

# Youth Justice and Child Wellbeing Reform

## Submission to the National Children's Commissioner (September 2023)

### Introduction

The Centre for Innovative Justice (CIJ) welcomes this opportunity to engage with the Australian Human Rights Commission and the National Children's Commissioner about opportunities for reforming youth justice and related systems. In sharing our insights about ways to reduce children and young people's involvement in the youth justice system, we draw on over ten years of experience researching and advocating for innovative justice approaches.

This submission is informed by the CIJ's recognised and longstanding work in the fields of family violence and crime victimisation. We understand the extensive overlap between people with experiences of trauma and those who come into contact with the criminal justice system as offenders. We also understand, and have heard first-hand through our research, how failures of the system to respond to or even recognise these experiences, can propel people into trajectories of further harm, both to themselves and others.

This inquiry comes at a time when there has been significant youth justice reform across jurisdictions and a strengthened political imperative to raise the age of criminal responsibility - yet Australia remains out-of-step with best practice and international law.<sup>1</sup>

The CIJ's work was founded on the belief that the criminal justice system has the potential to function as a positive intervention in peoples' lives, rather than compounding their experiences of harm and disadvantage.

For this to be realised for children and young people, Australia's justice system must turn away from a punitive and reactive approach to a focus on child wellbeing and welfare.

### Factors contributing to children and young people's involvement in youth justice systems in Australia

A range of complex and intersecting historical, environmental and systemic factors can contribute to a child or young person coming into contact with the youth justice system. While not an exhaustive list, some key factors highlighted by the CIJ's work are set out below.

#### Experiences of trauma drive contact with the youth justice system

A substantial body of research, both internationally and within Australia, demonstrates a link between cumulative experiences of trauma in childhood and adolescence, and a range of behavioural or developmental problems and subsequent involvement with the youth justice system.

Many of the young people charged, remanded or sentenced in a criminal justice process have complex and compounding experiences of violence and abuse, mental ill-health, disability, substance misuse, isolation from community and school, and homelessness.<sup>2</sup>

In Victoria, which has the lowest rates of youth justice involvement in Australia, two-thirds of young people in detention are themselves victims of violence, abuse or neglect.<sup>3</sup>

Similarly, a study of justice-involved young people in Queensland and Western Australia found that three-quarters of those surveyed had experienced some form of non-sexual abuse.<sup>4</sup>

The CIJ's extensive research in the family violence and victimisation context similarly highlights how such experiences can drive young people into contact with the justice system.

[The CIJ's evaluation](#) of a program delivering early, pre-court support for young people listed as the respondent on a protection order, for example, found that almost 70 percent of program participants had experienced or been exposed to violence or violence supportive behaviours.

Crucially, this included a small number of young people who were misidentified as the predominant aggressor – resulting in a justice response being imposed on children and young people who were themselves experiencing adult-perpetrated violence from a parent.

Consistent with these findings, exposure to family violence and trauma emerged as perhaps the most-prominent theme of the CIJ's [Positive Interventions for Perpetrators of Adolescent violence in the home \(AVITH\)](#) and [WRAP around families experiencing AVITH: Towards a collaborative service response](#) projects.

With the former involving an in-depth review of 385 legal case files of young people using violence in the home, and the latter involving a review of 33 family case files from a holistic, early intervention program for families experiencing AVITH, as well as interviews with program clients and focus groups with 75 practitioners working in this area, both projects identified childhood trauma as being a major contributor to young people's use of violence in the home.

This was in part as a result of social learning, in which young people are exposed to intimate partner violence that they then copy, but also as a result of the "significant impacts that trauma has on a child's ability to learn, communicate and regulate emotions and behaviour".<sup>5</sup>

In addition to adult-perpetrated family violence, this research also described intersecting traumatic experiences such as families fleeing persecution; families living in a refugee camp; young people witnessing a parental suicide attempt; the loss of a parent or loved one (in one case to COVID-19), combined with lockdown; and family separation, child removal and adoption.<sup>6</sup>

### Intergenerational trauma and justice system involvement

#### Intergenerational incarceration disrupts parent-child relationship

Citing the CIJ's [Leaving Custody Behind paper](#) and [submission](#) to the *Legal and Social Issues Committee Inquiry into Children Affected by Parental Incarceration*, a recent report by the Committee for Economic Development of Australia noted, "too many people – in particular a growing number of women – are becoming trapped in a system that is perpetuating the disadvantage that brought them into the system in the first place".<sup>7</sup> This cycle captures not only the individuals themselves but also their children and families, contributing to an intergenerational transmission of disadvantage and system involvement that has significant impacts for the health and wellbeing of young people.<sup>8</sup>

Between 2009 and 2019, the female prison population has increased at a faster rate than the male population.<sup>9</sup> This has significant implications for children and young people, as women in prison are more likely than men to be the primary carer of dependent children or other family members.<sup>10</sup>

The fall-out from this trend is felt more acutely within First Nations communities, with Aboriginal and Torres Strait Islander women representing the fastest growing cohort in Victorians prisons,<sup>11</sup> despite potentially having the care of additional children because of cultural obligations and kinship structures.<sup>12</sup>

As noted in the CIJ's [submission](#) to the *Legal and Social Issues Committee Inquiry into Children Affected by Parental Incarceration*, children of incarcerated parents experience greater developmental vulnerability across multiple domains, as well as increased disruption to their living arrangements, schooling and broader family and social networks. Further, children of imprisoned women are shown to be at an increased risk of criminalisation themselves, especially if they are taken into care of the state.<sup>13</sup>

Research conducted by the CIJ – in partnership with Djirra, to inform the development of a culturally responsive residential program for Aboriginal women in contact, or at risk of contact, with the justice system – highlighted the need to adopt a gender-specific and whole-of-family lens when seeking to respond to women's justice system contact. As emphasised by justice-involved Aboriginal women consulted through the project, this includes, developing models which promote family reunification and connection, as well as a focus on parenting skills.

### Contact with the justice system (and adjacent systems) can compound, rather than disrupt, trajectories of harm

The current youth justice system is not designed to respond appropriately to the nexus between young people's experiences of trauma and any subsequent offending. In many regards, engagement with the youth justice system (and adjacent systems) can deepen the challenges faced by young people and have a (re)traumatising effect that is in turn connected to ongoing offending.

### Child Protection is a well-recognised pathway to the youth justice system

Young people who have been in the out-of-home care system are criminalised at disproportionately high levels, with Child Protection involvement regarded by many in the sector as a 'pipeline' to the criminal justice system.<sup>14</sup>

Evidence confirms this. A recent nation-wide study found that more than 50 percent of young people involved in the justice system in Australia have had some involvement with Child Protection, while 21 percent had at least one out-of-home care placement.<sup>15</sup> The 'pipeline' effect is particularly pronounced for young people in residential care, more than half of whom require legal support with criminal charges within a year of their placement in a residential facility.<sup>16</sup>

Research by the CREATE Foundation has found that many young people in residential care interact with the justice system because of minor offences like fare evasion or stealing confectionary. This offending is often welfare motivated, such as breaking into a building to sleep because of homelessness. For others, justice involvement results from acts committed in residential care, such as minor property damage, that for most young people in a home environment would not result in police involvement.<sup>17</sup>

### Criminal justice involvement can increase reoffending

The criminal justice system itself is, in many cases, a self-perpetuating driver for criminalised behaviour and detention. A 2016 report by the Sentencing Advisory Council (SAC) found that, rather than reducing reoffending, early contact with the formal justice system is associated with subsequent and more significant offending.

The SAC's analysis of Victorian data found that, the younger a child is at their first sentence, the more likely they are to reoffend; to reoffend violently; to continue offending into the adult jurisdiction; and to be imprisoned in an adult prison by the age of 22.<sup>18</sup>

This is supported by data released in early 2023 by the Productivity Commission, which indicated that over 50 percent of young people released from sentenced supervision in 2019-20 returned within 12-months.<sup>19</sup>

These findings are consistent with a significant body of literature which suggests that the justice system is itself criminogenic – that is, it encourages and reinforces offending behaviour.<sup>20</sup>

Independent reviews and inquiries in multiple Australian jurisdictions, including Victoria, Queensland and the Northern Territory, have shown that youth detention facilities are not safe or appropriate environments for young people.<sup>21</sup> These inquiries have revealed the unacceptable use of restraints and force; extended periods of solitary confinement and isolation; and substantiated accounts of abuse and mistreatment including verbal abuse, racist remarks, physical abuse and humiliation.<sup>22</sup> The Northern Territory Royal Commission concluded that its youth detention centres were ‘not fit for accommodating, let alone rehabilitating, children and young people.’<sup>23</sup>

Despite the growing consensus that we “cannot imprison our way to a safer society”,<sup>24</sup> multiple jurisdictions have recently opened or announced new youth detention facilities.

More concerning, pressures on the Youth Justice system across multiple jurisdictions – including Victoria,<sup>25</sup> Western Australia<sup>26</sup> and, most recently, Queensland<sup>27</sup> - have been used as justification for children and young people being relocated to settings designed for adult offenders, ignoring and further compounding the factors that brought them into contact with the system in the first place.

Even where juvenile detention facilities are designed to meet basic human rights standards, placement in a custodial environment is harmful to young people. Custodial facilities can function as a ‘criminal learning environment’,<sup>28</sup> particularly for very young people, who may then engage with older, more prolific, and serious offenders.

Young people in detention are also removed from their support networks and have their family life and education disrupted.

Further, when the justice system removes Aboriginal and Torres Strait young people from their families, communities and Country, it compounds trauma already felt by the ongoing impacts of dispossession and statutory child removal.<sup>29</sup>

### **Young people are not adequately supported to return to community, increasing recidivism**

Young people released from detention commonly face difficulties re-integrating (or integrating) into the community as the rupture of detention leaves many unemployed or disengaged from learning; disconnected from the positive attachments of family, community, and culture; and at an increased risk of homelessness and recidivism.<sup>30</sup>

#### **Current project**

Reflecting the importance of effective and supported transitions back to the community, the CIJ is currently scoping research, in partnership with Parkville College, to improve understanding of the transitional support needs of young people exiting custody. Preliminary consultations and an evidence review have highlighted the importance of education, on-the-job work experience, practical skills, and other forms of support, such as mentoring and system navigation, to support young people to build pathways outside the youth justice system.

### **Cohorts of young people disproportionately represented in youth justice**

#### **Young people with Disability**

Substantial research points to the high prevalence of cognitive disabilities, as well as neurodiversities, among young people engaged with the youth justice system. International and Australian studies have consistently reported that up to one in three young people involved in the justice system will have a significant intellectual or cognitive disability, including attention deficit hyperactivity disorder (ADHD), traumatic brain injuries and foetal alcohol spectrum disorder (FASD).<sup>31</sup>

Young people with cognitive impairment are at greater risk of poverty, more likely to have poor educational outcomes, and are subject to greater stigmatisation and violence than their peers<sup>32</sup> - all of which increases their risk of criminal justice involvement. Cognitive impairment can also impact a young person's reasoning, problem solving, learning and social abilities. This in turn makes it difficult for them to manage their behaviours, resulting in what one researcher has described as 'the criminalisation of disability and disadvantage'.<sup>33</sup>

This remains a reoccurring theme across the CIJ's AVITH research; that responses to young people with disability often fail to recognise its impact on their behaviour, capacity to regulate emotions and to express themselves. What results is a family violence, and ultimately justice, response to an issue that needed a disability lens, as described by one practitioner in the WRAP project:

*"Some of them were really inappropriate referrals. So like we've got kids that are like, you know, incredibly low IQ, with specialist school history ... sexual abuse, who've ended up in the program. Like that young person had no capacity to even understand why the behaviour was not okay."*

#### Young people with mental health concerns

Mental health issues and psychosocial disability are also prevalent among justice-involved young people. A recent Australian study indicated that more than half of justice-involved young females experience high or very high levels of psychological distress (compared with 35 per cent in the general community), while for justice involved young males, the rate was almost twice as high (33 per cent compared with 17 per cent of their counterparts in the community).<sup>34</sup>

The CIJ's work in the AVITH field has similarly identified the prevalence of mental health needs among this cohort, including depression, anxiety and suicidal ideation, as well as potential diagnoses of psychosis, paranoia and bipolar disorder. A program evaluation conducted by the CIJ, for example, found that young people's use of violence often occurred alongside self-harm and suicide ideation, thus requiring a mental health, rather than family violence, response.<sup>35</sup>

It is also important to consider the devastating impacts of the COVID-19 pandemic on mental health and the subsequent implications for youth offending. Research has identified a range of potential negative impacts for children being confined to their homes during the pandemic,<sup>36</sup> particularly in the Victorian context. These range from reductions in physical exercise and poorer diets;<sup>37</sup> an increase in screen time and irregular sleep patterns; to disrupted education;<sup>38</sup> entrenched inequalities; deteriorating mental health, including increased anxiety; and, most worryingly, increased vulnerability to neglect and abuse.<sup>39</sup>

The CIJ's own [research into experiences of family violence in the context of COVID-19](#) similarly highlighted these negative impacts, with one practitioner describing it as a period of "unchartered turbulence for families".<sup>40</sup> An area of particular concern revealed in the research was the link between a young person's exposure to online environments and the severe and acute mental health issues with which they were presenting to services.

This was further supported by the CIJ's [Behind Closed Doors paper](#) (2020), which described a noticeable "net-widening" whereby young people who had not previously been in contact with the law were propelled into a legal response because of behaviour which had developed or escalated during COVID-19.

## Aboriginal and Torres Strait Islander young people

Although the majority of Aboriginal and Torres Strait Islander children and young people are being raised in safe environments and will never offend, Aboriginal young people are vastly over-represented in both the Child Protection and the youth justice systems.

These startling statistics should be contextualised within the systemic, historical and ongoing acts of colonisation in this country which have compounded across generations to perpetuate economic, social and health inequity.<sup>41</sup>

The fact that Aboriginal young people face differential treatment from the youth justice system has been well documented<sup>42</sup>. Systemic racism within and beyond the criminal jurisdiction means that Aboriginal and Torres Strait Islander young people are less likely to be cautioned;<sup>43</sup> often receive harsh sentences for minor offences; receive limited access to diversionary options; and are more likely to be processed through the courts than non-Aboriginal young people.<sup>44</sup> As a result, Aboriginal and Torres Strait Islander young people currently comprise 56 percent of Australian youth prison populations and are 26 times more likely to be in detention than their non-Aboriginal peers.<sup>45</sup>

The cyclical contact with the Child Protection and criminal justice systems is further exacerbated by broader system failures to support the wellbeing and welfare needs of Aboriginal children and their families.

Research conducted by the CIJ - in partnership with Djirra, Dardi Munwurro and Elizabeth Morgan House Aboriginal Women's Services (EMHAWs) – which involved yarns with 26 Aboriginal people who had experienced crime victimisation confirmed an absence of culturally responsive, specialised services to address the needs of Aboriginal people.

This system gap was compounded by chronic under-resourcing of the Aboriginal Community Controlled Organisations (ACCO) sector, which meant that many Aboriginal people were falling between gaps or not able to receive holistic, timely and flexible support. Young people were often particularly lost in the service response, resulting in a “revolving door” of contact with the criminal justice system. As one yarning participant in the research described:

***“My [son] ... He’s very smart, very switched on. I had to rely on him a lot, you know, when we were escaping ... he copped severe abuse himself ... he knew what was going on ... because of his upbringing he went bad for a while. He did a lot of crime and drugs and I think that was just because of the pain that he was carrying inside ... he should have had counselling, he should have been offered that.”***

## Culturally and linguistically diverse young people

Children and young people from culturally and linguistically diverse backgrounds are yet another cohort disproportionately represented in Australia’s youth justice system. Māori, Pacific Islander and South Sudanese young people are particularly over-represented<sup>46</sup> but, as the Centre for Multicultural Youth noted, “the phenomenon of overrepresentation isn’t new – while the faces and names of young multicultural offenders may have changed over time, their negative and racialised experiences and outcomes in our justice system have persisted.”<sup>47</sup>

In Victoria, young people from CALD backgrounds represent 39 percent of the youth prison population,<sup>48</sup> with the intersection of complex life experiences, poorer socioeconomic outcomes, marginalisation and racism coalescing to contribute to their risk and vulnerability.<sup>49</sup>

Migration and refugee experiences have known impacts for children and their families. Community dislocation, family fragmentation, intergenerational trauma as well as limited social, economic and cultural capital can all contribute to this cohort of young people's involvement with the youth justice system.

### Current project

The CIJ has a long-standing relationship with Himilo Community Connect and is now undertaking an evaluation of their 'At-Risk Youth Panel' which delivers early intervention activities and a pre charge and post charge diversion program for Somali Australian youth in northern metropolitan Melbourne. Insights from this project will contribute to the evidence base of culturally responsive and community-led approaches to address youth crime and reduce recidivism.

### Service system gaps that contribute to youth justice contact

#### Justice-involved young people previously invisible to the system

Some cohorts of young people are invisible to the system until the point that their offending brings them into the sharp focus.

Despite the well documented links between trauma, family violence and juvenile offending, the service system is not designed to meet the specific needs of this cohort. The Victorian Royal Commission into Family Violence identified young people as the 'silent victims' of family violence<sup>50</sup>, and the Melbourne City Mission's *Amplify Report* found that young people's status as victims is often invisible.<sup>51</sup>

### Current project

In partnership with Melbourne City Mission, the CIJ is currently embarking on an investigation of unaccompanied children and young people leaving situations of family violence<sup>52</sup> which seeks to make their experiences visible and platform their voices. This cohort is unlikely to receive support for their experiences of trauma.<sup>53</sup> positioning them out of view from the service system until a point of crisis.

The COVID-19 pandemic further reduced the visibility of children and young people, and without the usual "umbrella" of the school system many went without having their support needs met. As one practitioner in the CIJ's [Future-proofing safety research](#) noted:<sup>54</sup>

*"But you're not necessarily then directly addressing the wellbeing concerns for the children or the behavioural concerns for the children that are coming up. And so that loss of visibility for how children are doing, not being able to go out and just see them, parents being stressed about trying to get them into sessions online and actually get them to sit in front of a screen when they're already having to do so in all other aspects of their life."*

#### Those visible to the system are often overserved but under-served

Young people are often engaged with a number of support services prior to their involvement with youth justice.

Across the CIJ's research, a consistent theme is the involvement of multiple services in families' lives without these services having any useful effect. Consistently, this has a detrimental impact on young people and their families.

Participants across our portfolio of research describe service fatigue, as well as the damaging impacts when service engagement is experienced as punitive or a betrayal of trust.

Wider literature acknowledges that experiencing multiple co-occurring issues can mean that the needs of young people and their families often do not fit within the remit of any single service.<sup>55</sup> Because of the way in which services are designed and funded, they often operate in siloes which are unable to respond to complex and intersecting needs holistically. As a result, young people are often passed from one service to another, leading to increasing distress and disillusionment.<sup>56</sup>

The implication for youth justice involvement, as demonstrated in the CIJ's [Victim Services Review](#), is that, when there is failure to respond to people's experiences of harm and related support needs, this often results in them re-entering the system at the 'pointy-end' through Child Protection or a criminal justice process.<sup>57</sup>

*"I have a [client] who's been repeatedly assaulted by his son who is using ice and he just wants to know how to help his child. But I'm not supposed to help his child and we aren't funded to do that... That man needs help to get his son into a residential rehabilitation program."*

### Strengthening responses to children and young people

The CIJ has identified a number of best practice principles for responding to children and young people based on its extensive portfolio of research, and importantly through direct engagement with people in contact with the criminal justice and related support systems.

Each of these are applicable across contexts and periods of engagement and align with calls for reinvestment in community-led, place-based diversion, early intervention programs and alternative justice responses.

### Trauma-informed and developmentally appropriate

The youth justice system must adopt a holistic view to addressing community safety concerns, which involves maintaining a lens on the impacts of prior and current experiences of trauma. This lens must be cognisant of the many forms that trauma takes, including migration trauma, intergenerational trauma experienced by Aboriginal and Torres Strait Islander people, and trauma stemming from interactions with the system itself.

In practice, this looks like:

- Shifting practice away from deficit-based discourse towards understanding each young person as presenting with their own story and unique set of strengths, experiences and challenges.
- Screening young people's needs and circumstances at an early entry point, and identifying opportunities for early intervention and diversion.
- A trauma-informed workforce, supported to work flexibly (and in some cases intensively) to meet the specific needs of young people throughout all stages of justice system engagement.
- Considering a young person's readiness and capacity to engage and providing opportunities for them to exercise autonomy and build trust to maximise the benefits of service contact.



### Whole-of-family

A whole-of-family approach will recognise the protective factors in many familial structures and the value of relational work to recovery and reintegration. It will also consider the needs and histories across the family and recognise that the dependent status of children and young people means that so many of the factors contributing to their home environment, behaviours and healing sit outside of their control.

In practice, this will look like:

- Interrupting intergenerational incarceration by providing opportunities for parents and care-givers to maintain or gain contact with their children.
- Working with multiple family members, for example with the young person in the context of their offending; with a caregiver regarding experiences of adult perpetrated family violence which may be impacting parenting skills; and with siblings regarding disability or mental health.
- Using a whole-of-family lens to keep potential contributors to behaviour in view, including by understanding the function of specific behaviours and their relationship to experiences of trauma and harm within the family unit, such as grief, discrimination and intergenerational trauma.

### Service Coordination

Ensuring that service engagement has a positive impact on young people, while undoing the harm caused by previous service interactions, requires practitioners to walk side-by-side with young people to navigate the system complexities and barriers.

In practice, this will look like:

- Reducing system overwhelm by identifying a service which can lead engagement with the young person, based on whichever service can best meet the young person's needs and/or has established a relationship of trust with the young person.

- Intervening to prevent youth homelessness and avoid future contact with the criminal justice system, including through the provision of wraparound supports, employment and education opportunities, throughcare and appropriate, safe and affordable accommodation. This includes providing appropriate and extended support to care leavers.
- Improving processes for information sharing within the youth justice system and adjacent systems, including key documents which should underpin trauma-informed and developmentally-appropriate responses to individual young people, such as clinical assessments, care plans and cultural plans.

### Intersectional and culturally safe

The youth justice and related systems must respond to the intersecting and layered identities of young people and their families, including through centring the experiences of Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, LGBTIQ+ families and young people, and children and young people with disability.

In practice, this will look like:

- Adopting strengths-based approaches that affirm and celebrate a young person's identity in all its forms while they are exploring and taking their place in the world.
- Investing in community-led programs and working with the young person's wider family, kinship and community networks to support prevention and early intervention strategies. This includes recognising the crucial role of mothers, grandparents and Elders in particular communities.
- Establishing effective partnerships and collaborations across services and programs, including through training, secondary consultations and co-case management, to build the capacity of services to respond to young people's needs and identities.

- Building a diverse workforce to respond to children and young people, including peer workers and practitioners from priority communities.

### A self-determined Youth Justice system

Substantial work has been carried out by the Aboriginal Justice Caucus (AJC) to reimagine the current system of youth justice in Victoria as part of the process of consultation around future reform.

This vision for a self-determined justice system<sup>58</sup> would see the progressive transfer of resources, authority and responsibilities from government to the Aboriginal community over time until the Aboriginal community has full control over all justice responses for Aboriginal children and young people.

Significant work has also been carried out by the Koorie Youth Council to centre the voices and experiences of Aboriginal children in Victoria's youth justice system as part of the [Ngaga-dji \(hear me\) Report](#).

Fundamental to achieving the Aboriginal community's vision for youth justice is the need to shift from approaches that blame, isolate and punish individual children by:

- investing in place-based cultural programs and healing practices as means of prevention and diversion; and
- developing alternative and community-led justice models to address offending behaviours.

### Raise the age of criminal responsibility

The age of criminal responsibility [should be raised](#) to at least 14 years in all Australian jurisdictions. This is to reflect the available evidence regarding brain development and cognition; to stop young people, who typically grow out of offending, from being exposed to the criminogenic effects of the criminal justice system; and to bring Australia in line with its obligations under international human rights law.

### Justice response as a last resort

International standards recognise that custody should be a last resort for young people, whether at the time of arrest, when considering bail or at sentencing stage. To achieve this, there should be an expansion of diversionary options for children and young people such as warnings or cautions. These should be viewed as an opportunity to connect young people to the supports and programs they need, with no further intervention by the formal legal system.

### The benefits of a national approach

An effective national approach to youth justice and youth wellbeing can have many benefits.

It can articulate a shared set of commitments, outcomes and targets which can be actively monitored over time and used to encourage progress and hold governments to account – as evidenced by the National Plan for Closing the Gap and associated Implementation Tracker.

A national approach may facilitate increased collaboration, with capacity for jurisdictions to share lessons on 'what works' as interventions are developed, piloted and scaled.

It can also ensure a shared, national commitment to rights-based and evidence-informed approaches. This includes an emphasis on early intervention and prevention to address the underlying factors that contribute to youth offending; a greater focus on the meaningful participation of young people in decisions which affect them; and a practical approach to implementation and action, which are core features of a child rights approach.<sup>59</sup>

At the same time, the pursuit of a national approach on raising the age of criminal responsibility has not resulted in an uplift across jurisdictions. Instead, it has contributed to delays and obfuscation by state and territory governments as discussions around a national position and approach have stalled.

Without a national consensus, different jurisdictions have opted for phased approaches or included significant exceptions, all of which fall short of international and community expectations and recognised best practice.

A national approach also requires the adoption of a position that is acceptable to all jurisdictions. This carries the associated risk that any national approach reflects the least ambitious approach rather than an uplift across all jurisdictions. Arguably, Australia already has in place an existing framework for upholding the rights of children and young people, including those in contact with the justice system. The extent to which this framework has resulted in meaningful improvements in the lives of justice-involved young people, as well as protected against breaches of young people's rights – particularly those held in places of detention – is, however, limited and out of step with international norms.

Australia ratified the UN Convention on the Rights of the Child in 1990 yet has ignored multiple calls from the relevant Committee to raise the age of criminal responsibility.

Similarly, Australia's status as a signatory to the Optional Protocol to the Convention Against Torture (OPCAT) has done little to reduce young people's exposure to harm in places of detention, with multiple Australian jurisdictions yet to designate or adequately fund their National their National Preventative Mechanisms, and the

continued adoption of a 'primary versus secondary' approach which places multiple settings in which people are deprived of liberty out of scope.<sup>60</sup>

Therefore, if a national approach is adopted, efforts to develop such an approach should be:

- timely – with a clear process and timeframes for achieving consensus;
- cognisant of existing frameworks – seeking to consolidate and strengthen existing frameworks and address key gaps, rather than duplicating efforts;
- measurable – with clear indicators for implementation and outcomes so that government action can be meaningfully assessed;
- evidence-informed – including being informed by what the evidence tells us about young people's experiences of harm and trauma, and the overlap of these experiences with subsequent offending; and
- progressively ambitious – with any resulting framework to be treated as a living document, with clear cycles for reviewing and updating the approach to ensure that it remains in step with emerging evidence.

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<sup>1</sup> Human Rights Law Centre, Major UN human rights review highlights need for Australia to raise the age of criminal responsibility (Media Release, 20 January 2021) <https://www.hrlc.org.au/news/2021/1/20/un-review-highlights-need-for-aust-to-raise-the-age-criminal-responsibility>

<sup>2</sup> Save the Children and 54 reasons, 'Putting children first: A rights respecting approach to youth justice in Australia' (2023).

<sup>3</sup> Commission for Children and Young People, Victoria State Government, 'The same four walls: Inquiry into the use of isolation, separation and lockdowns in the Victorian youth justice system' (2017).

<sup>4</sup> Carla Muerk et al, 'Changing direction: mental health needs of justice-involved young people in Australia' (2020), Kirby Institute, UNSW, Sydney.

<sup>5</sup> Campbell et al, 'The PIPA project: Positive interventions for perpetrators of adolescent violence in the home (AVITH) Research report' (2020), ANROWS Research report, Issue 04/2020, p 7.

<sup>6</sup> Campbell et al, 'The PIPA project: Positive interventions for perpetrators of adolescent violence in the home (AVITH) Research report' (2020); Campbell et al, 'WRAP around families experiencing AVITH: Towards a collaborative service response report' (2023).

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- <sup>7</sup> CEDA, 'Double Jeopardy: the economic and social costs of keeping women behind bars' (2022).
- <sup>8</sup> Ibid.
- <sup>9</sup> Australian Institute of Health and Welfare, 'The health and welfare of women in Australia's prisons' (2020)
- <sup>10</sup> Samantha Walker, Paul Sutherland and Melanie Millstead, 'Characteristics and offending of women in prison in Victoria 2012-2018' (2019), Crime Statistics Agency.
- <sup>11</sup> Corrections Victoria, Overview of female prisoners at 30 June (December 2020) <https://www.corrections.vic.gov.au/annual-prisoner-statistical-profile-2009-10-to-2019-20>
- <sup>12</sup> Lorana Bartels, 'Indigenous women's offending patterns: A literature review' (2010) Australian Institute of Criminology.
- <sup>13</sup> Debbie Kilroy, Women in Prison, Australia: Current Issues in Sentencing Conference, p. 5 (2016)
- <sup>14</sup> Sentencing Advisory Council, 'Crossover Kids': Vulnerable Children in the Youth Justice System Report 1: Children Who Are Known to Child Protection among Sentenced and Diverted Children in the Victorian Children's Court' (2019).
- <sup>15</sup> Australian Institute of Health and Welfare, 'Young people under youth justice supervision and their interaction with the child protection system 2020-2021' (2022).
- <sup>16</sup> Victoria Legal Aid, 'Care not custody: A new approach to keep kids in residential care out of the criminal justice system' (2016).
- <sup>17</sup> CREATE Foundation, Youth Justice Report: Consultation with young people in out-of-home care about their experiences with police, courts and detention (2018).
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- <sup>19</sup> Productivity Commission, Report on Government Services 2023, Part F Section 17 (2023).
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