

ADHD Foundation Australia

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AUSTRALIAN HUMAN RIGHTS COMMISSION YOUTH JUSTICE AND CHILD WELLBEING REFORM ACROSS AUSTRALIA



ADHD



Foundation

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ADHD FOUNDATION LTD SUBMISSION

29 June 2023

Via: youthjusticereform@humanrights.gov.au

About the ADHD Foundation

The ADHD Foundation a national for purpose not for profit charity, consumer-based organisation, advocating for and supporting people with Attention Deficit/ Hyperactivity Disorder and their support networks. The Foundation has extensive expertise in researching and supporting people with ADHD in the justice system, evidenced by our 2020 Conference, events and a soon to be published paper “*ADHD, Youth Justice and the Law, The Jury Is No Longer Out*” which can be shared once published.

The ADHD Foundation has extensive expertise in researching the correlation between mental health and in particular, ADHD with people in the judicial system. The ADHD Foundation in collaboration with Associate Professor Mark David Chong, Dr Corey J. Lane, Dr Geoff Kewley, Ms Joy Toll and Ms Dymrna Brbich, all experts in their field, recently completed a research paper in 2023 titled; “ADHD, Youth Justice and the Law, The Jury Is No Longer Out”, published in the “Bond Law Review” which quantified the percentage of juveniles in the judicial system at a staggering 25%. In a population study, published in 2014 by The Lancet Psychiatry, it was revealed that both boys and girls with ADHD were more than twice as likely to receive a Community Correction Order and three times more likely to be in detention than children without ADHD, some UK studies have the number as high as 45%. As with many other chronic conditions, ADHD rates are higher in custodial settings than in the general population, estimated to be five times higher among juvenile prisoners and ten times higher among adult prisoners. Had this condition been effectively diagnosed and treated, it could be argued that events leading to detention might have been avoided.

The ADHD Foundation submission will respond to each question posed by the Australian Human Rights Commission but in addition wishes to highlight cause and effect by addressing the significant impact of mental health including ADHD on both direct and indirect judicial outcomes. Addressing root cause issues rather than the symptoms will have the largest positive impact on juvenile wellbeing, the judicial system, the community, and the Australian economy. ADHD is highly genetic and lifelong, these young people are being punished for a Mental Health condition they were born with and cannot control without support and treatment. ADHD is not curable, but highly treatable.

The ADHD Foundation’s comments and recommendations are supported by defensible and extensive validated research and anecdotal evidence gleaned from its extensive Helpline operations, education program participants and research. This includes case studies which can be made available to the Human Rights Commission upon request. In addition, all ADHD Foundation recommendations have incorporated extensive local and international research data resulting in what we believe to be a best practice approach to rectifying systematic issues within the justice system as they relate to mental health and ADHD identification, treatment, and management.

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Introduction

As highlighted in the Deloitte Report ADHD is the most common neuro developmental disorder and is estimated to affect more than 1.5 million Australians. ADHD is often characterised by difficulties with impulse control, hyperactivity, and emotional regulation, and has a high correlation with contact with the youth justice system¹. It is estimated that children and young people are at least three times more likely to be in detention than children without ADHD². However, very few reviews into youth justice in Australia have acknowledged the importance of early diagnosis and treatment of ADHD and the role this could play in reducing children and young people having contact with the youth justice system³.

ADHD carries a significant financial burden to the Australian economy and is estimated to cost more than \$20.4 billion⁴. This includes the costs associated with the justice system at approximately \$307 million. In addition, ADHD affects the social and emotional wellbeing of people with ADHD and their support networks, affecting relationships, employment and impacting on other areas of a person's health⁵. It is therefore imperative that action is taken to address the root causes of ADHD which will have the greatest positive impact on the wellbeing of children and young people; reduce pressure of the justice system; and reduce the financial burden on the Australian economy.

The responses provided in the below submission focus on the benefits of early identification and treatment of children and young people with ADHD; the call for improved community awareness of ADHD; and the role education and training for professionals in the youth justice system can have in creating a more inclusive youth justice system.

¹Stephen V. Faraone et al. (2021). 'The World Federation of ADHD International Consensus Statement: 208 Evidence-based conclusions about the disorder' 128 *Neuroscience & Biobehavioral Reviews* 789-818.

² Silva D, Colvin L, Glauert R, Bower C. (2014) Contact with the juvenile justice system in children treated with stimulant medication for Attention Deficit Disorder: A population study. *The Lancet Psychiatry*

³ Lane, Corey J, and Chong, Mark David (2019) *A hard pill to swallow: the need to identify and treat ADHD to reduce sufferers' potential involvement in the criminal justice system*. *James Cook University Law Review*, 25. pp. 119-136.

⁴

Deloitte Access Economics (2019). *The social and economic costs of ADHD in Australia: Report prepared for the Australian ADHD Professionals Association*

⁵ [RACGP - Australians with ADHD may be missing out on diagnosis and treatment](#)

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Q1. What factors contribute to children's and young people's involvement in youth justice systems in Australia?

There are multiple factors contributing to children and young people entering the justice system in Australia. Seldom are these factors in isolation, several in combination and can lead to anti-social behaviours varying in severity:

- 1) Comorbidity- Often a primary condition such as ADHD is accompanied by comorbidities such as Bi-Polar Disorder, Oppositional Defiance Disorder (ODD), Schizophrenia and Depression⁶. Left untreated, these conditions can result in behavioural dysfunctionality, executive function impairment, irrational behaviours, and emotional dysregulation⁷. However, often by accurately and effectively diagnosing and treating primary conditions such as ADHD, co-morbidities such as anxiety and depression can be avoided⁸.
- 2) Substance abuse– ADHD has a high association with substance abuse, and it is well-documented many people in the justice system have addiction issues⁹. From the ADHD Helpline we often hear that substance abuse can be triggered by an event and/or primary mental health condition such as ADHD. Many of those with ADHD seek out legal and/or illicit substances to alleviate their symptoms. This can lead to addiction and negative social outcomes.
Helpline: (just out of custody) – I don't want to be a criminal; I want to be normal. Ice makes me feel normal.

I cannot afford a psychiatrist to prescribe my ADHD medication, so now I get it on the black-market, which means going back to my old 'dealer'
- 3) Childhood trauma including abuse – Childhood trauma is a contributor to mental and emotional dysfunction which can lead to children and adults becoming involved in the judicial system. Often the perpetrators of the abuse have undiagnosed and/or untreated mental health conditions. Conditions such as untreated ADHD can lead to family relationship breakups triggering a multitude of wider social issues including but not limited to crime.
- 4) Unemployment parents /carers - A significant percentage of unemployed people who have either undiagnosed and/or untreated mental health conditions such as but not limited to ADHD. Untreated ADHD is a major contributor to individuals being unable to secure and retain employment¹⁰ including those with ADHD and Learning Disabilities. They often do not have the skills to negotiate contracts, social security, and government departments. With lack of employment income, some turn to crime to survive.

⁶ 3 Young, Susan and Kelly M. Cocallis. 'Attention Deficit Hyperactivity Disorder (ADHD) in the Prison System.' (2019) 21(6) Current psychiatry reports 41

⁷ [Add ref here](#)

⁸ Ref

⁹ Lane, Corey J, and Chong, Mark David (2019) *A hard pill to swallow: the need to identify and treat ADHD to reduce sufferers' potential involvement in the criminal justice system.* James Cook University Law Review, 25. pp. 119-136.

¹⁰ [Add ref](#)

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- 5) Negative peer influence– Children and young people with ADHD often have low self-esteem and difficulties making friends. This can lead to them being influenced by others who engage in anti-social behaviours and actions and may lead to individuals taking unfortunate actions leading them to the judicial system.

Recommendation: The ADHD Foundation therefore recommends government funding be released to enable juvenile ADHD diagnosis and where required treatment as a preventative measure and to mitigate re-offence potential for those already in the justice system. More detailed information can be found in the ADHD Foundation Senate Inquiry Submission 09 June 2023.

Q2. 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?

Given that studies have shown that 25% of juveniles in the justice system have ADHD, it is essential that prior to sentencing that mental health diagnosis is undertaken. If conditions are identified and have been untreated, this must be considered, and a humanitarian clinical approach taken. Similarly, all juveniles currently in the system should be diagnosed and if found to have a condition(s), treatment for that condition must ensue with investment then made in rehabilitation. Early diagnosis in schools, prior to crimes being perpetrated, would have a major preventative effect on the judicial system. There is a direct path between school suspension/expulsion and the judicial system (*Mark Chong & Corey Lane*).

The Convention of the Rights of the Child was ratified by Australia in 1990 and outlines the rights of children and young people including being treated fairly, having their best interest upheld and access to legal help if they break the law, among many others¹¹. However, for children and young people with ADHD, they often experience a system that does not cater for their neuro developmental needs, leading to discrimination in the youth justice systems.

The biggest barrier to children and young people with ADHD being treated fairly is the lack of early diagnosis and treatment of ADHD. It is essential that children and young people are assessed for ADHD and other mental health disorders as early as possible. Schools, youth support services and child protection agencies all play a vital role in supporting early diagnosis to avoid future contact with youth justice.

If conditions are identified and have been untreated, this creates further barriers through the justice process. ADHD must be considered in all part of the justice process. The Equality and Humans Rights Commission in the UK¹² provided excellent recommendations for creating an inclusive justice system. One of their recommendations looked at effective participation and ensuring people with neurodiversity have a proper understanding of what was occurring. Barriers to change would include stakeholder lack of knowledge and awareness of the impact of mental health on behaviours and decision making and acknowledgement of the beneficial transformational difference effective diagnosis and treatment can have on individuals.

¹¹Australian Human Rights Commission (nd) What are children’s rights?. Accessed 22/6/23 [What are Children's Rights? | Australian Human Rights Commission](#)

¹² Equality and Human Rights Commission 2020. Inclusive justice system: a system designed for all. Accessed 20 June 2023: [EHRC Inclusive justice a system designed for all \(equalityhumanrights.com\)](#)

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There are critical points in the justice process where awareness of ADHD can be valuable for staff involved. For example, during the sentencing process and judges and other personnel should have an awareness of the impact of ADHD when considering sentencing. Similarly, all children and young people currently in the system should be assessed and if found to have a condition(s), treatment for that condition must be made available to avoid recidivism. Left untreated children and young people will have a greater likelihood of entering the youth justice system. Properly treated, this could be avoided in many cases.

Greater awareness and education are key to overcoming some of these barriers. Law enforcement and judicial personnel, including judges, should be provided with training around ADHD and its impact on behaviour and decision making. It is only with such awareness that fair and appropriate interventions can be apportioned to children and young people in the justice system.

Recommendation: Provide all professionals working with children and young people in the youth system with an understanding of ADHD and how it impacts on criminal activity.

Q3. 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?

The ADHD Foundation research into the youth justice system and its findings that children and young people with ADHD would strongly benefit from effective diagnosis and treatment and would lead to a reduction in delinquencies. Such an approach could prevent those in the juvenile justice system from re-offending and entering the adult justice system. Based on extensive research evidence in youth justice reforms in the Brighter Futures program UK . In Australia, the Department of Justice and Community Safety in Victoria's Youth Justice Strategy program "The way forward" has been implemented.

Indirectly however, when considering the mitigating factors contributing to a child's incarceration, addressing root cause issues such as domestic violence, abuse, substance dependency, unemployment, poverty, homelessness, extreme inconsistent emotions and behaviours where mental health and in particular ADHD are present, effective diagnosis and treatment would prevent many of the current issues and deliver immediate positive outcomes.

Recommendation: ADHD Foundation recommends investment in a mental health and ADHD awareness program designed to stimulate early detection and treatment of conditions before symptoms manifest in anti-social behaviours and judicial intervention.

Q4. From your perspective are there any benefits in taking a national approach to youth justice and child wellbeing reform in Australia? If so, what are the next steps?

Child wellbeing needs to fall under a national best practice framework to achieve consistency of approach and optimised outcomes. There are examples where states and territories have different perspectives on mental health conditions such as ADHD (e.g., Whether ADHD is

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behavioural or neurodevelopmental disorder) and a standardised approach to terminology and categorising disorders is required as a minimum¹³.

Similarly, harmonisation of justice system, its approach and sentencing would reduce costs in the system and remove cross jurisdictional confusion and ambiguity. "One size fit all" programs are not suitable for those with ADHD and co-existing conditions (as happens now.) Individual learning needs must be taken into consideration. Current staff in correctional settings have absolutely no idea, and most do not even know that ADHD and co-existing conditions are disabilities! Educational institutions could standardise curriculums enabling all legal professionals to operate from a consistent platform.

Recommendation:

- 1) Launch a national multi-media mental health and ADHD awareness program. The ADHD Foundation has the knowledge and capability of delivering such programmes and would encourage the Human Rights Commission to engage with us to develop both effective prevention strategies and to prevent children and young people from having contact with the justice system.
- 2) Promote mental health and ADHD diagnosis in primary and secondary schools
- 3) Harmonise legal education curriculums enabling consistent definitions and approaches towards mental health including ADHD management and sentencing

Conclusion

The youth justice system would benefit from taking direct action in addressing mental health including ADHD. The ADHD Foundation has provided a set of recommendations it believes will resolve many of the issues currently being faced. The adoption of the ADHD Foundation recommendations should result in reductions in crime leading to less juvenile and adult detention via:

- Reductions in cases of comorbidity such as ADHD symptom related anxiety and depression which can lead to anti-social behaviours and irrational actions
- Reductions in suicide and attempted suicide within the youth justice system
- Reductions in unemployment and homelessness
- Fewer school/apprenticeship drop-outs
- Reduction in domestic violence and relationship issue.

The ADHD Foundation acknowledges this as an essential inquiry and looks forward to further contributing to the development of effective and sustainable outcomes.

¹³ Lane, Corey J, and Chong, Mark David (2019) *A hard pill to swallow: the need to identify and treat ADHD to reduce sufferers' potential involvement in the criminal justice system*. James Cook University Law Review, 25. pp. 119-136.

Thank you

The ADHD Foundation thanks, supports and stands ready to participate in the next stage of this critical Youth Justice and Child Wellbeing Reform across Australia. The ADHD Foundation anticipates that the findings and resulting actions from this reform submission will deliver positive improvements in the well-being of those with ADHD who are in touch within the youth justice system in Australia. The ADHD Foundation supports positive change to allow young people with ADHD either diagnosed or not achieve and live their best lives. On the ADHD Foundation National Helpline no parent or young person has indicated that their dream is to be considered a criminal. It is clear that the benefits associated with effective diagnosis and treatment of ADHD will far outweigh the associated costs across all measures within our society.

With kind regards

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