

Australian Human Rights Commission June 2023

Youth Justice and Child Wellbeing Reform across Australia

Submission from the Centre for Excellence in Child and Family Welfare

The Centre for Excellence in Child and Family Welfare (The Centre) is the peak body for child and family services in Victoria, representing more than 150 community service organisations, students, and individuals working across the continuum of child and family services, from prevention and early intervention to the provision of out-of-home care. Many of our members work with children and young people who have experienced significant childhood adversities and who have become caught up in the youth justice system.

The Centre welcomes the opportunity to respond to the Commission's Youth Justice and Child Wellbeing Reform project. A body of evidence highlights the importance of focusing on the diversion, rehabilitation, and reintegration of young people known to the youth justice system. Rather than attributing interaction with police or the court system to an individual's 'bad choices', it is critical to understand that environment and personal circumstances have a significant impact on children and young people's interaction with the criminal and youth justice systems. Our submission examines a range of these factors and evidence-informed solutions.

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

Young people caught up in the youth justice system have often experienced trauma, misuse of drugs or alcohol, disengagement from school, parental incarceration, parental substance abuse, homelessness or insecure accommodation, and high rates of child maltreatment and neglect.¹ These young people have multiple co-occurring needs and require therapeutic supports.²

The primary causes of offending are often connected to a young person's overall experience of social and economic disadvantage. Aboriginal and Torres Strait Islander children and young people, and children and young people from culturally and linguistically diverse (CALD) communities are two of the most overrepresented groups in youth justice.³ Children and young people from regional, remote and low socioeconomic areas, and those who experience developmental challenges, are also at increased risk of contact with the youth justice system.⁴ Children who have been in care, frequently experiencing cumulative harm across their lives, also comprise a significant minority of the young people who end up in youth justice.⁵

Young First Nations people make up 5.8 per cent of all young people aged between 10-17 in Australia but make up 49 per cent of all young people in detention.⁶ While data varies across Australia, First Nations young people continue to be overrepresented in the criminal justice system in all states. They also experience higher

¹ Australian Institute of Health and Welfare (2022). Australia's Children: Children under youth justice supervision, Web report, Australian Institute of Health and Welfare.

² ACT Children and Young People Commissioner (2016). Children and young people with complex needs in the ACT youth justice system, ACT Human Rights Commission.

³ WEstjustice (2021). Inquiry into Victoria's Criminal Justice System, Submission No 41.

⁴ Save the Children and 54 Reasons (2023). Putting Children First: A rights respecting approach to youth justice in Australia, p. 22.

⁵ Baidawi, S. and Sheehan, R. (2019). 'Cross-over kids': Effective responses to children and young people in the youth justice and statutory Child Protection systems. Report to the Criminology Research Advisory Council. Canberra: Australian Institute of Criminology

⁶ Aboriginal and Torres Strait Islander Health Performance Framework, Determinants of Health (2023) Contact with the criminal justice system, Australian Institute of Health and Welfare.

rates of psychological distress than their non Aboriginal peers.⁷ A 2021 investigation by the Commissioner for Children and Young People found that Aboriginal children and young people in the youth justice system 'are likely to have experienced greater cumulative adversity compared to their non-Aboriginal counterparts'.⁸ This includes intergenerational trauma arising from state-inflicted interventions which have broken links to family, community, culture and Country. Aboriginal children and young people interviewed by the CCYP told of having little or no early services and supports available to them and their families during childhood which could potentially have prevented the trajectory into youth justice.⁹

Young people from particular culturally and linguistically diverse (CALD) communities are also significantly overrepresented in the youth justice system.¹⁰ Almost one quarter of the Victorian youth custodial population are non-native English speakers, and the number of young people from a CALD background who are involved in the justice system in Victoria is believed to be under-reported.¹¹ Youth offenders from CALD backgrounds, like their Australian-born peers, can often come from backgrounds with experiences of poverty, family dysfunction, trauma relating to dislocation and persecution in their country of origin, substance abuse, or other forms of disadvantage. Challenges and hardships relating to the migrant experience, such as financial stress, cultural differences, limited social supports, mistrust of authority figures, language barriers and trauma can collectively place a young person at risk of engagement with the youth justice system. Other factors such as misunderstanding of Australian laws, experiences of racism and cultural disengagement, can potentially increase the risk of young multicultural Victorians offending, as can educational disengagement and exclusion.¹²

Young people in Out of Home Care are also over-represented in the criminal justice system, with one study of 'cross-over children' finding that around 22 per cent of 300 children appearing before the Children's Court of Victoria were current or past clients of child protection.¹³ Research shows that children and young people who have been in care are more likely than their peers to have experienced trauma and abuse, health conditions, homelessness, educational disengagement and have youth justice reports on file.¹⁴ One key driver of criminalisation of care-experienced children is the lack of effective management of challenging behaviour.¹⁵ Lack of continuity of care, placement breakdown, undiagnosed disability or developmental conditions can all be expressed as challenging behaviours that can lead to contact with the youth justice system.

These cohorts of young people are overrepresented in the youth justice system and their wellbeing needs must be considered in any potential reforms to be developed and implemented by government.

⁷ ACT Children and Young People Commissioner.

⁸ Commission for Children and Young People (2021). Our youth, our way: Inquiry into the over-representation of Aboriginal children and young people in the Victorian youth justice system, Commission for Children and Young people, p. 22.

⁹ Ibid, p. 23.

¹⁰ Shepherd, S. (2021). Working With At-Risk Culturally and Linguistically Diverse Young People in Australia: Risk Factors, Programming, and Service Delivery (2021). *Criminal Justice Policy Review*, vol. 32 (5), pp. 469-83.

¹¹ Ibid.

¹² Centre for Multicultural Youth (2021). Uneven justice: Addressing multicultural youth overrepresentation in the Victorian youth justice system, Youth Justice Briefing Paper, https://www.cmy.net.au/wp-content/uploads/2021/10/CMY_Uneven-Justice_Briefing-Paper_11-October-2021.pdf (viewed 16 June 2023).

¹³ Baidawi and Sheehan.

¹⁴ Colvin, E., Gerard, A., and McGrath, A. (2020) Children in out-of-home care and the criminal justice system: A mixed method study, Report to the Criminology Research Advisory Council, Canberra: Australian Institute of Criminology.

¹⁵ Ibid, p. ix.

Recommendations for consideration:

1. Youth justice systems need to be centred on the principles of prevention and early intervention, to divert a young person's trajectory, and make sure they are supported appropriately to live healthy lives away from the justice system.
2. The system must be trauma-informed and designed with the needs of children and young people in front of mind, recognising the complexities that bring them to be engaged with the system in the first instance.
3. There needs to be greater investment in building communities' capacity to adopt a place-based justice reinvestment approach to address the interconnected social determinants of offending and reoffending.
4. Cultural awareness and cultural safety training should be undertaken by all youth justice employees working directly or indirectly with young people.

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?

The youth justice system needs to address the underlying contributing factors that lead to a young person's offending by providing culturally safe and therapeutic supports, early in life and early in need, to change the young person's trajectory. However, the system is not developed with the needs of children and young people in mind. It does not consider the impact on a developing brain and the lifelong harms that exposure to the justice system will have. These systems are created with an adult-lens, and for the rights of children and young people to truly be upheld and protected, a child's rights approach to justice must be developed and implemented.¹⁶

The younger children are at the time of their first sentence, the more likely they are to have a background known to child protection.¹⁷ These young people are vulnerable, and often have serious trauma that is further compounded by interaction with the youth justice system. If these young people are not diverted from the system with early interventions, diversionary programs and services, and wrap-around supports, Sentencing Advisory Council research has shown that they are more likely to reoffend, reoffend violently, and continue reoffending into the adult criminal jurisdiction – and will be sentenced to imprisonment in an adult court before their 22nd birthday.¹⁸ There is an urgency to address the concerns around the treatment of young people in the youth justice system, and to make sure that prevention and early intervention are central to reforms.

The Centre regards the opportunity to listen to the diverse voices of lived experience as a unique opportunity to shape the lives of children and divert them from youth justice. Children and young people with youth justice experiences have an important perspective on how policy decisions affect them and the community they identify with. These young people should be invited to the decision-making table, with the understanding that there is mutual responsibility in the reforms.

The 2022 Lived Experience Voices report indicates that young people do not feel adequately supported to transition from youth justice to independent living arrangements.¹⁹ The system gaps identified in this report highlight the lack of awareness of services and supports available to young people leading up to their

¹⁶ Save the Children and 54 Reasons.

¹⁷ Sentencing Advisory Council (2019). Crossover Kids: Vulnerable children in the Youth Justice System, Report 1.

¹⁸ Ibid.

¹⁹ The Constellation Project (2022). Lived experience voices: Insights into young people's transition from the child protection and youth justice system in South Australia and the intersections with homelessness. https://theconstellationproject.com.au/wp-content/uploads/2022/11/Lived-Experience-Voices-Report_1122-1.pdf

transitional period, and the absence of appropriate planning. National principles to support greater consistency in leaving care plans should be established based on consultation with young people. Co-developed and timely plans would better support young people transitioning from youth justice settings and decrease the risk of reoffending.

Many young people who come into contact with the criminal justice system have been excluded from education settings. A 2017 Ombudsman Victoria investigation into Victorian government school expulsions found that 60 per cent of those in the youth justice system had previously been suspended or expelled from school.²⁰

A central value of the youth justice system should be keeping children and young people connected to their families, their communities and cultures, and close to schools and recreational activities – these things combined can provide healthy environments for young people to thrive. Exclusion from social settings such as schools increases the risk of a young person entering the youth justice system. Education also plays an important pathway to rehabilitation, decreasing offending and reoffending rates of at-risk young people by providing the critical support, structure and care at-risk youth need to live their life to its fullest potential.²¹ The Jesuit Social Services study tour in 2017 visited a wide range of youth detention facilities and diversion programs and found a strong focus on education and re-socialisation in the justice systems they examined.²²

The Victorian Ombudsman pointed to the LOOKOUT Centres, Navigator Program and Education Justice Initiative as examples of positive programs which have been effective in assisting particularly vulnerable groups and keeping them in education. The Centre’s Raising Expectations program, a collaboration between the Centre, La Trobe University, Federation Australia University and Swinburne University, has also been successful in changing expectations and aspirations in relation to what care-experienced children can achieve in education and supporting care-experienced young people to access post-secondary pathways.²³ Evidence-based programs like Multisystemic Therapy (MST) and Functional Family Therapy (FFT), which deliver intensive, home-based support to families to address young people’s behaviours and issues, have been shown to help decrease the likelihood of young people offending or re-offending through the intensive support provided to families to address young people’s behavioural challenges.²⁴

Recommendations for consideration:

5. Adopt a child rights approach to youth justice, with the best interests of the child truly at the heart of decision making.
6. Ensure young people’s views are reflected in the design and delivery of programs aimed at diverting children and young people from contact with the youth justice system and at reducing recidivism.
7. Continue to invest in programs that work, such as the Lookout Centres, Navigator Program, Education Justice Initiative, Raising Expectations, and evidence based programs like MST and FFT.

²⁰ Victorian Ombudsman (2017). Investigation into Victorian government school expulsions. Melbourne: Victorian Ombudsman.

²¹ Jesuit Social Services (2017). Justice Solutions Tour: Expanding the conversation. <https://cdn.jss.org.au/wp-content/uploads/2022/12/19160846/SUB-170623-Solutions-Tour-Long-Report-v.15.pdf> (viewed 16 June 2023).

²² Ibid.

²³ See <https://www.cfecfw.asn.au/raisingexpectations/>

²⁴ Department of Justice and Community Support (2022). Diversion: Keeping young people out of youth justice to lead successful lives, Victorian Government. <https://files.justice.vic.gov.au/2022-03/Youth-diversion-statement.pdf> (viewed 17 June 2023).

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?

For Aboriginal and Torres Strait Islander children and young people, any reforms must be underpinned by the principle of Aboriginal self-determination and partnerships with communities must be at the core of these changes if they are to be successful.²⁵

First Nations led programs, such as the Maranguka Justice Reinvestment Project, encourage self-determination while addressing the over-representation of Indigenous youth in youth justice settings.²⁶ The project uses a 'collective impact approach' with sectors and systems collaborating to support young people at risk.²⁷ An impact assessment of the program found that serious offending was reduced by 38 per cent while school student retention rates were increased by 31 per cent.²⁸ Programs like this highlight the need for ongoing funding commitments from all levels of government. Justice reinvestment projects support the principle of self-determination while redistributing funds in community service areas of elevated risk, often addressing the root causes of offending.

An evidence-based therapeutic program called Transition to Success (T2S) is offered by the Queensland Department of Youth Justice.²⁹ It aims to prevent young people from entering or continuing to engage with the criminal system. T2S employs a paradigm of therapeutic services and vocational training with young people aged 15 to 18 who are involved in, or are thought to be at risk of entering, the juvenile justice system. T2S provides young people with the chance to learn nationally recognised certificate qualifications, set goals for their future and build the social, cognitive, and behavioural skills they need to attain and maintain further education and employment.

Real and long-lasting change requires both addressing the structural causes of inequality and enabling local organisations to bring about change that matters.

Recommendations for consideration:

8. All responses to issues relating to youth justice need to be trauma-informed, with each young person's unique experiences considered and approached in a strengths-based way.
9. Continue to invest in proven and promising prevention, early intervention, and diversionary programs that support self-determination, engage with local communities and are informed by the lived experience of young people.

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?

The Centre can see several benefits in adopting a national approach to youth justice and child wellbeing reform.

One benefit from a national approach to youth justice reform is a more consistent approach to raising the age of criminal responsibility. At present this is not uniform across the country, and most states and territories are behind the minimum age of criminal responsibility recommended by a body of international evidence and

²⁵ Department of Justice and Community Safety (2020). *Victorian Youth Justice Strategic Plan 2020-2030*, Victorian Government.

²⁶ KPMG (2018). Maranguka Justice Reinvestment Project: Impact assessment, <https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf> (viewed 14 June 2021).

²⁷ Allison, F (2022). Redefining Reinvestment. An opportunity for Aboriginal communities and government to co-design justice reinvestment in NSW. Final Report. Just Reinvest NSW.

²⁸ KPMG 2018.

²⁹ Information about this program can be found at: <https://www.qld.gov.au/law/sentencing-prisons-and-probation/young-offenders-and-the-justice-system/youth-justice-community-programs-and-services/t2s/about-transition-2-success>

research. The age of criminal responsibility is an important factor when considering child wellbeing in the context of youth justice. The United Nations recommends 14 years as a minimum age of criminal responsibility and specifies it should continue to be raised, ideally to 16 years of age.³⁰ In Australia, a child as young as 10 years of age could enter the youth justice system, despite having a significant amount of growth and development still ahead of them. It is imperative that young people receive the therapeutic supports they need to grow up safe, healthy, and able to reach their fullest potential. A national approach to the criminalisation of children could encourage states and territories to make this commitment.

Australia currently lacks a national framework for restorative justice with states and territories having their own legislation and approaches. A restorative justice system that truly has the best interests of the child or young person at heart must focus on planning for wrap-around supports to be available once a young person leaves custody and reintegrates back into their community. Without consistent access and tailored supports to purposefully engage the young person away from reoffending, it is more difficult to rebuild connections with family, culture, community, and education.³¹ Restorative justice approaches offer an alternative method of justice for young offenders and offer potential benefits for victims, young offenders and the community.³² A national, culturally appropriate, framework means that access to the restorative justice system would not depend on the jurisdiction the young person resides in and could also be appropriate for First Nations communities.

The Federal government can work with the state and territory governments to develop and resource their youth justice systems, so that children and young people who engage in offending behaviour can get the therapeutic and rehabilitative assistance they need, which should be place-based and specific to the needs of communities and young people.

The federal government can also support the states and territories to work together on a coordinated services response to youth justice and can steer the national priorities to focus on primary prevention and early intervention.

Recommendations for consideration:

10. Consistent with international evidence, raise the minimum age of criminal responsibility to 14 years across all Australian states and territories.
11. As part of health and wellbeing reform implementation for the youth justice system, address offending drivers and focus on rehabilitation and reintegration post-custody.
12. Adopt a national approach to youth justice to shape the national conversation around the importance of prevention and early intervention and provide resources and support to the states and territories to enable them to implement evidence-informed programs and approaches.

³⁰ UNICEF (2023). Minimum age for criminal responsibility.

³¹ Save the Children and 54 Reasons, p. 58.

³² Sewak, S., Bouchahine, M., Liong, K., Pan, J., Serret, C., Saldarriaga, A., Farrukh, E. (2019), Restorative justice: Lessons from Australia, A Report for HAQ Centre for Child Rights, <https://haqcrc.org/wp-content/uploads/2019/07/restorative-justice-in-australia.pdf> (viewed 17 June 2023).