



ACT
Government

ACT Government Submission

To the National Children's
Commissioner Project:

Youth Justice and Child Wellbeing Reform

July 2023

The ACT Government welcomes the opportunity to provide this submission to the National Children's Commissioner project on youth justice and child wellbeing reform across Australia. This submission provides information on the ACT Government's work to raise the minimum age of criminal responsibility, highlighting the importance of supporting a self-determined Aboriginal and Torres Strait Islander response to youth justice issues, strengthening high-risk families, and identifying disability needs.

Risk factors that contribute to children and young people's involvement in youth justice in Australia

Children and young people are at risk of involvement in the youth justice system when their needs are not sufficiently addressed by the service system.

An [independent review](#) into the service system requirements for implementing a raised minimum age of criminal responsibility (MACR) in the ACT showed that children and young people in the youth justice system have complex needs¹, often with significant underlying trauma. Too often, these children are part of the Aboriginal and Torres Strait Islander community and experience vulnerability due to the ongoing impacts of colonisation, dispossession, systemic racism and alienation from Indigenous land and culture. Children involved in the youth justice system are more likely to have parents who have been incarcerated, or experience family and domestic violence, sexualised behaviours and sexual exploitation. They are also at greater risk of precarious housing and homelessness.

Risk factors are not indicators of inherent criminality. Rather, they signify policy and legislative gaps in health, education, social welfare, child protection and community reintegration services. Potential risks may present across a broad spectrum of health and wellbeing areas. This means information sharing between agencies is a key element in identifying at-risk individuals and supporting a trauma-informed response to address underlying unmet need and reduce the risk of offending or reoffending.

Individualised and coordinated support from a variety of social, welfare and health services is critical to support young people to stay out of the youth justice system. As a small jurisdiction, the ACT is uniquely placed to trial and refine innovative approaches to addressing complex problems that drive involvement with the youth justice system. This submission outlines the key changes required, associated barriers and evidence-based reform trialled in the ACT that target children and young people at risk of involvement in the justice system.

What needs to be done: Change and its barriers

Raising the minimum age of criminal responsibility to 14 years

In May 2023, the ACT Government introduced legislation to increase the minimum age of criminal responsibility (MACR). Under the *Justice (Age of Criminal Responsibility) Legislation Amendment Bill 2023*, the MACR will increase to 12 years, and then further to 14 years by 1 July 2025, with exceptions for a small number of the most serious intentionally harmful offences.² Medical and legal bodies have argued that raising the MACR to 14 is critical to keep children and young people out of the justice system. Medical evidence on brain development confirms children and young people aged under 14 years have not yet

¹ 'Complex needs' is a term typically used to capture individuals who have a combination of: Mental health problems, cognitive disability (including intellectual and developmental disability), physical disability, behavioural difficulties, precarious housing, social isolation, family dysfunction, and problematic drug and alcohol use.

² The Bill and Explanatory Statement can be found here: https://www.legislation.act.gov.au/b/db_67587/.

developed the requisite level of maturity to form the necessary intent for full criminal responsibility.³ As such, children and young people lack the capacity to meaningfully engage in the criminal justice system.

Across Australia, changes to raise the MACR are progressing. The Victorian Government recently announced that it will introduce legislation to raise the age to 12 in late 2024, with a commitment to increasing it to 14 years old by 2027, with exceptions for serious crimes. The Northern Territory has passed legislation to raise the MACR to 12 that is expected to commence in the second half of 2023. However, in all other Australian jurisdictions, the MACR remains 10 years. Uniformly raising the MACR to 14 years in all states and territories would provide the opportunity, and imperative, to develop alternative responses that address the underlying complex needs of children who engage in harmful behaviour.

Justice for children and young people, when considered more broadly as meeting their needs and supporting their families, is rarely achieved solely through the youth justice system. The younger the child is when encountering the youth justice system, the more likely they are to progress to deeper problems linked to reoffending, more serious offending, and the adult criminal justice system.

Raising the MACR is also an imperative in the upholding of human rights. The United Nations (UN) Committee on the Rights of the Child has raised serious concern about Australia's low MACR. Australia is a signatory to the UN Convention on the Rights of the Child, which stipulates that prison sentences should be a last resort for children and young people under the age of 14, who are unlikely to understand the gravity of a criminal offence. Criminal offending by children and young people is generally non-violent; 50 per cent of crimes committed by children aged between 10 and 14 years are theft, burglary, and property related offences.⁴

The Australian Government Productivity Commission's recent figures show that Aboriginal and Torres Strait Islander youth are detained at a rate of [18 times that of non-Indigenous young people](#). MACR reform must also be considered in light of this overrepresentation.

Governments must work with the community to keep children and young people out of the system, designing a justice response that centres around their needs. This could be achieved by all jurisdictions, including the Commonwealth, committing to raising the MACR to 14 years, together with developing and strengthening services that prevent involvement in the justice system.

Developing coordinated services to support raising the minimum age of criminal responsibility

An identified challenge for the ACT and other jurisdictions in raising the MACR has been a gap in early support and alternative responses to harmful behaviour. To support a raised MACR, the ACT Government has identified key priority areas that require further development.

Working towards a self-determined Aboriginal and Torres Strait Islander response to youth justice issues is vital for improving the health, wellbeing and life outcomes of Aboriginal and Torres Strait Islander people. The *Royal Commission into Aboriginal Deaths in Custody* (1991) found the most significant factor bringing Aboriginal and Torres Strait Islander people into conflict with the justice system was ongoing dispossession, which has structurally established a disadvantaged and unequal position in wider society.

³ In an [open letter](#) sent to premiers, chief ministers, health ministers, and attorneys-general, a coalition of 30 health and medical organisations, argued it is harmful to put children, whose brains are not fully developed, into jail. The letter outlines evidence which shows children under the age of 14 do not possess the capacity to have criminal intent.

⁴ Figures obtained from the Australian Human Rights Commission report, [The Minimum Age of Criminal Responsibility \(2021\)](#).

This legacy – and ongoing reality – can only begin to be addressed when Aboriginal and Torres Strait Islander people are supported to make decisions for their children and young people. Self-determination provides the critical foundation for ongoing socioeconomic development and wellbeing, which prevents contact with the justice system.

Raising the MACR must be supported by culturally safe services for Aboriginal and Torres Strait Islander people. Transferring services from government and mainstream non-government organisations to Aboriginal Community Controlled Organisations (ACCOs) is a meaningful step towards self-determination. This acknowledges the unique expertise held by ACCOs, enabling them to provide culturally safe services and work with families who have experienced intergenerational trauma and disadvantage.

The 2019 Aboriginal and Torres Strait Islander-led [Our Booris, Our Way review](#) into the experiences of Aboriginal and Torres Strait Islander children and families in care and protection has been critical in guiding work in the ACT. The ACT Government is committed to implementing the recommendations of the review in full, driven by the leadership of the *Our Booris, Our Way* Implementation Oversight Committee.

Strengthening high risk families will also be vital. Families must feel safe in asking for help before harmful behaviours in children and young people escalate to youth justice involvement. This requires better integrated and coordinated services to provide support to children and young people in ways that meet their unique needs in the context of their family.

For example, children and young people [have told us](#) they experience family and domestic violence differently to adults. Family decisions are often made without listening to, informing and involving young people. Children and young people want case workers who are trained in youth engagement and can understand their specific needs.

Children and young people, especially those aged under 16 years, are often not eligible for homelessness services. A lack of housing support and accommodation services puts children and young people at risk of long-term harm, increasing their likelihood of involvement in the youth justice system. Better outcomes for children and young people at risk of homelessness are more likely if they are provided with skills to address conflict, and supported to stay at home safely.

Identifying and responding to disability needs is another priority area. Across Australia, children and young people with disability enter the youth justice system at disproportionately high rates. While it is not possible to accurately quantify the number of young people with disability in the ACT justice system, recent screening at the Bimberi Youth Justice Centre (Bimberi) indicates this figure is at least 50 per cent.⁵

The systemic criminalisation of disability is often related to undiagnosed disability. Many children and young people go through early education and schooling without diagnosis, due to long wait times for specialists, strict eligibility criteria, a lack of universal disability screening and siloed approaches to disability. When these children and young people do not have the appropriate support, they are at risk of struggling in the early years of school, falling behind their peers, becoming disengaged and exhibiting problematic behaviour that can lead to youth justice involvement.

⁵ Due to long wait times to see specialists and a lack of universal disability screening in the ACT, we cannot accurately identify all children with disabilities in the youth justice system. The provided estimate comes from a recent trial at Bimberi that tested a disability screening tool, and found that 50 per cent of children and young people in detention had at least one disability.

Additionally, there are limited services that are culturally safe for Aboriginal and Torres Strait Islander children and families. Aboriginal and Torres Strait Islander people with disability face particular disadvantages due to intersections of ableism and racism.

Evidence-based reform

Working in partnership towards a self-determined Aboriginal and Torres Strait Islander response: supporting Aboriginal Community Controlled Organisations (ACCOs)

The ACT Government continues to work in partnership with Aboriginal and Torres Strait Islander people towards a self-determined response to youth justice. In line with priority reform areas 2 and 3 of the *National Agreement on Closing the Gap*, this involves supporting the development of a strong and resourced ACCO sector and embedding the principles of cultural safety and trauma-aware healing-informed service delivery. Under the [Aboriginal and Torres Strait Islander Agreement 2019-2028](#), the ACT Government committed to the development of an Aboriginal and Torres Strait Islander Capacity Building Policy. This seeks to guide the funding, support and development of new and long-term ACCOs.

To support self-determination, the ACT Government has passed the [Aboriginal and Torres Strait Islander Children and Young People Commissioner Act 2022](#). The appointed Commissioner will advocate for Aboriginal and Torres Strait Islander children and young people to promote their rights and wellbeing on individual and systemic levels. This appointment was a key recommendation from the Aboriginal and Torres Strait Islander-led *Our Booris, Our Way* review of the care and protection system. It will help ensure the voices of Aboriginal and Torres Strait Islander children will be heard by a trusted person who has the advocacy powers to intervene in decisions that affect the rights and wellbeing of Aboriginal and Torres Strait Islander children and young people, and respond in a culturally appropriate way.

The ACT Government also established a New and Emerging Organisations (NEO) Grant Program to support the ACCO sector. In 2020, ACCO Yerrabi Yurwang received \$25,000 towards start-up costs from the NEO Program.⁶ The ACT Government has since committed to further short-term and ongoing funding for Yerrabi Yurwang, among other ACCOs, to grow the sector. Yerrabi Yurwang seeks to improve outcomes for Aboriginal children, young people, and their families – particularly those living in Canberra's north. It provides direct family support and is growing through partnerships to improve access to housing, health services, community, culture, legal and employment assistance.

In the 2022-23 Budget, the ACT Government committed more than \$19 million for the construction of a purpose-built facility for Gugan Gulwan Youth Aboriginal Corporation. This organisation provides support to Aboriginal and Torres Strait Islander children, young people, and their families, to address risk factors associated with involvement in the youth justice system. Programs include drug, alcohol and mental health support, preventative support for young people at risk of homelessness, Functional Family Therapy, and nicotine replacement therapy.

Other ACCOs, such as Sisters in Spirit Aboriginal Corporation and Yeddung Mura (Good Pathways) Aboriginal Corporation, have received grants from ACT Government directorates to support culturally safe service responses for Aboriginal and Torres Strait Islander people and families in the ACT.

⁶ [Funding boost for new local Aboriginal led organisation - Chief Minister, Treasury and Economic Development Directorate \(act.gov.au\)](#)

Strengthening high risk families: providing targeted services for children, young people and their families experiencing domestic and family violence, homelessness and conflict

The ACT Government recognises the need to provide targeted services for children, young people and their families to help reduce risk factors for youth justice involvement.

For children and young people experiencing family and domestic violence, the Domestic Violence Crisis Service (DVCS) launched the government-funded Young People's Outreach Program in 2018. This was designed to help the wellbeing and recovery of children and young people who have been exposed to domestic and family violence. DVCS works with children aged between 5 and 15 years who exhibit trauma-related problematic behaviours. Through a focus on building trusting and safe relationships, DVCS supports children and young people to talk about the experiences they have at home and strategies for staying safe.

For children and young people at risk of homelessness, the Safe and Connected Youth program is delivered by the Conflict Resolution Service in partnership with Marymead CatholicCare. The program was initially piloted in 2019 and has subsequently received ongoing funding to bridge a service gap for children and young people in the middle years (8 to 15 years). Safe and Connected Youth provides therapeutic outreach and support to children, young people and their families. Where it is safe to do so, the program prioritises keeping children and young people at home. Children and young people who enter the program benefit from outreach support and case management for 12 months or longer. The program emphasises restoration, reunification and reconciliation for families, who receive individual and family case management, including counselling, coaching and mediation. If needed, children and young people are also provided with safe temporary accommodation. Therapeutic case workers advocate for children and young people and help them connect to other services that can be difficult to navigate.

For children and young people showing signs of harmful behaviour at home, the ACT Government has funded a Functional Family Therapy – Child Welfare (FFT-CW) program and trialled Functional Family Therapy – Youth Justice (FFT-YJ). In Australia, and internationally, there is a strong overlap of children involved in both child protection services and the youth justice system. Non-family-based out of home care is a particularly strong predictor of a child's involvement in the youth justice system.

The development of the FFT-CW program aligns with recommendations from the 2019 Aboriginal-led *Our Booris, Our Way* review of the experience of Aboriginal and Torres Strait Islander children in out of home care. The ACT Government has committed ongoing funding for FFT-CW, which has been delivered by Gugan Gulwan in partnership with OzChild. From the implementation of the pilot program in November 2018 through to September 2020, the program engaged 47 families, involving 142 children and young people. Of these, 28 families and 93 children and young people successfully completed FFT-CW with no subsequent re-entries into the out of home care system.

Following the success of FFT-CW, a youth justice specific model was trialled in 2021 (FFT-YJ). This was delivered by OzChild to target the over-representation of Aboriginal and Torres Strait Islander children and young people in youth justice systems. An evaluation of the success of FFT-YJ led the ACT Government to commit \$3.076 million over four years in the 2023-24 Budget to deliver the FFT- YJ program as part of the service system response to support increasing the MACR.

Identifying disability needs and responding: better screening and a stronger public health response

The ACT Government, through its [Disability Justice Strategy 2019-2029](#) and [First Action Plan 2019-2023](#), has focused on achieving equity and inclusion for people with disability in the justice system. As part of this, a Tool for Identifying Reasonable Adjustments (TIRA) was developed in 2020 to help identify reasonable adjustments for people with disability involved with the youth justice system. TIRA was based on the modified Washington Group set of questions, combined with observational components. The questions are designed to identify people with functional limitations, and deliberately exclude explicit references to disability to overcome stigma associated with disability and obtain more accurate screening results. Since trialling TIRA in January 2022 and identifying reasonable adjustments for more than half the young people, the tool is now part of the standard Bimberi Youth Justice Centre (Bimberi) induction process.

Further, an Allied Health pilot program was trialled at Bimberi. From June 2020 to January 2021, the pilot provided increased therapeutic support for children and young people in detention via a speech pathologist, clinical psychologist, and occupational therapist. This pilot oversaw universal screenings of all young people at Bimberi, and further assessment and diagnosis where appropriate. Consistent with TIRA data, the screening revealed a high prevalence of disability-related need in young people at Bimberi. The pilot, in which 50 young people were screened for prevalence of disability need, found that 100 per cent of assessments identified disability need, and 100 per cent of young people screened would benefit from allied health professional interventions.

Consultation with staff at Bimberi suggests that key challenges remain in the disability/justice space. Universal screening for disability should be proactive, rather than targeted at children and young people already involved with the justice system. The difficulties of coordinating and delivering Medicare and NDIS services for children and young people who cycle in and out of detention provides a fragmented service response to vulnerable children and young people. Better coordination between different services and levels of government would help address risks factors due to disability needs.

Governance: the importance of local governments in youth justice

The ACT Government recognises the importance of all levels of government in keeping children and young people safe, supporting their families and preventing contact with the youth justice system. However, a state- and territory-level approach to youth justice is critical, particularly in jurisdictions with human rights legislation (Victoria, Queensland and the ACT) governing the delivery and operation of youth justice services.

States and territories are responsible for the design and delivery of key prevention services, including child protection systems and related areas of law, family support, health, housing and education. As a small jurisdiction, the ACT is well placed to respond more flexibly to community needs, supporting trials for different approaches to youth justice that can be shared through national discussions. For example, the Warrumbul Circle Sentencing Court operates an alternative method of sentencing Aboriginal and Torres Strait Islander young people, using a panel of Elders to guide the sentencing process.

Strong collaboration between government agencies and community organisations is critical to building an evidence-based, responsive system. For example, ACT Policing partners with the Community Services Directorate's Child and Youth Protection Services (CYPS) for monthly case management meetings to discuss at-risk young people who have come to the attention of police and/or youth services in the community. ACT Policing also works alongside the ACT Education Directorate to provide safety education programs and

resources, and employs Liaison Officers to engage with school communities on a referral basis. These program responses reflect a shared focus on diversionary practices and therapeutic interventions.

The ACT Government continues to work hard to repair, build and maintain connections to local Aboriginal and Torres Strait Islander partners. The importance of building community-controlled sectors that are connected to the specific needs and challenges of local Aboriginal and Torres Strait Islander communities cannot be overstated.

Collaboration to guide future efforts

Regarding a national approach to youth justice, we encourage the Australian Government to continue to provide support through income and family payments, Medicare and the NDIS, national level family and legal services, and through information sharing with state and territory governments.

Ongoing collaboration between states and territories, the Commonwealth, and non-government partners remains vital in developing consistent approaches to supporting the safety of children and young people and their families. [Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031](#) (Safe and Supported) was jointly developed by the Australian Government and state and territory governments, in partnership with [SNAICC – National Voice for Our Children](#) and the [Aboriginal and Torres Strait Islander Leadership Group](#). Bringing together critical perspectives from Community Services Ministers, government officials and Aboriginal and Torres Strait Islander leaders, it seeks to ensure children and young people grow up safe, connected and supported in their family, community and culture.

Through a shared decision-making approach, Safe and Supported has enabled new ways of working alongside Aboriginal and Torres Strait Islander community leaders, to reduce child maltreatment and support improved child wellbeing outcomes. Safe and Supported aligns with priority reforms under the [National Agreement on Closing the Gap](#) and provides a strong mechanism for collaboration between governments and community partners in delivering early support and prevention. This shared approach to national policy-setting remains important in guiding progress for government and community partners.

In conclusion, the ACT Government welcomes the National Children's Commissioner's project and encourages the Commissioner to engage directly with the Community Services Ministers Meeting and other relevant Ministerial meetings and councils to share the outcomes of this project.