



AASW

Australian Association
of Social Workers

Youth Justice and Child Wellbeing Reform Across Australia

JUNE 2023



About the Australian Association of Social Workers

The Australian Association of Social Workers (AASW) is the national professional body representing more than 17,000 social workers throughout Australia. The AASW works to promote the profession of social work including setting the benchmark for professional education and practice in social work, while also advocating on matters of human rights to advance social justice.

Acknowledgements

This submission has been developed in consultation with our members who are working across Australia in various social work areas of practice in which they encounter vulnerable children, young people and their families. More detailed consultation was conducted with members whose work provides more detailed knowledge of the youth justice system and its related services.

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Executive Summary

The AASW's position is informed by the Convention on the Rights of the Child (CROC) and the core values in our code of Ethics: Respect for Persons, Social Justice and Professional Excellence. This means that respecting and promoting the best interests of children are the paramount consideration in all our work with children and young people; and the guiding principle on which this submission is based.

The AASW considers youth justice and the well-being of children and young people in their broadest social and political context. Social workers address the diversity and complexity of the issues facing children and young people, informed by their understanding of issues such as poverty, domestic violence, drug and alcohol misuse, disability, homelessness, access to education, unmet health and mental health needs, colonisation and the intergenerational impacts of the Stolen Generation. The position of the AASW is that our shared social responsibility for the wellbeing of children and young people demands that these issues are addressed in families and communities; and that all conceivable efforts are made to prevent young people from entering the youth justice system. As well as being socially and economically responsible, this is the only position that conforms with our obligations under the CROC.

Recommendations

The AASW recommends:

- That all state and territory governments establish partnerships with Aboriginal and Torres Strait Islander communities to design culturally safe, locally appropriate education and health programs, as investments in their shared futures.
- That all Australian jurisdictions raise the age of criminal responsibility to 14.
- That all government funded programs for vulnerable and marginalized young people be required to demonstrate that they have been co-designed with young people.
- That all states and territories be required to develop and implement holistic early intervention action plans to assist children and young people from vulnerable and marginalized families avoid contact with the youth justice system.
- That all states and territories be required to establish diversion programs at sufficient levels to enable every young person in the youth justice system to have access to one, should they choose to.
- That governments commit to ongoing funding for youth diversionary programs as permanent features of the service system, to ensure that:
 - funding agreements for pilot programs or innovative models of care aimed at reducing contact with the youth justice system be set for sufficient periods of time to enable robust evaluation.
 - funding is continuous unless the evaluation demonstrates that it is ineffective.

Context for this submission

Over-representation of Aboriginal and Torres Strait Islander children

It is not possible to discuss the youth justice system in Australia without recognizing the alarming and shameful over representation of Aboriginal and Torres Strait Islander children and young people in that system. This is the result of multiple interlocking factors in the lives of these young people. It must be acknowledged that some of the factors are themselves the result of previous interventions which had the aim of assisting children and young people.

The AASW recognises that social workers were among the welfare professionals who previously implemented policies which were discriminatory, coercive and unjust. Although commonly accepted at the time, these practices were contrary to the values and ethics of the social work profession in terms of respect for persons, human rights, social justice and self-determination. The AASW published a formal apology for its role in historical injustices in 2004.¹

Since then the AASW has continually raised concerns over the failings of the child protection and youth detention systems that perpetuate the overrepresentation of Aboriginal and/or Torres Strait Islander young people in the justice system throughout Australia.² We have been calling for a wide range of primary intervention programs that address the systemic social and economic disadvantages encountered by Aboriginal and Torres Strait Islander families and children.³ As a priority for this submission, the AASW calls on state and Territory Governments to collaborate with Aboriginal and Torres Strait Islander communities to co-design immediate reforms to protect the best interests of and promote the self-determination of Aboriginal and/or Torres Strait Islander peoples.

Recommendation:

- That all state and territory governments establish partnerships with Aboriginal and Torres Strait Islander communities to design culturally safe, locally appropriate education and health programs, as investments in their shared futures.

¹ (Australian Association of Social Workers 2004)

² (Australian Association of Social Workers 2020)

³ *ibid*

Responses to the Terms of Reference/Our submission

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

The inappropriately low age at which children are considered to have criminal responsibility.

The current age of criminal responsibility in all Australian jurisdictions too low. Currently set at either 10 or 12 years, both ages are out of step with current research about children's biological and neurological development.⁴

Recent advances in neurological research has given weight to developmental theories which have argued that young people do not develop insights into all the consequences and moral implications of their actions until much later in their teens. Even though some children can identify some actions as either right or wrong, the level of moral reasoning which is required by the criminal justice system does not develop until much later.⁵

Although we welcome the recent changes in some jurisdictions to raise this age, the AASW remains critical of these reforms because they have adopted the age of 12. The AASW is participating in continuing campaigns across all Australian jurisdictions, arguing that it should be set at 14.⁶

AASW members have extensive evidence that the children and young people who are in contact with the law have unmet needs which in fact require a non-criminal justice response. This will be dealt with in detail in the next section.

Unmet support needs in the family and by the young people

Social workers who work with vulnerable children and young people have observed that many of the children and young people who exhibit challenging, harmful or destructive behaviours are from families with heightened vulnerabilities, and who are isolated from community and social supports. These factors can include: poverty, insecure housing, unmet health, mental health or disability needs, family violence, addictions and past experiences of trauma or discrimination. The AASW endorses the extensive formal and informal evidence base that recommends early intervention for families such as these. Addressing the full spectrum of needs in these families is the most effective way to enable them to create a nurturing environment in which their children and young people can be supported to develop pro-social attitudes and behaviours.

Similarly, there is evidence that young people in the criminal justice system are also experiencing these unmet needs.⁷ Social workers report that many young people in the youth justice system

⁴ (Cunneen 2017)

⁵ ibid

⁶ (AASW 2021)

⁷ (Richards 2011)

appear to have been living for years with undiagnosed health, mental health conditions or impairments.

The AASW is not suggesting that all problematic behaviours by young people are the result of unmet support needs, nor that comprehensive health and family support systems will eradicate the need for a youth justice system. Instead, our members' experience concurs with the findings of the Victorian Inquiry into the Justice System: that young people with problematic behaviours who are living with these marginalising elements, currently receive inappropriate service responses which compound their marginalisation.⁸ Judgemental and punitive responses from the police, and services such as schools, and health providers leave the young people with attitudes and coping mechanisms which make them more likely to end up in the youth justice system.⁹ It is clear to social workers that a therapeutic response is not only the one that best fits their needs, but is also the only one that is consistent with our obligations under the CROC.

Experience in the out of home care system

Many members of the AASW who work in the child protection system report that the dynamic described above is heightened for young people in out of home care.¹⁰ The AASW submission to the Inquiry into Youth Justice Centres described how, for many young people, the trauma of their early experiences of neglect or abuse, which generated the involvement of child protection, was then compounded by the trauma of removal from their home and community.¹¹ Many of the behaviours which lead young people to the youth justice system are better understood as responses to this compounded trauma.¹²

In addition to this, children in out-of-home care are likely to encounter the police for behaviours that would not have this consequence for children who live with their parents.¹³ The Service Agreements between state government departments and the community sector organisations which provide out of Home Care specify that the local police be called to intervene in incidents of aggression. Without minimising the importance of providing a safe workplace for the care workforce, the AASW draws attention to its consequence, which is that young people leave out-of-home care with a record of contact with the police. As well as compounding the trauma of removal from their home, this response further stigmatises their challenging behaviours as a problem that needs to be solved by incarceration.

⁸ (Legislative Council Legal and Social Issues Committee 2022)

⁹ (AASW 2017)

¹⁰ *ibid*

¹¹ *ibid*

¹² (Dean 2018)

¹³

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?

Raise the Age at which young people first encounter the criminal system.

We have already argued that the age of criminal responsibility is too low: that it defies current medical knowledge; and that the most appropriate response for these young people is a therapeutic one. The third reason that the age of criminal responsibility should be raised is that early encounters with the criminal justice system can lead to subsequent involvement with that system.¹⁴

The physical, mental, and emotional stress, and the accompanying deprivation of emotional, support, health services and educational opportunity within the justice system interferes with the development of these young people. By breaking the young person's connections to their family, education and health services, incarceration removes any supports the young person maintained. It becomes difficult for these young people to resume schooling, take up pro-social activities, acquire work and make positive social connections, all of which provide financial, social and emotional resources necessary to meet basic needs. Without these supports, it becomes very difficult for young people to avoid activities that lead them back to the justice system.¹⁵

Recommendation:

- That all Australian jurisdictions raise the age of criminal responsibility to 14.

Consult and build relationships with young people.

Identifying the needs of vulnerable and marginalized young people, and implementing holistic, targeted responses, requires collaborative respectful partnerships with young people. Social workers know that this relationship-based work is predicated on each party having opportunities for respectful communication. While AASW members strive to create such relationships with the young people they work with, they also report that other services and organisations do not always share this approach. AASW members have reported that systems need to be better at talking to young people about the help and support they need. Young people themselves have already told the social work profession how to create caring and respectful environments that build young people's capacity for self-agency.¹⁶ The AASW upholds these principles, given that they are an expression of the right of all young people to express their views on matters which concern them. We believe that their message applies to the whole of the public and community service sector.

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¹⁵ (Legislative Council Legal and Social Issues Committee 2022)

¹⁶ (Zuchowski I 2022)

Recommendation:

- That all government funded programs for vulnerable and marginalized young people be required to demonstrate that they have been co-designed with young people.

Expand community based early intervention and youth diversion programs.

This submission has already described the prevalence of unmet needs in the young people who are in the justice system. It is an unfortunate corollary of this, that marginalized and vulnerable communities are more likely to experience shortages of the early intervention programs which they need.¹⁷ This applies not only to responses to problematic behaviours, but to the full range of mental health, disability and educational services. In our submission to the NT's Draft Aboriginal Justice Agreement, AASW members have reported that this also applies to diversionary programs for Aboriginal and Torres Strait Islander young people, and that there is a shortage of specialised youth outreach services for Aboriginal young people.¹⁸ This has a twofold influence on their trajectory into the youth justice system: it fails to intervene to prevent any problematic behaviours from becoming worse, and it also means that the only service response available is the tertiary level response of removal from their home and introduction to the youth justice system.

Recommendation:

- That all states and territories be required to develop and implement holistic early intervention action plans to assist children and young people from vulnerable and marginalized families avoid contact with the youth justice system.

Create tailored case management services targeted at young people at risk of entering the justice system.

AASW members report that many of the current case management models available are crisis-orientated and can only provide a short-term solution to the young person's needs. In our consultations, members report that it can be challenging to develop a long-term therapeutic relationship with a young person who is at risk of offending. This is because the standardised case management model encourages workers to refer a young person on to other 'more suitable service' rather than maintain a therapeutic relationship. Even if it is appropriate to involve specialist services in the young person's care, it is still important to maintain a case management role, in order to build a holistic, coherent services response around that young person.

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Specific models for Aboriginal and Torres Strait Islander young people:

With respect to young Aboriginal people who have already attended multiple unsatisfactory services across their lifespan, the current model is doubly unhelpful. It fails to address their unmet needs; and it exacerbates long standing experiences of discrimination.

Therefore, the AASW encourages state and territory governments to promote a trauma-informed case management model that facilitates working with Aboriginal and/or Torres Strait people as a 'healing journey', with attention to a person's resilience and individual strengths. A long-term strategy to develop 'mentorship' between Aboriginal practitioners and the people they work with is required to achieve the self-determination of the Aboriginal and/or Torres Strait Islander

¹⁷ (Australian Association of Social Workers 2020)

¹⁸ (Australian Association of Social Workers 2020)

communities. Our members are aware that some cultural mentorship programs have been implemented in the Aboriginal health sector. Those programs are often led by community elders. However, the mentoring role Aboriginal social workers can play is currently underexplored. Therefore, the AASW submits that the government should consider an alternative approach to case management where Aboriginal and/or Torres Strait social workers can provide long-term therapeutic care for a person when it is deemed appropriate.

Recommendation:

- That all states and territories be required to establish diversion programs at sufficient levels to enable every young person in the youth justice system to have access to one, should they choose to.

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?

EG1: Early Intervention programs

AASW members have nominated early intervention programs such as the Territory Families Youth Outreach and Re-engagement Team (YORET) as being valuable and effective. These teams use specialist youth workers who engage with at-risk young people who are unsupervised in public spaces at night in Alice Springs, and areas of Darwin. They are tailored to the specific needs of young people in those areas.

AASW Members report that success in these programs in rural and regional areas requires collaboration with local Aboriginal and/or Torres Strait Islander communities to ensure that the programs respond to the circumstances and needs of that specific community. Members agree with Patten et al that the best way to do this is by engaging with each community through its elders and leaders. The AASW draws attention to recommendation 16 of the Patten report and recommends that the principles of self-determination that it outlines for Victoria be extended to apply nationally.¹⁹

EG2: Restorative justice programs

AASW members have created and implemented a successful restorative justice program, which was aimed at young people involved in the justice system who had committed offences relating to car theft. The program engaged participants by providing education in automotive mechanics (Certificate IV Automotive Mechanical Diagnosis) by fixing old cars that had been provided to the program. Upon graduation of the program, the cars would then be given back to those people who had cars stolen from them, particularly people who had been seriously impacted by the crime.

¹⁹ Page 224 of the Patten Report summarises 10 principles identified by the Aboriginal justice caucus for self determination in the criminal justice system.

Success factors for the program as described by member feedback included:

- Starting from a strengths-based orientation to the young people's interest and skill base, rather than starting with a punitive mindset.
- Empowering participants to take responsibility and being able to see the impact of their work.
- Providing participants with alternative options for their life pathways, particularly when intergenerational patterns were present in their family.
- Engaging participants in meaningful activity where they were able to develop skills and knowledge, translating into increased confidence and self-efficacy.
- A sense of belonging for participants (fostered through therapeutic relationships with workers as well as actions such as providing overalls for the participants to work in).

Referrals increased from 2 or 3 initially to 15 participants every 10 weeks. The evaluation demonstrated positive outcomes, indicating that upon completion of the program, 87-92% of participants were engaging in employment or further education. A further evaluation showed that there was an 87% reduction in offences committed by participants.

Unfortunately, AASW member feedback indicated that the funding for this program was cut prior to the conclusion of its evaluation, and therefore it ceased to deliver services. The AASW recommends that as it often takes time to show positive outcomes for these programs, longer-term funding agreements are required to demonstrate impact and embed programs into communities.

Recommendation:

- That governments commit to ongoing funding for youth diversionary programs as permanent features of the service system to ensure that:
 - funding agreements for pilot programs or innovative models of care aimed at reducing contact with the youth justice system be set for sufficient periods of time to enable robust evaluation.
 - funding is continuous unless the evaluation demonstrates that it is ineffective.

Principles of successful reforms

The AASW is aware of many other projects which have successfully kept young people away from the criminal justice system. For decades, social workers have been involved in the design, implementation and evaluation of dozens of successful programs, under various titles and funded through a variety of sources. The programs which have been successful share the following features:

- They used skilled, experienced workers.
- Each worker had a small caseload so had time to build a relationship with the young person.
- The young person received a highly individualized response which took a holistic, culturally appropriate approach to all their needs.
- Each young person's engagement with the program was funded for a period long enough to establish new attitudes and behaviours.
- The program was tightly aimed at re-engagement with education and employment.

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- The program also worked with potential education and employment providers to adapt their procedures to accommodate the young person.
 - Local community organisations and government departments were partners in the design and implementation.

In many instances, these were pilot programs, so they were carefully evaluated, and the result of their evaluation demonstrated that this approach was successful.

It is unfortunate that these initiatives have not all become permanent features of our mainstream youth services system. AASW members have observed that the subsequent government actions follow a depressingly similar path. After the pilot projects have concluded, many disappear entirely, meaning that the skills of staff, the community linkages and the accumulated body of practice experience are permanently lost. In other instances, governments delay making a decision about the future of these projects for so long that staff and resources are similarly lost and the program has to re-establish itself. In other instances, funding continues at a level far below what is required to replicate the results of the pilot project. This leads to a lower success rate and diminished community support, which further jeopardizes future funding, so that the program is eventually terminated.

Although it is valuable to identify successful programs in submissions such as this, the AASW believes that it is equally important to advocate for system level changes in the way services for vulnerable and marginalized young people are commissioned and funded. The AASW believes that governments should treat holistic, community led, place based early intervention and diversion programs as permanent, foundational investments in the wellbeing of young people and the quality of the whole community's life.²⁰

Conclusion

Our current service system for children and young people who are exhibiting challenging, destructive and harmful behaviours relies too heavily on interventions that separate them from their families and communities, including incarceration. The AASW believes that these children and young people require responses that are culturally appropriate, trauma informed, therapeutic, and oriented toward their development. It also requires raising the age of criminal responsibility. These actions will care for the children and young people, promote their development and embody their best interests. To re-orient our systems in this way will require redirecting funds and expertise away from systems to police and contain young people and redirecting them into supports systems. These actions will have the added benefit that they will enable Australia to better meet our obligations under the CROC. The AASW looks forward to collaborating with the Australian human rights commission on this important work.

²⁰ (Legislative Council Legal and Social Issues Committee 2022)

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