

Youth Justice and Child Wellbeing Reform Across Australia Submission

Dr Rebecca Duell (PhD)

Quality, Research, and Innovation Senior Manager

Submission made on behalf of Brisbane Youth Service (BYS)

[REDACTED]
[REDACTED]
[REDACTED]

Email: [REDACTED]

Phone: [REDACTED]

Website: <https://brisyouth.org/>

Brisbane Youth Service (BYS) was founded in 1976 in response to the issue of youth homelessness. We holistically support vulnerable young people experiencing or at risk of homelessness aged between 12 and 25 years, and their children. Young people who access BYS typically experience a range of complex challenges such as past or current domestic or family violence; mental ill health; unsafe, overcrowded or unaffordable housing; and no or very low income. We assist young people to secure and maintain housing; address physical and mental health issues; establish safe relationships; connect with community; and access pathways to education and employment.

In the 2021-22 financial year, BYS supported 3076 young people through brief crisis intervention and 1571 young people and accompanying children through ongoing planned support. Of the young people receiving ongoing planned support 220 were aged between 12 – 17 years old.

The number of young people presenting with legal concerns was 23% in 2021-22, although the actual number of young people with either youth or adult justice system contact is likely to be much higher. As this data is collected at intake, past or current contact with the justice system may not be disclosed or may occur while young people are receiving ongoing support.

Thank you for the opportunity to respond to the issue of youth justice and child wellbeing reform across Australia. As a community-based organisation with a long history of supporting children and young people, we make the following points to the National Children's Commissioner:

Factors that contribute to children's and young people's involvement in youth justice systems in Australia

Many interconnected factors contribute to young people's involvement with the youth justice system. The factors we most commonly see at our service that directly impact young people's day-to-day lives revolve around the core issues of homelessness or unsafe home environments. Systems disadvantage (the social conditions and environmental factors that intersect with a young person's life to act as barriers to their positive development) also sets many young people on a path to youth justice that they may otherwise not take if they were more socioeconomically advantaged.¹

¹ This point is evidenced by the demographic profile of young people on supervision orders. More than 1 in 3 young people (35%) under supervision on an average day in 2021–22 were from the lowest socioeconomic areas, compared with about 1

In the 2021-22 financial year, 44% of young people supported by BYS were homeless e.g. sleeping rough, couch surfing, or in crisis/short term accommodation. Homelessness increases a young person's risk of encountering the youth justice system. With no or very limited income, young people experiencing homelessness may engage in illegal activity to meet their basic needs of food and shelter. With limited access to private spaces and nowhere safe to be at night, young people experiencing homelessness may engage in so-called 'antisocial behaviour' in public including substance use, aggression, or public nuisance. Often these behaviours are a coping strategy or trauma response to a situation where the young person feels unsafe; however, they increase a young person's visibility to police and can often result in a formal caution or arrest.

While complex, the link between childhood adversity and youth offending is becoming increasingly clear. For example, one recent study of young people under youth justice supervision in South Australia found that 88% of the young people involved in the research reported experiencing four or more types of family dysfunction or adverse childhood experiences e.g. abuse, neglect, victimisation or exposure to family violence, parental incarceration, parental mental illness or substance use.ⁱ The study found that the more adverse childhood experiences a young person suffered, the more likely they were to engage in serious, violent, or chronic offending.

Childhood adversity and the resulting trauma can negatively impact key neurobiological developmental processes and the longer term social and mental wellbeing outcomes of young people.ⁱⁱ Young people with developmental trauma may exhibit reckless and self-destructive behaviour, struggle to regulate their emotions, and have difficulty imagining or planning for the future. They may seek experiences that make them feel good in an attempt to reduce mental and emotional distress or may more easily succumb to peer pressure to create a sense of acceptance, security, and belonging. These risk behaviours can lead to offending, while developmental impairment may make it easier for young people to be manipulated into committing crime. Finally developmental trauma can also make it difficult for young people to understand and comply with criminal justice interventions and to comprehend the consequences of breaching them.

In the past financial year 40% of the young people supported by BYS indicated they had a critical lack of family, community, or professional support, and 72% had experienced past family violence; 45% had previous experience of a violent relationship (likely to be underreported). Young people we have worked with have been coerced or manipulated to commit crimes or have taken responsibility for other people's crimes in the context of family and/or intimate partner violence. This is particularly common when a young person is in an intimate partner relationship with an older person.

One cohort of young people who have been overwhelmingly impacted by co-occurring childhood adversity leading to significant cumulative harm are referred to as "cross-over kids". These young people have both youth justice and child protection system involvement in their lives. Nearly one in five young people in some jurisdictions of Australia are "cross-over kids".ⁱⁱⁱ In addition to childhood adversity, key circumstances common to "cross-over kids" include:

- Substance misuse
- Offending networks

in 16 young people (6.1%) from the highest socioeconomic areas. Source: <https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/summary>

- More violent and voluminous offending

When parents or residential care providers are not equipped to respond to challenging behaviour or emotional outbursts that result from these experiences, one of the only available responses is that of a criminal justice response. This criminalises behaviours that are not related to antisocial peers, rather behavioural and emotional regulation challenges that are present from early childhood and are largely outside of a young person's control.

It is important to acknowledge that systems discrimination and disadvantage, and the surveillance bias mentioned above in relation to homelessness is particularly intense for young Aboriginal and/or Torres Strait Islander people, where institutional racism and the long shadow of the Stolen Generation and continuing contact with the child safety system further deepens collective and intergenerational trauma.

What needs to change 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?

We highlight several key changes and barriers but recognise that we only skip along the surface of some intractable social policy issues that will require much work over the long term to address.

Firstly, the systemic drivers of youth offending must be addressed to reduce the likelihood of reoffending. For example, in the housing and specialist homelessness system there needs to be a coordinated federal and state-level response to youth homelessness, including safe crisis options, supported housing, and more social housing for young people. The most recent *Rental Affordability Snapshot* released by Anglicare found there were no affordable rental properties for someone on the Youth Allowance in Australia.^{iv} This situation forces young people into unsafe, overcrowded, housing or into homelessness. Currently, 21% of people experiencing homelessness in Queensland are under the age of 25^v but only make up 2.8% of the social housing population.^{vi}

Two significant barriers to successfully addressing the drivers of youth offending are:

- A lack of coordinated responses for “cross-over kids” who have experienced developmental trauma and childhood adversity. Reform to the child safety system is needed so it does not set young people up to be funnelled into the youth justice system and a pathway to recidivism and poor wellbeing.
- A lack of developmentally focused, trauma-informed approaches to assisting young people and keeping the community safe from crime.² Responses must acknowledge the neuropsychological differences between children and adults.

For some young people, the opportunity for early intervention has passed and they will not engage in services/supports and may be a danger to themselves and the community. In these circumstances detention may be necessary. Not all young people's experiences of youth detention are negative. Detention may be the first time a young person has a safe place to sleep, regular meals, boundaries, and has had people in their life who show an interest in their wellbeing. We are working with one 17-year-old currently held in an [REDACTED] who is receiving excellent support.

² See the Yiliyapinya Indigenous Corporation at: <https://www.yiliyapinya.org.au/>

However, too often we hear from young people about their negative experiences of detention and the damage done by incarceration, especially for the very high rates of young people who enter detention with mental health issues, cognitive disability from trauma such as FASD, ADHD etc. There needs to be greater accountability for systems and individuals that enable or perpetrate abuse against children in detention, as currently there seems to be limited accountability. While recent reviews into youth detention in Queensland and the Northern Territory are welcome, more needs to be done to change the punitive deficit approach to detention currently adopted. Such approaches are not effective at reducing recidivism.^{vii} For example, one young person we work with related to us that the unrelenting expectation of that young person to act badly while in detention and on release led him to give into this expectation – “why try to act differently when they expect me to be that way anyway?”.

Finally, one of the most significant barriers to change is community attitudes toward young people in the youth justice system and the perceived issue of ‘youth crime’. Relatedly there is a public misconception about what ‘trauma informed’ approaches to youth justice look like. Such approaches are not about excusing criminal behaviour due to someone having hard life, but rather using therapeutic approaches to help young people develop the neural pathways for more pro-social responses to the world. This is a very topical issue in Queensland, where the so-called “crack down” on youth crime by the state government has led to the passing of the *Strengthening Community Safety Act 2023* that seriously limits children’s human rights.^{viii} Offending by young people is often sensationalised by the media, who will fixate on the most serious of crimes with the most tragic outcomes for the victims. Such stories demonise young people and fuel misguided assumptions about why young people offend.

There needs to be more opportunity for young people to tell their stories, including what led to their interaction with youth justice, to reduce stigma and help people see the whole person. With the many confronting and tragic stories relating to youth crime, it is understandable that many people are calling for change and action. We wonder though, how many stories like █████ are not told.

█████ the second eldest of four children and father himself at 17. █████ is a young Aboriginal male, raised in a separated, supportive loving family unit with strong values and connection to kin, faith and culture. Fatherhood seems to have come naturally to █████ with the strong attachment he and his little girl share being evident in all their interactions. It is hard to believe that this young man is also part of what seems like a whole different world. Since a young age █████ has faced challenges with his mental health, used substance, and been involved in the youth justice system.

Recently, █████ had not been travelling well. █████ mother, taking an opportunity to spend quality time with him took him for a drive to get ice-cream. It was a short trip, so they didn’t take their phones. As they were driving through the main street, they noticed what they described as a well-dressed, middle-aged man in the middle of the street yelling and stabbing at himself with a knife, inflicting significant injuries on himself. █████ and his mother could not see anyone coming to the man’s aid, █████ asked his mother to stop. █████ spoke to the man from the car and asked his mother to run into a nearby shop to call for help. █████, with his kind and calm way asked the man his name, he shared his name and was able to keep the man talking. Although the man would intermittently start to stab at himself, █████ was able to keep him engaged until help arrived. There are very few people who would be able or willing to assist in a situation like this. There were others witnesses to this incident who did not assist in this moment. █████ did not hesitate.

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 average cost per day to hold young people in detention was \$2,086 in 2020-21.^{ix} There is clear evidence demonstrating not only cost-savings but also reduced recidivism when diverting young people away from court and other more formal youth justice responses. Looking only at the monetary cost, diverting young people away from the justice system at the point of police contact saves a considerable amount of money per young person, per diversion.^x

Other benefits of diversion include reductions in recidivism and in the seriousness of offences committed by young people, which in turn reduces the number of contacts young people have with the justice system overall. One study compared young people who received diversions or youth justice conferencing referrals to young people who went straight to court.^{xi} Young people who were diverted at their first, second and/or third contact with police:

- Were significantly less likely to have contact with the justice system within two years
- Had significantly fewer contact events within two years
- Took significantly longer to have further contact with the justice system.

It should be noted that police diversions are offered to Aboriginal and/or Torres Strait Islander children and young people at a substantially lower rate (26.3%) compared to all children and young people aged 10-18 (39.2%).^{xii}

In our experience, a youth-friendly and integrated response between community services like BYS and youth justice works best for young people. As a youth-centric service that sits outside the youth justice system, we can build trusting relationships with young people in a way that is often difficult for youth justice workers. With permission from the young person, youthworkers and youth justice workers can collaborate to assess risk, check-in with young people, share information, and intervene when a young person is at risk of being returned to detention. Bail officers, for example, see the support provided by youth services as a protective factor as they know the young person has at least one positive influence working to limit future contact with the justice system.

Such cross-sector wrap-around supports need to continue when young people are in detention so they can maintain meaningful connection to family, community, and culture and have an easier transition back to community on release. With two new youth detention centres scheduled to be built in Queensland, detention can provide an excellent opportunity to deliver more therapeutic interventions to young people. However, programs need to be well resourced and funded, and there also needs to be greater support for the families of young people in detention. The investment would need to be made now but would pay off in the long term.

One promising trauma-informed psycho-educational intervention aimed at addressing the use of either adolescent to parent violence or intimate partner violence by young people is the K.I.N.D program. K.I.N.D was designed by forensic psychologists from Youth Justice South Australia and aims to reduce violence while increasing connection and strength within relationships. BYS commenced delivery of the K.I.N.D program in July 2021. We recently worked with a young person who was able to avoid a custodial sentence (and therefore continue to provide full time care for his child) after

completing the K.I.N.D program to address his use of violence. Another participant reported to us that:

“KIND taught me a lot about myself – more than I already knew. It helped me to get a better understanding of how to deal with my anger. It gave me a lot more skills to deal with the things that are going on in my life and the tools to succeed in life instead of failing all the time.”

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?

Queensland has the second highest rate of community supervision (16.6 per 10,000) and detention (4.8 per 10,000) of young people aged 10-17 in Australia.^{xiii} For comparison, the lowest rate of community supervision (4.6 per 10,000) and detention (1.3 per 10,000) are in Victoria and are around one quarter and one third of the Queensland rates. Queensland also has the second highest rates of community supervision and detention of Aboriginal and/or Torres Strait Islander young people. A national approach to youth justice could lead to more equitable outcomes for young people across the country. However, when federal policy responses are very high level, they sometimes have limited state level influence, and the money spent on reform could have more impact when directed towards a state-based response.

In terms of next steps, engagement with young people with a lived experience of youth justice systems is crucial for informing any future actions that arise from this project.

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^{ix} Productivity Commission. (2023). *Report on Government Services 2023: Part F, Section 17*. Australian Government Productivity Commission: Canberra, Australia. Retrieved from: <https://www.pc.gov.au/ongoing/report-on-government-services/2023/community-services/youth-justice>

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