sup>3</sup> (Australia's youth: Crime and Violence - Australian Institute of Health and Welfare, 2022) Available at: <https://www.aihw.gov.au/reports/children-youth/crime#perpetrators>

Alarming, there also exists a pattern of a large number of young people who end up becoming recidivists, those who re-offend shortly after finishing their sentence. A study done by the New South Wales Bureau of Crimes Statistics and Research, found that in 2019, 46% of juveniles who had received a penalty other than a prison sentence, had re-offended within the next 12 months, compared to 63.9% of juveniles who had received a prison sentence, and had re-offended within 12 months of being released from custody.<sup>4</sup>

What is also most concerning amongst these offenders, is a majority have very significant home issues in their normal lives. According to the Australian Institute of Health and Welfare, 34% of young people in detention had a substantiated notification for abuse or neglect five years before the offence. It also found that another 26% had been in out-of-home care within the same period<sup>5</sup>. These statistics help to highlight a connection between youth crime and offending, and the impact of childhood trauma and neglect. Another alarming statistic indicated that around 50% of those in detention from ages 10-17, were of indigenous descent.<sup>6</sup>

## Section 2: Youth Justice and Youth Justice Conferencing

The major Government Program that aims to reduce youth recidivism and unjust sentencing is Youth Justice NSW, previously known as Juvenile Justice. Following the legislation of the Young Offenders Act 1997, the program states that it “...cares for young offenders in the community...” and “...provides youth justice conferences for young offenders referred by police or the courts.”<sup>7</sup> The Program has 6 Youth Justice centres in the State, where they offer young offenders health, educational, and spiritual services, that include individual case management, specialised counselling, and training in job and living skills. The program also encompasses 35 Youth Justice community offices that seek to provide community-based intervention for young offenders.<sup>8</sup>

One of the major strategies that Youth Justice NSW uses to tackle youth crime is Youth Justice Conferencing. As stated before, police and courts may refer young offenders for Youth Justice Conferencing, only when an offender has committed eligible offences that are deemed too serious for warning or cautions, or have exceeded the maximum number of cautions available.<sup>8</sup> The conferences aim to bring young offenders, along with their families and supporters face-to-face with the victims, the victim's supporters and the police to discuss the crime, and the effects that it had on the people involved. After the discussion, they must agree on a suitable outcome, which could consist of an apology, reparation to the victims,

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<sup>4</sup> Australia's youth: Crime and Violence - Australian Institute of Health and Welfare, 2022) [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_pages/Re-offending.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Re-offending.aspx)

<sup>5</sup> (Young people under youth justice supervision and in child protection 2018–19, Summary - Australian Institute of Health and Welfare, 2022) <https://www.aihw.gov.au/reports/youth-justice/young-people-in-child-protection/summary>

<sup>6</sup> 2022. Youth justice in Australia 2018–19, Summary - Australian Institute of Health and Welfare. [online] Available at: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2018-19/contents/summary> [Accessed 19 June 2022].

<sup>7</sup> Youth Justice NSW. [online] Available at: <https://www.youthjustice.dcj.nsw.gov.au/> [Accessed 19 June 2022].

<sup>8</sup> 2022. Reducing the Rates. [online] Available at: <https://br952has20019.home.blog/2019/05/26/reducing-the-rates/> [Accessed 19 June 2022].

and steps to help reconnect the young offender with their community to desist from further offending/reoffending.<sup>9</sup> A report from 2012 found (though it will have been subject to much change) that Youth Justice Conferencing was not any more effective in reducing recidivism than sentencing in standard courts. The report took the results from a pool of 918 young people who were referred to Youth Justice Conferencing, alongside a matched sample of 918 young offenders, who had been eligible for a YJC, but who were dealt with in the NSW Children's Court. In the pool, it compared the offenders in terms of whether or not they were convicted of a further offence within three years of their sentencing or conference, with the results showing no significant difference, with 64% of those who participated in Youth Justice Conferencing having committed another offence within the 24 month follow-up period, and 65% of those in the Children's Court having reoffended within that same time period.<sup>10</sup> Now, of course, the results will have changed over the period since 2012, but it is still telling that the process was not as effective as it had hoped to be.

An ABC News article from 2019, stated that in 2018 12,355 students in NSW schools received long suspensions of up to 20 days, with one-quarter of the students being indigenous. It also stated that research from the US and Australia has pointed towards a "school-to-prison pipeline", where those students who receive suspensions are more likely to commit crimes while unsupervised at home or in the community.<sup>11</sup>

## Section 3: International models for dealing with Youth Justice

Around the world, other countries use different Youth Justice models, such as the one in New Zealand, which seeks to divert young offenders from the court system. The New Zealand model focuses strongly on the idea of community and recognises the fact that young people grow out of participating in crime. In this model, Police Youth Aid officers with specialised training, work with young people, diverting as many as 80% from the court system. Family group conferencing is used as the next step, to determine the best form of intervention, with the young person active in the whole process. If the young person does not comply with the conferencing, they are then moved through a more formal process, which may take many forms that depend on the nature of the offence, such as a Youth Court hearing or being transferred to the district court.<sup>12</sup>

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<sup>9</sup> 2022. Youth Justice Conferencing. [online] Available at: <https://www.youthjustice.dcj.nsw.gov.au/Pages/youth-justice/conferencing/conferencing.aspx> [Accessed 19 June 2022].

<sup>10</sup> 2022. The effect of Youth Justice Conferencing on re-offending. [online] Available at: [https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2012/bocsar\\_mr\\_cjb160.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2012/bocsar_mr_cjb160.aspx) [Accessed 19 June 2022].

<sup>11</sup> 2022. Juvenile detention centre report urges less isolation, more activities for offenders - ABC News. [online] Available at: <https://amp.abc.net.au/article/11651512> [Accessed 19 June 2022].

<sup>12</sup> 2022. Juvenile detention centre report urges less isolation, more activities for offenders - ABC News. [online] Available at: <https://amp.abc.net.au/article/11651512> [Accessed 19 June 2022].

## Recommendations

### Recommendation 1: Raising the age of criminal responsibility

The age of criminal responsibility in New South Wales is currently 10, though it should be raised to the age of 14, to help with the issue of Youth Justice and Juvenile sentencing. Research has proved that countries that have a higher criminal age of responsibility see less of a rate of recidivism in their youths, as the younger a child is incarcerated, the more likely they will be to develop into a lifestyle of reoffending. To fix this issue, the criminal age of responsibility should and must be raised to 14.

### Recommendation 2: Trial the New Zealand model

The current New South Wales model for sentencing juveniles currently has very high rates of recidivism amongst the youth. Though, as we have seen in New Zealand, specifically training police officers to deal with youth crime, coupled alongside family group conferencing, has a much more profound impact of keeping them out of the prison system, with as many as 80% of young people being diverted from the court system. If tried and implemented right in Australia, we could see a huge decrease in those in the court system and the rate of recidivism within the State.

### Recommendation 3: Create independent body to choose jurors

The current system where the two sides of the court, the prosecution and the defence, choose the jury together has been proven to be ineffective in many cases. Often one side will have more power in picking the jury than the other, based on their cost and status. This can create a disadvantage for lower income earners, especially young people who do not have the money saved up to pay for a good lawyer. An independent body that has the power to oversee the choosing of the jurors in a particular court case is an important measure to keep the case fair, equal and representative to both sides.



## Recommendation 4: Increase funding for rehabilitation programs around the state

As discussed earlier (introduction), the reoffending rate for young people in NSW is very high, with 28.8% of criminals reoffending within 12 months of leaving prison.<sup>13</sup> To make these rates lower we would need to increase the amount of state funding into specific rehabilitation programs that focus on keeping offenders out of trouble in the future, rather than punishing them for their past actions.

## Recommendation 5: Supporting Youth Programs and grassroots by improving existing state programs that deal with young offenders

Increase state government funding to improve existing programs that deal with troubled youth, while also creating new ones. Tackle the issue before it becomes an issue by supporting troubled youth into following the law and becoming capable members of our society. These programs need to be placed in both lower and upper socio-economic areas to ensure that everybody who needs them is able to have access to them.

## Recommendation 6: Launch investigation into the demographics that can jeopardise a case against an individual

In Australia, Aboriginal and Torres Strait Islander adults make up around 2% of the national population, yet they constitute 27% of the national prison population. The current judicial system can be unfair on Indigenous youth, due to many reasons including the under-representation of Aboriginal people on juries, the lower socio-economic status that many Indigenous people find themselves in due to decades of historical, social and economic difficulties that have led to an overall smaller population of Indigenous people with the funds to provide adequate legal support. It is important to start an investigation into the solution to this problem, with further recommendations to be made based on the results of the investigation.

## Recommendation 7: Implementing Crime Prevention Awareness in Schools

Integration of a crime prevention ethos in the education system (primary and secondary), youth crime and recidivism can be reduced as education serves as a preventive measure to this contentious issue. By following the nature and format of drug education in NSW government schools, implementing a similar method directly targeted to crime prevention can be an effective tool in reducing youth crime and increasing awareness from a young age. This can also be unique to different demographics and backgrounds that may require

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<sup>13</sup>NSW Government. (2021). Reducing recidivism in the prison population. [online] Available at: <https://www.nsw.gov.au/premiers-priorities/reducing-recidivism-prison-population>.

specific methods of education and varying focuses to achieve the goal of decreasing youth crime.

## Final recommendations

### Recommendation 1 - Supporting Grassroots and Existing Youth Programs

By increasing state government funding to improve existing programs that engage young people in New South Wales, especially disadvantaged youth, it poses as a preventative measure to tackling youth crime by increasing awareness and education. By providing widespread access to these programs or partnering with organisations and grassroots to establish these programs can consistently increase accessibility in metropolitan, rural and regional areas. Increased funding to youth religious centres as well as independent organisations such as youth advisory councils or organisations, such as the YMCA NSW, will equip these organisations with the proper training and facilities to cater to young people and ultimately prevent crime through raising awareness through fellowship and education.

Furthermore, by providing a framework for these organisations, consistency can be achieved whilst enabling for specialisation in certain demographics e.g different approaches for communities with linguistic or cultural diversity with high rates of crime. A state based framework can guide organisations and advise what they can do to engage young people and increase their awareness about the consequences their actions can have on individuals and wider society.

### Recommendation 2 - Raising the Age of Criminal Responsibility

Recommendation (1) suggests raising the age of criminal responsibility in New South Wales in an attempt to reduce rates of recidivism and holistically decrease the rate of young offenders. As aforementioned (recommendation 1), countries with a higher age of criminal responsibility have lower rates of juvenile recidivism. Australia's age of criminal responsibility is currently at 10 and the global average is 14 years old, despite repeated criticism by the United Nations (Committee on the Elimination of Racial Discrimination), Australia and New South Wales have failed to reform the current minimum age. With a focus on Indigenous juvenile recidivism, Indigenous children are the most vulnerable and disadvantaged in the criminal justice system across the nation, especially New South Wales and are imprisoned 17 times the rate of non-indigenous children, despite being just 6 per cent of the Australian population (10-17). Between 2017 and 2021, children under 14 - 65 per cent were indigenous and 68 per cent had not been convicted of a crime.<sup>14</sup> With a history of racism and bias present in the justice system, the age of criminal responsibility being set at such a young age disproportionately impacts Indigenous youth and continues the cycle of recidivism among young indigenous people.

Therefore, this committee believes that by raising the age of criminal responsibility, the criminal justice system in NSW will better create a fairer and more equitable justice system, providing every young person with the fair go that they deserve.

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<sup>14</sup>Amnesty International (2021). Why we need to raise the minimum age of criminal responsibility. [online] Amnesty International Australia. Available at: <https://www.amnesty.org.au/why-we-need-to-raise-the-minimum-age-of-criminal-responsibility/>.

This notion is further attested by the inconsistencies of current laws in direct contrast with medical and social science which affirm a child's brain has not developed to its full capacity and do not completely understand the consequences and severity of their actions and leads them on a path of recidivism and is ultimately a measure of punishment rather than rehabilitation. This is further affirmed by human rights law in which the UN Committee on the Rights of the Child has stated that nations should be working towards a minimum age of 14 for criminal responsibility.

## Recommendation 3 - Crime Prevention Education and Awareness in Schools

By integrating a crime prevention ethos in the education system, this committee believes youth crime and recidivism can be reduced through this preventative measure. Similar to drug education in NSW government schools, it provides school communities with the responsibility to educate students about drug use, protective strategies and building skills to make effective decisions in the present and in the future,<sup>15</sup> This committee wishes to implement a similar program regarding crimes relevant to the youth such as larceny and the destruction of property. By providing students in primary and secondary education with the equal opportunity to make informed decisions and choices about the actions they take and be aware of the consequences, youth crime rates and recidivism may drastically be reduced. The state government can also commission promotional ads that cater to young people and certain demographics to show the ramifications their actions can have. These ads can be televised and shown in schools to inform young people about the significance their actions can have on individuals and wider society and ultimately encourages positive behaviour within society. This committee recognises the socio-economic, linguistic and cultural barriers that may prevent families from teaching such moral ethos, therefore this committee recognises the profound nature that the education system has on crime prevention.

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<sup>15</sup> Anon, (2019). Drug education in NSW government schools. [online] Available at: <https://education.nsw.gov.au/content/dam/main-education/teaching-and-learning/curriculum/key-learning-areas/pdhpe/media/pdhpe-es1-s1-s2-s3-s4-s5-drug-education-fact-sheet.pdf>.

## Dissenting statements

The recommendations proposed are a step in the right direction for addressing youth justice in NSW. However, the opposition believes that there are issues and oversights that can prohibit progress.

With regards to final recommendation 1 (Supporting Grassroots and Existing Youth Programs), we firmly agree with the sentiment proposed: youth, especially those at risk should be aided with proactive measures prior to offending. However, we express concern that these programs are not accessible or broad enough. The opposition views youth crime as not a fundamental issue within NSW, but rather, a manifestation of deeper, systemic failures. The opposition advocates for a proactive approach to youth offending, which includes this recommendation, but also goes beyond this. We support a holistic application of policy, providing young people with the opportunities and options necessary to have a fulfilling youth and make good decisions.

Disadvantaged children are more likely to commit crimes because they don't have access to these opportunities. Sport, recreation, a high quality education, the ability to socialise with friends, are all integral parts of development. The state has failed in ensuring these are accessible to all. We request change - including increasing the funding for leisure programs, counselling, crisis support, disadvantaged accommodation, social activities, sports, meeting places, and employment programs. We would place particular emphasis on marginalised areas and places vulnerable to juvenile crime. We would also hope youth are adequately consulted with the development and application of these policies and programs.

The opposition agree with final recommendation 2 (Raising the Age of Criminal Responsibility), that Australia should more closely align its youth policy with that of the United Nations. However, we express concern over the potential adverse impacts that such a change could have, and therefore request care and consideration be taken when making changes.

Firstly, the benefit of such a change should be assessed. Figures from the NSW Bureau of Crime Statistics and Research reveal there are no children aged 10-11, and only 4 ages 12-13 in NSW juvenile detention. It is rare for children this young to be subject to criminal justice, and even then, immense caution is exercised with the way they are treated and sentenced. Therefore, it is unlikely for this change to have a major benefit on youth in the justice system.

Furthermore, we recognise the potential for a genuine threat to community safety with certain offenders that may be difficult or resistant to intervention or rehabilitation. While it is a tragedy that youth reoffenders may continue to harm the community, the opposition believes consideration for community safety and wellbeing should still play a significant role in policy making on youth justice.

Our concerns with raising the criminal age are twofold: the potential for community backlash, and the potential harms for vulnerable youth. In terms of the first, community perception for juvenile offenders and youth at risk is crucial because it influences the ways they are treated

by members of the community. It also affects the stigmas surrounding youth crime. We recognise that many people will be opposed to this change, because they feel a threat to their safety and community. We are concerned by the ways this may impact vulnerable youth, and stress the inclusion of management programs into managing this, should the change occur. In respect to the second, lifting the age of criminal responsibility may mean offenders and vulnerable youth under 14 are ignored, as the law does not imply responsibility. As a result, they may be neglected in youth programs that can help them, which they would have received before. This is because the vast majority of children burdened with criminal responsibility don't end up in detention, as children in custody far exceed those in detention. Being in custody provides many with the opportunity to find help and support. Even though this is clearly not ideal, it should be ensured that even though criminal responsibility is not present, these children can still access support programs and intervention.

The development of decision making and cognitive function in youth below the age of 14 was also listed as a reason to increase the age. However, the opposition questions the arbitrary age of 14, as research indicates significant development occurs to 25 years of age, and beyond that, people continue to change. We believe that this arbitrariness is unfair for many young people, who may continue to act irrationally as a result of their youth, but are above the age of 14.

Correspondingly, the opposition supports the increase of funding and improvement of rehabilitation centres, such as juvenile detention, an area largely neglected by the sponsors. It is not sufficient to raise the age and neglect these programs. Their final recommendation draws attention away from the children already in these centres. We support general recommendation 6, increasing funding for rehabilitation programs.<sup>16</sup> These have the potential to be effective, but unfortunately, are not. We particularly advocate for improving connections and communication between offenders and their families, when possible. We would encourage families to actively help their children seek non-criminal pathways during rehabilitation, so they can depart the program. We would also call for detention centres to have sufficient programs such as counselling, wellbeing, education, and community service to allow for successful reintegration. These centres have been currently neglected, but change can massively reduce recidivism.

With respect to final recommendation 3, the opposition feel that these campaigns risk sounding cliched and are unsure if they will successfully target, engage, and change youth at risk. Furthermore, it is unclear that these campaigns would reach those especially at risk, given the barriers to education and media already present. The opposition believe it is far more effective to target youth at the root issues and causes, through community and policy measures<sup>17</sup>.

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<sup>16</sup> Smh.com.au. 2022. Lifting age of criminal responsibility to 12 would be meaningless in NSW. [online] Available at: <https://www.smh.com.au/national/nsw/lifting-age-of-criminal-responsibility-to-12-would-be-meaningless-in-nsw-20211118-p59a2x.html>

<sup>17</sup> Anon, (2022). New South Wales Custody Statistics. [online] Available at: [https://www.bocsar.nsw.gov.au/Publications/custody/NSW\\_Custody\\_Statistics\\_Mar2022.pdf](https://www.bocsar.nsw.gov.au/Publications/custody/NSW_Custody_Statistics_Mar2022.pdf).

The opposition thanks the sponsors for their diligent investigation and proposal, and looks forward to navigating these issues to create a more just NSW for youth.