

ALS Submission - Youth Justice and Child Wellbeing Reform

30 June 2023

Submission to Youth Justice and Child Wellbeing Reform

The Aboriginal Legal Service (NSW/ACT) Ltd ('ALS') is a proud Aboriginal community-controlled organisation and the peak legal services provider to Aboriginal and Torres Strait Islander adults and children in NSW and the ACT. We currently undertake legal work in criminal law, care and protection law, and family law, and discrete areas of civil law. We also undertake broader work in law reform and wrap-around programs for community wellbeing. Our experience has given us a deep understanding of the importance of considering youth justice within a broader context and committing

We urge the Australian Human Rights Commission ('AHRC') to look beyond narrow criminal justice responses and prioritise holistic, evidence-based reforms which seek to improve the outcomes for young people and children—diverting them from the criminal justice system instead of further entrenching them within it. Crucially, reforms must prioritise eliminating racism in all its forms and resourcing therapeutic pathways which facilitate the wellbeing of Australia's young people and children in a culturally appropriate manner.

A principles-based approach

The ALS submits that the AHRC should take a principles-based approach to an improved youth justice and wellbeing framework. In relation to Aboriginal and Torres Strait Islander young people and their families, we submit principles could include the following:

- Recognition of the continuing impact of settler colonisation on Aboriginal children, families and communities.
- Recognition of the significance of culture in Aboriginal and Torres Strait Islander communities and the right of children to enjoy their culture.¹
- Self-determination is the foundation for policy.²
- Strategies and solutions in communities must be led by communities.
- The minimum age of criminal responsibility must be raised to at least 14—with no exceptions and no carve-outs.
- Evidence based and best practice policy, not reactive politically driven tough on crime responses to win votes.
- The service sector must back young people and their lived experience and expertise.
- The service sector must improve how it provides therapeutic support to young people getting caught up in the criminal justice system and that diversion away from the criminal justice and child protections systems must be a default.³
- Government must align all strategies and initiatives involving Aboriginal and Torres Strait Islander people, including young people, with the National Agreement on Closing the Gap (CTG) including the CTG Priority Reforms.⁴ Implementing the National Agreement on Closing

¹ See Article 30 of the United Nations Convention on the Rights of the Child.

² "The right to self-determination is not about the state working with our people, in partnership. It is about finding agreed ways that Aboriginal people and their communities can have control over their own lives and have a collective say in the future wellbeing of their children and young people." Professor Megan Davis, *Family is Culture Report* https://www.familyisculture.nsw.gov.au/data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf, XVII.

³ Wilson DB, Brennan I and Olaghery A, 'Police-initiated diversion for youth to prevent future delinquent behaviour: A systematic review' *Campbell Systematic Reviews*, 2018, 1–88.

⁴ <https://www.closingthegap.gov.au/national-agreement/priority-reforms>.

the Gap is everyone’s responsibility and is an unprecedented shift in the way governments work, by encompassing shared decision-making on the design, implementation, monitoring and evaluation of policies and programs to improve life outcomes for Aboriginal and Torres Strait Islander people. The National Agreement’s Implementation Plans provide additional guidance on key priorities, including socio-economic outcomes, priority reforms and focus areas.

What factors contribute to children’s and young people’s involvement in youth justice systems in Australia?

The factors contributing towards children and young people’s involvement in the youth justice system are complex and multifaceted—and have already been set out in multiple Inquiries and research.⁵ Children who are Aboriginal and Torres Strait Islander, from lower socioeconomic backgrounds or have come into contact with the care and protection system are more likely to come into contact with the criminal justice system at some point in their life.⁶ Colonisation continues to impact on Aboriginal young people, their families and communities through continuing discriminatory policies and practices. Experiences of institutional racism, over-policing, targeted surveillance, the ongoing impact of dispossession and colonisation, intergenerational trauma, and discrimination also contribute towards their likelihood to be involved in the youth justice system.⁷

Aboriginal and Torres Strait Islander children and young people are disproportionately overrepresented in youth justice and child protection systems in Australia. According to the most recent research by the Australian Institute of Health and Welfare (**AIHW**), Aboriginal or Torres Strait

⁵ See, for example, House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, *Doing time – time for doing: Indigenous youth in the criminal justice system*, 2011, Commonwealth of Australia; Save the children, *54 Reasons, ‘Putting children first: A rights respecting approach to youth justice in Australia’*, April 2023, <https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia-april-23.pdf.aspx>; Parliament of Victoria Legislative Council Legal and Social Issues Committee, *Inquiry into Victoria’s criminal justice system*, Volume 1, March 2022, <https://new.parliament.vic.gov.au/492a4a/contentassets/6961bccea1ac41dd812811ab0312170d/lcslc-59-10-vic-criminal-justice-system.pdf>; Kimberlie Dean, Tyson Whitten, Stacy Tzoumakis et al., *‘Incidence of Early Police contact among children with emerging mental health problems in Australia’*, Jama Network, March 2021, doi:10.1001/jamanetworkopen.2021.1205; Human Rights and Equal Opportunity Commission, *‘Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families’*, 1997; We refer also to Megan Davis, *Family is Culture* report and the references therein at https://www.familyisculture.nsw.gov.au/data/assets/pdf_file/0011/726329/Family-Is-Culture-Review-Report.pdf at Chapter 1; Australian Law Reform Commission, *‘Pathways to Justice—Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples’*, ALRC Report 133, 2018, <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/>; Royal Commission into Protection and Detention of Children in the Northern Territory, August 2016, <https://www.royalcommission.gov.au/child-detention>; House of Representatives Standing Committee on Aboriginal and Torres Strait Islander Affairs, p200-205, <https://www.aph.gov.au/binaries/house/committee/atsia/sentencing/report/fullreport.pdf>.

⁶ see also McCausland, R. and Baldry, E. (2023) “Who does Australia Lock Up? The Social Determinants of Justice”, *International Journal for Crime, Justice and Social Democracy* at <https://www.crimejusticejournal.com/article/view/2504>

⁷ Ibid.

Islander young people aged between 10-17 made up 52% of all young people under youth justice supervision in 2021-2022.⁸ The same report notes that young people in remote areas were more likely to be under supervision than their counterparts in metropolitan areas, reflecting the higher proportion of Aboriginal and Torres Strait Islander young people living in remote areas.

AIHW findings indicated that 35% of young people under supervision were from the lowest socio-economic areas, compared with 6.1% from the highest socioeconomic areas⁹. Children and young people involved in the youth justice system have comparatively higher rates of childhood neglect and trauma, substance abuse, familial instability, lower levels of education and experience in the out of home care and child protection systems.¹⁰ These young people are also more likely to have experienced domestic and family violence, mental health difficulties, learning difficulties, disability, and homelessness.¹¹ Evidence from the Young People in Custody Health Survey shows young people in custody in NSW are more likely to have experienced psychological disorders, experienced childhood trauma, experienced parental incarceration and been suspended or expelled from school.¹²

There is a direct correlation between children's placement in the child protection system and the criminal justice system. Children and young people who experience other system services and interventions, such as child protection and out of home care prior to the youth justice system are often deeply impacted by the service system failures when their safety is not protected, and their wellbeing is ignored. Consequently, those children are more likely to encounter the youth justice system. Approximately 40% of children and young people under justice supervision, especially Aboriginal and Torres Strait Islander young people, have engaged with the child protection system.¹³ While some jurisdictions in Australia are raising the minimum age of criminal responsibility ("MACR") to 12, Australia is lagging behind the rest of the world where the global median MACR is 14.5. This is in spite of overwhelming evidence - from Aboriginal organisations and our communities, medical experts, legal experts and human rights bodies - that detention, as well as any other interaction with the criminal justice system, harms children.¹⁴

What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

⁸ Australian Institute of Health and Welfare, *Youth Justice in Australia 2021-2022*, March 2023, <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/summary>, 6.

⁹ Ibid.

¹⁰ Save the children, 54 Reasons, 'Putting children first: A rights respecting approach to youth justice in Australia' April 2023, https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia_april-23.pdf.aspx, 41.

¹¹ Ibid, 19.

¹² see Justice Health and Forensic Mental Health Network and Juvenile Justice NSW *2015 Young People in Custody Health Survey* https://www.nsw.gov.au/sites/default/files/2022-05/2015_YPiCHS_Full_report.pdf

¹³ Ibid, 21. See also Kath McFarlane, 'Care-criminalisation: The involvement of children in out-of-home care in the New South Wales criminal justice system' 2018, 51(3) *Australian and New Zealand Journal of Criminology* 412, 421.

¹⁴ see

https://www.alsnswact.org.au/submission_to_the_council_of_attorney_general_s_public_consultation_into_the_age_of_criminal_responsibility

Widescale Reform

Widescale social reform is required to address the underlying drivers of interactions with the criminal justice system. For Aboriginal and Torres Strait Islander children, self-determination must be the foundation of all reform.

In international law is the right of Indigenous peoples to freely determine their political status and economic, social and cultural destiny. It is much more than a right of participation or consultation. It extends to the right to develop autonomous arrangements and the power to make decisions from conception through to implementation and review. This right recognises that Aboriginal communities are best placed to make decisions about the safety, wellbeing and protection needs of their children. This includes Aboriginal autonomy in the delivery of child and family services and statutory child protection functions. All Governments, including the NSW Government, have agreed to upholding self-determination as part of the National Framework on Protecting Australia's Children 2021-31 and the Closing the Gap National Agreement.

These reforms include more resourcing for community-led and designed approaches to build and maintain connection to culture and promote well-being. We need to shift focus and resources away from expensive, harmful and sometimes punitive criminal justice and police-led responses to holistic, therapeutic responses which support children and divert them away from the criminal justice system. This requires transformation of the youth justice system itself—ensuring that those who become involved in that system are not further entrenched.

Successive Productivity Commission Reports on Government services show the disproportionate government expenditure in the policing and out of home care systems compared to diversionary support and therapeutic early intervention approaches.¹⁵ A justice reinvestment approach would see that reversed, with communities designing and leading culturally safe models of care and support.

The minimum age of criminal responsibility is a primary legal barrier to criminalisation and therefore entry into the criminal justice system.¹⁶ Australia's MACR is inconsistent with child cognitive development medical evidence¹⁷ and international human rights law standards.¹⁸ The Standing Council of Attorneys-General (SCAG) has had raise the age as a priority on its agenda for quite some time and we must see action from all Australian Governments to raise MACR urgently.

¹⁵ See Productivity Commission Report on Government Services 2023 <https://www.pc.gov.au/ongoing/report-on-government-services/2023>

¹⁶ Above n 8.

¹⁷ See Open Letter to Premiers, Chief Ministers, Attorneys Generals and Health Ministers setting out medical evidence at <https://static1.squarespace.com/static/626a302c86867e538989f657/t/626b2ac137caa619cdbd5306/1651190466548/Open%2Bletter%2B-%2Bhealth%2Bevidence%2Bfor%2Braising%2Bthe%2Bage%2Bto%2B14%2B%281%29.pdf>.

¹⁸ For a breakdown of the minimum age of criminal responsibility, see the Australian Institute of Health & Welfare, 'Youth Justice in Australia 2021-2022' at <https://www.aihw.gov.au/getmedia/3fe01ba6-3917-41fc-a908-39290f9f4b55/aihw-juv-140.pdf.aspx?inline=true> Table 9 at p 48; see also Royal Commission, Australian Government, Royal Commission into the Protection and Detention of Children in the Northern Territory, Australian Government, 2017 at <https://www.royalcommission.gov.au/child-detention>; and Child Rights International Network, Minimum ages of criminal responsibility around the world, CRIN, 2020, <https://archive.crin.org/en/home/ages.html>.

There is opportunity for states and territories to reform several areas of law to prioritise a self-determined approach to youth justice and the rights of children and young people. There is an opportunity to develop national standards that reflect the voices and experiences of young people and incorporate research and international best practice through community co-design processes. We refer the Commission to the Save the Children 54 Reasons, *'Putting children first: A rights respecting approach to youth justice in Australia'* Report.¹⁹ This report points to raising the age of criminal responsibility, increasing access and availability of diversion programs, investing in and evaluating early intervention programs, undertaking reviews of restrictive bail and remand laws and further investment in bail supports, improving detention practices and implementing workforce reform to ensure all parts of the youth justice system are delivering therapeutic and culturally responsive support.

To change the way the rights and well-being of young people are protected, the ALS recommends the Commission refer to research and best practice showing that change is best catalysed through listening to and acting on the lived experience of those impacted by systems, and ensuring their voices and experience are at the forefront of every conversation and decision.²⁰ We refer the Commission to the work of the Office of the Advocate for Children and Young People,²¹ the principles under which they operate, and their many reports based on the voices and experiences of young people. The lived experience of young people and youth justice is also set out in the Mounty Yarns work through Just Reinvest NSW.²²

Research and data indicate that police often fail to use diversionary options with Aboriginal and Torres Strait Islander children and young people, those with a disability and from multicultural or multi-faith

¹⁹ Save the children, 54 Reasons, *'Putting children first: A rights respecting approach to youth justice in Australia'* April 2023, <https://www.savethechildren.org.au/getmedia/4bafc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia-april-23.pdf.aspx>, 8, 9.

²⁰ See, for example, Save the Children, *Putting Children First: A rights respecting approach to youth justice in Australia* (2023), <https://www.savethechildren.org.au/getmedia/4bafc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia-april-23.pdf.aspx>; See also research on platforming community voices in Allison, F, *'Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW'*, Final Report, Just Reinvest NSW, 2022; Also see V Rawlings, J Flexner, L Riley (eds), *'Community-Led Research: Walking New Pathways Together'*, <https://open.sydneyuniversitypress.com.au/files/9781743327630.pdf>; Jumbunna Institute for Indigenous Education and Research, UTS, F Allison and C Cunneen, *'Justice Reinvestment in Australia: A Review of Progress and Key Issues'*, https://jrna228913579.files.wordpress.com/2022/07/national-report_jr.pdf; See also recent callout from June Oscar AO, Australia's Aboriginal and Torres Strait Islander Social Justice Commissioner on community-led solutions <https://humanrights.gov.au/about/news/media-releases/first-nations-commissioner-calls-community-led-solutions-alice-springs> *An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW'*, Final Report, Just Reinvest NSW, 2022; Also see V Rawlings, J Flexner, L Riley (eds), *'Community-Led Research: Walking New Pathways Together'*, <https://open.sydneyuniversitypress.com.au/files/9781743327630.pdf>; Jumbunna Institute for Indigenous Education and Research, UTS, F Allison and C Cunneen, *'Justice Reinvestment in Australia: A Review of Progress and Key Issues'*, https://jrna228913579.files.wordpress.com/2022/07/national-report_jr.pdf; See also recent callout from June Oscar AO, Australia's Aboriginal and Torres Strait Islander Social Justice Commissioner on community-led solutions <https://humanrights.gov.au/about/news/media-releases/first-nations-commissioner-calls-community-led-solutions-alice-springs>.

²¹ <https://www.acyp.nsw.gov.au/>.

²² See Just Reinvest NSW, Mounty Yarns at <https://www.justreinvest.org.au/mountyarns>.

communities.²³ Police discretion and practices in Australia often undermine diversion from the youth justice system and limit the rights of children and young people and we need an inquiry specifically in relation to police discretion and use of force. Increasing the categories and number of offences that are available for diversion under the *Young Offenders Act 1997 (NSW)* and similar acts in every Australian jurisdiction, and mandating that diversion, would allow for more Aboriginal and Torres Strait Islander children to receive police cautions and diversionary options.

Systemic racism and inequality play a detrimental part in the treatment of children and young people by police and the broader youth justice system. We refer the commission to the Victorian Commissioner for Children and Young People's *Our Youth, Our Way Inquiry*²⁴, which outlines key recommendations to address systemic racism through the design, control, delivery and supervision of services by Aboriginal communities. We also note the role of police in driving the detention of Aboriginal and Torres Strait Islander children and young people through denying children and young people bail or liberty on bail. We refer the Commission to the ALS Report, *Short term remand: A Snapshot*.²⁵

Can you identify reforms that show evidence of positive outcomes, including reductions in children's and young people's involvement in youth justice and child protection systems, either in Australia or internationally?

There are numerous alternatives that show positive outcomes in responding to and supporting children and young people who are forced into contact with the criminal justice system, including alternative police responses, self-determination and co-design, expansion of rehabilitative services, therapeutic jurisprudence and solutions focused courts.

Diversory options for children and young people generally aim to address underlying social factors, including trauma, substance abuse, unemployment, housing and education, that contribute towards young Aboriginal and Torres Strait Islander people entering the youth justice and child protection systems.²⁶

Aboriginal and Torres Strait Islander specific court initiatives are at the pointy end and include specialist sentencing courts that incorporate individualised case management, wraparound, culturally safe services, designed, implemented and evaluated by Aboriginal and Torres Strait Islander organisations

²³ Victorian Commissioner for Children and Young People, 'Our Youth, Our Way', Systemic Inquiry into the over-representation of Aboriginal children and young people in Victoria's youth justice system, June 2021, <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/>, 21 and Weatherburn, D., & Thomas, B. (2022). *The influence of Indigenous status on the issue of police cautions*. Journal of Criminology, 0(0). <https://doi.org/10.1177/26338076221146326>.

²⁴ <https://ccyp.vic.gov.au/inquiries/systemic-inquiries/our-youth-our-way/z>.

²⁵ <https://www.alsnswact.org.au/short-term-remand-snapshot>.

²⁶ Australian Law Reform Commission, 'Pathways to Justice – Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples', ALRC Report 133, <https://www.alrc.gov.au/publication/pathways-to-justice-inquiry-into-the-incarceration-rate-of-aboriginal-and-torres-strait-islander-peoples-alrc-report-133/10-access-to-justice/specialist-aboriginal-and-torres-strait-islander-sentencing-courts/>, 10-2, 10-3.

have been proven to increase appearance rates, increase engagement with rehabilitative services and are 'highly valued' among Aboriginal community stakeholders.²⁷

Some examples of initiatives and programs that have positively impacted on Aboriginal and Torres Strait Islander young people's interactions with the criminal justice system are set out below.

The Joint Protocol

In NSW, the *Joint Protocol to reduce contact of young people in residential care with the criminal justice system*²⁸ aims to reduce unnecessary police involvement in responding to behaviours of young people living in residential out of home care. It is founded on the principle that criminal interventions and charges should not be pursued against a young person where there is an alternative means of dealing with the issue. It represents a shared commitment by residential care providers and Police that collaboration, early intervention and appropriate support are better ways of supporting young people - recognising that criminalising behaviours causes harm.

Creating Futures

In NSW, Weave's *Creating Futures* program uses an Aboriginal Healing Framework to support young people leaving custody and involves a trauma-informed, strengths-based, culturally safe and client led approach.²⁹ At time of evaluation, *Creating Futures* participants' reoffending rates was 4.1% compared to Bureau of Crime Statistics and Research rates of approximately 57%.

The Youth Koori Court (NSW)

The Youth Koori Court involves an intensive case-management approach to support Aboriginal and Torres Strait Islander young people who have plead guilty to a criminal offence. The Youth Koori Court focuses on young people facing a period of incarceration. It involves Aboriginal elders and respected community panel members sitting alongside a specialist magistrate. Young people and their families are active and vocal participants in the court process and have significant input into their goals and case management. Independent evaluation of the Youth Koori Court found that the Court returns \$2 for every \$1 invested, and participants were 40% less likely to receive a custodial sentence at their court finalisation without any adverse impact on recidivism.³⁰

Yuwaya Ngarra-li and Bulaarr Bagay Warruwi Burranba-li-gu in Walgett

Yuwaya Ngarra-li is a community-led partnership between the Dharriwaa Elders Group and the University of NSW.³¹ A key focus for Yuwaya Ngarra-li is to build and embed a holistic model to divert young people from the criminal justice system by creating positive opportunities for current and future generations underpinned by core principles and integration of community knowledge and priorities. It has developed an Action Plan for Children and Young People and has designed an ecosystem and model of care that is holistic, community-led, rights-based, strengths-focused and culturally connected while building community leadership and influencing and ensuring service system accountability.

²⁷ Ibid, 10.34.

²⁸ <https://www.facs.nsw.gov.au/download?file=585726>.

²⁹ <https://www.weave.org.au/programs/creating-futures-justice/>.

³⁰ Inside Policy, 'An Evaluation of the Youth Koori Court process', 6 June 2022.

³¹ see <https://www.igd.unsw.edu.au/our-initiatives/community-led-development-walgett-nsw/news/YUWAYA-NGARRA-LI>

Victorian Court Diversion Service

In Victoria, the Children’s Court Diversion Service is a scheme that allows for the Children’s Court to adjourn a criminal matter for a child or young person for up to four months to allow them to participate in a diversion program.³² An evaluation of the scheme found that only 12-25% of children and young people who complete the program reoffend and allowed young people an opportunity to avoid the long-lasting impacts of having a criminal record.³³

Mounty Yarns

Mounty Yarns is a Just Reinvest NSW Mt Druitt based Aboriginal and Torres Strait Islander youth led project, exploring the lived experience of young people’s interactions with police. Young people involved in Mounty Yarns are using their lived experience to advocate for changes in the way police and the broader community discriminate against them. Through *Mounty Yarns*, young people are leading the conversation on the lack of youth voice in decision-making through multi-disciplinary justice reinvestment approaches to keeping safe including advocacy, working with young people in detention, re-setting engagement with police, engagement in cultural, sport and art activities.³⁴

The Protected Admissions Scheme

The Protected Admissions Scheme (“**PAS**”) came about through a collaboration between the ALS, the Police Force of NSW and Legal Aid NSW. The scheme allows young offenders who make an admission of guilt for some offences can be dealt with by way of a caution by police, and anything the young person tells the police cannot be used as evidence against them. PAS avoids unnecessary and potentially detrimental impact of putting young people through the Courts, as well as saving time and costs in the legal system. The PAS would be enhanced by incorporation into legislation to ensure its full implementation.

New programs at the ALS

The ALS is developing various projects, programs and strategies, all of which will support young people and their families through the provision of culturally safe wraparound support and advocacy. All these initiatives have identified positions comprising youth workers, social workers and lived experience advocates, working alongside solicitors, recognising that our communities are best served with and by the expertise and strengths in community.

Bail Advocacy Program

As noted earlier, a significant factor contributing to the over-incarceration of Aboriginal youth and adults is avoidable remand. This significantly impacts not just the person entering custody, but their family and community – as well imposing high costs on government. The ALS is commencing a Bail Advocacy Program (BAP) for young people (and a separate bail support program for women). This multi-disciplinary, wrap-around program seeks to break the cycle of reoffending by supporting women and young people throughout their contact with the criminal legal system from the point of first

³² Guckenburg S, Petrosino A and Turpin-Petrosino C, ‘*Formal System Processing of Juveniles: Effects on Delinquency*’, Crime and Justice; Smart Justice for Young People, 2016.

³³ Above n 8.

³⁴ See Just Reinvest NSW, Mounty Yarns at <https://www.justreinvest.org.au/mountyarns>.

contact with police. The pilot is intended to act as a proof of concept to support a statewide model to reduce the overall number of Aboriginal people remanded in custody.

Aboriginal Child & Family Advocacy and Support Program (ACFAS)

Recognising early intervention and culturally safe approaches are required to keep children out of the child protection system, and to keep families safe and strong in culture, the ALS is commencing the ACFAS program. This holistic service will provide both a state-wide telephone advocacy referral line, and face-to-face services in Western NSW (Dubbo, Moree and surrounding areas). Under ACFAS, multi-disciplinary team of non-legal advocates, specialist civil and child protection lawyers, disability workers, social workers and lived experience advisors will support clients by providing:

- Information on the child protection system and how to navigate it
- Advice regarding DCJ actions and decisions, and legal and non-legal options for families
- Referral to support services to address concerns raised by child protection authorities (e.g. relating to alcohol and other drugs and mental health)
- Advocacy around the client's view of what is needed for their child
- Education to build the cultural awareness and understanding of child protection caseworkers.

A local Lived Experience Consultancy and reference group will inform the service.

Therapeutic Pathways for Children

The ALS is developing a "Therapeutic Pathways for Children Strategy" with the NSW Department of Communities and Justice (DCJ). This will involve designing a framework to divert young people away from entering the criminal justice legal system through the establishment of more holistic, supportive and therapeutic alternative responses. A joint ALS/DCJ project team will work with Aboriginal communities and service providers to assess what changes to systems and services are needed to better address the underlying causes of youth offending. Based on these findings, the project will design a new approach to establish therapeutic pathways for children, including:

- enhancing integration of responses and services, including health, mental health, disability supports, education and housing
- increasing opportunities for service delivery by the Aboriginal community-controlled sector
- ensuring services are culturally appropriate and trauma-informed
- proposing staged responses depending on the seriousness of offending behaviour.

From your perspective, are there benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

We recommend a national approach to reform youth justice and these requests have been repeatedly recommended as a positive approach to youth justice issues.³⁵

³⁵ Legal Aid NSW, Submission to the Australian Human Rights Commission Youth Justice and Child Wellbeing Reform Across Australia, 15 June 2023,

When the Standing Council of Attorneys-General (SCAG) last met on Friday 28 April, where it was agreed that all Australian jurisdictions must ‘do better, collectively, to improve justice outcomes for First Nations Australians’ and they noted the importance of achieving Closing the Gap (CTG) targets 10 and 11 which are aimed at reducing the number of Aboriginal and/or Torres Strait Islander adults and young people who are incarcerated. It must be a top priority for all Australian governments to ensure that these targets are met by the CTG deadline of 2030, as urgently raising the age of criminal responsibility to at least 14 years old would directly impact progress towards both justice CTG targets 10 and 11.

The *Putting children first: A rights respecting approach to youth justice in Australia* refers to opportunities for reforms through a national approach.³⁶ This includes the development of National youth justice standards, a national approach to raising the age of criminal responsibility, improved oversight of all youth detention facilities through implementation of Australia’s obligations under the Optional Protocol to the Convention against Torture and legislated national human rights protection. It also points to national priorities in relation to the United Nations Convention on the Rights of the Child (CRC).³⁷

A national approach to youth justice was considered in the Australian Law Reform Commission’s *Pathways to Justice Report*.³⁸ The Commission identified the link between the high rate of removal of Aboriginal and Torres Strait Islander children into out-of-home care, juvenile justice, and adult incarceration and recommended the Commonwealth Government establish a national inquiry into child protection laws and processes affecting Aboriginal and Torres Strait Islander children and young people. The ALS is supportive of this recommendation, however beneficial reforms should not be delayed in the interests of national cohesion.

<https://www.legalaid.nsw.gov.au/content/dam/legalaidnsw/documents/pdf/about-us/law-reform/Youth%20justice%20and%20child%20wellbeing%20reform%20across%20Australia-%20Legal%20Aid%20NSW%20submission%20to%20the%20National%20Children%27s%20Commissioner,%20June%202023.pdf>; Australian Human Rights Commission Joint Statement, ‘Governments must urgently address youth justice crisis’, <https://humanrights.gov.au/about/news/governments-must-urgently-address-youth-justice-crisis>.

³⁶ Above n 8, 9.

³⁷ Including ratifying the 3rd Optional Protocol to the United Nations (UN) Convention on the Rights of the Child to allow children to bring complaints directly to the UN Committee on the Rights of the Child and removing Australia’s reservation to article 37(c) of the CRC which requires children not be detained with adults. See https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/putting-children-first-a-rights-respecting-approach-to-youth-justice-in-australia_april-23.pdf.aspx, 68-69.

³⁸ *Ibid*, Recommendation 15: Child protection and Adult Incarceration.