

# Fams and Youth Action joint submission– Youth Justice and Child Wellbeing Reform across Australia

June 2023

## Acknowledgment of Country



The Gadigal people of the Eora nation are the Traditional Custodians of the land on which our offices stand, and we pay our respects to Elders past, present and emerging.

We also acknowledge the Traditional Custodians of the land on which our member organisations operate and the lands on which we travel across for our work.

## Introduction

Fams and Youth Action welcome the opportunity to present this joint submission to the National Children's Commissioner to inform Youth Justice and Child Wellbeing Reform across Australia.

We agree with the premise of this consultation, that while there has been some reform to improve youth justice systems, there remains laws, policies and practices that impact negatively on the rights and wellbeing of children and young people.

The impacts of poverty, trauma and disadvantage are leading to increasing numbers of children being involved in the child protection and justice systems. We need to invest early to disrupt this trajectory.

Reform is needed to both respond to the root causes of young people entering the justice and child protection systems and to ensure that programs and supports in place to support them are effective and responsive to their needs.

Protecting the rights and wellbeing of young people in contact with the justice system is complicated by compounding systemic disadvantage. In recent years, many of the services that these young people rely on to help them navigate this disadvantage were less available due to the pandemic.

Our consultations with young people in contact with the law, justice, and child protection systems have highlighted the complexity of issues such as mental health, family and domestic violence, housing insecurity, loss of income, disengagement from education, and experiences of trauma increase as a result of the pandemic<sup>1</sup>.

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<sup>1</sup> Youth Action, Research summary: [COVID-19 Pandemic Recovery: Young People's Perspectives](#)

We wish to stress the importance of resources being directed to addressing issues of systemic disadvantage which frequently underlie young people's involvement in justice and child protection systems as well as building workforce capacity to provide specialist culturally safe, trauma-informed, and evidence-based services to these children, young people and families.

We recommend that the following reform opportunities be prioritised:

- Greater coordination of responses and accountability by the government and non-government organisations across child protection and youth justice systems.
- Implement holistic and targeted school retention strategies to support children and young people when they are experiencing difficulties with a focus on early identification and intervention.
- Move to minimum 5-year funding cycles to support effective programs that reduce youth likelihood of entering the justice system.
- Increase access to child and youth specialist mental health support across the spectrum of mental health from early intervention and prevention through to crisis support and clinical treatment.
- Improve the availability of safe and secure housing options tailored to young people, ranging from crisis accommodation to independent living choices. This will help address the underlying factors that contribute to their entry into the justice system, as well as reduce the instances of individuals remaining in custody due to not having a home to be released on bail.
- Increase access to and resourcing of youth services to provide support and address issues that lead to young people coming into the justice system, and for those involved, to reduce the likelihood of further involvement.
- Improve workforce capability across police, education, health, justice and community services.

Overall, we wish to see greater recognition of the role of the not-for-profit sector in preventing children and young people from entering the justice system, as well as supporting them in a way that is trauma-informed, culturally appropriate and recognises the role of systemic disadvantage.

## About Fams

Fams is a New South Wales peak body that supports the not-for-profit sector to build on capacity and capability. We advocate for improved policies for children, families, communities and services.

Fams works collaboratively with Government, Policy and decision-makers, non-government organisations, academic organisations, peak bodies, family and community services sector, Aboriginal Community Controlled Organisations and organisations working with diverse communities.

Children and family's safety, health and wellbeing are at the heart of all our work. Fams is committed to children and families receiving the support they need, evidence-informed and outcomes-based service delivery, government and sector accountability and influencing policy outcomes.

## About Youth Action

Youth Action is the peak organisation representing young people and the services that support them in New South Wales. We work towards a society where all NSW young people are supported, engaged, valued, and have their rights realised.

We represent over 150 Member organisations and regularly engage with young people and youth workers from all over the state, as we have for over 30 years. We give a particular focus to young people who are regional, First Nations, LGBTIQ+, with disability, from culturally and linguistically diverse communities, including migrants and refugees, and doing it tough.

We use a rights-based lens to focus on programs, policy and advocacy that achieve meaningful outcomes, embed strengths-based approaches, and are informed by data and evidence. We are an ally to the self-determination of First Nations communities, are led by the expertise of young people and the Sector, and work to be a trust-worthy partner and collaborator.

## Response to consultation questions:

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

#### Systemic disadvantage and culturally appropriate support for young people

There is a clear and well-evidenced link between systemic disadvantage and involvement in youth justice systems in Australia, particularly for First Nations people who experience significant intergenerational trauma.

First Nations people are overrepresented in both the child protection and justice systems. This is correlated with the continuation of entrenched racism and colonial practices in Australia's justice system over the last 230 years that disadvantage First Nations people<sup>2</sup>.

In NSW, the *Independent Review of Aboriginal children and young people in out-of-home care* found that systems, policies and practices in out-of-home care and Child Protection in NSW contribute to the disproportionate number of Aboriginal children and young people in care.

Despite clear directives about the importance of consultation with Aboriginal families, and the need to work with families at all stages of the child protection continuum—from pre-entry into care to case planning to cultural planning—the Review found that caseworkers in NSW routinely failed to consult with Aboriginal children, parents, and family members<sup>3</sup>.

There is an urgent need for our child protection and youth justice systems to provide culturally appropriate support for First Nations people and children and address the root cause of systemic disadvantage.

It is imperative that programs and services for First Nations Children and Young People that come in contact with the justice system are trauma-informed, cognisant of systemic disadvantage and recognise the need for culturally appropriate support.

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<sup>2</sup> <https://www.crimejusticejournal.com/article/download/2121/1184/9876>

<sup>3</sup> <https://www.familyisculture.nsw.gov.au/?a=726329>

### Link between child maltreatment and involvement in youth justice systems

A strong body of evidence demonstrates a link between child maltreatment and youth offending. Young people involved in the child protection system are 12 times more likely than the general population to be under youth justice supervision. In 2014–16, 39.2% of the 7,185 young people under youth justice supervision were also in the child protection system<sup>4</sup>.

Young people involved in both the child protection system and under youth justice supervision are generally recognised as having a range of complex needs, including developmental trauma, challenging behaviours and mental health difficulties among others.

Importantly, the maltreatment–offending association is complex and can involve a range of risk factors, including the nature of the maltreatment and children and young people's out-of-home care experiences.

While placement in out-of-home care can help reduce the risk of offending, in some cases this risk can be exacerbated. Placement in residential care, placement instability and young people transitioning from care to independence are common factors that are associated with an increased risk of offending for maltreated young people. The Australian child welfare system has continued to operate a forensic approach to child welfare, focused on the statutory system. It follows that a system set up in this way becomes an inadvertent pipeline into the justice system due to inadequate responses to the social and systemic determinants of child maltreatment.

### Ineffective school retention strategies

When combined with systemic disadvantage, ineffective school retention strategies can be a contributing factor for young people entering the youth justice system.

Research by Youth Action points to a clear need for a more comprehensive approach to support young people to be able to engage in school when they have difficulties in their life<sup>5</sup>. The young people consulted by Youth Action as part of recent research into the aftermath of COVID-19 expressed difficulty engaging in schooling for a number of reasons, including boredom, struggling to keep up and a lack of teaching staff.

Young people in regional areas especially highlighted the fact that teachers are often teaching subjects they are not trained in and not all subjects can be offered in remote areas. Some young people suggested life skills programs that would help them develop practical skills (such as how to get a Medicare card or set up a bank account) and keep them engaged in education.

Disengagement from school is also often triggered by suspension, with many young people feeling they've been suspended for 'no reason' or feeling that they don't get along with their teachers. They also expressed that they did not feel they were given an opportunity to speak for themselves. Students most affected by school suspension tend to be those with higher and more complex needs, such as those with disabilities, experiences of complex trauma and mental health issues.

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<sup>4</sup> <https://aifs.gov.au/resources/policy-and-practice-papers/intersection-between-child-protection-and-youth-justice>

<sup>5</sup> Youth Action Research summary: [COVID-19 Pandemic Recovery: Young People's Perspectives](#)

Research<sup>6</sup> shows students who are expelled have a higher future risk of engaging in criminal and anti-social behaviour, or consuming drugs. Exclusionary school discipline is described as contributing to a phenomenon known as the “school-to-prison pipeline”<sup>6</sup>. There is an essential need for non-exclusionary responses to children and young people that address the root cause of a child’s behaviour to ensure that trauma experiences are not exacerbated, and trauma recovery not impacted.

Studies have linked school exclusion to involvement in justice system. This highlights the need to examine how social determinants for children and young people lead to contact with the justice system, and the importance of addressing systemic disadvantage.

### Increasingly negative interactions with Police

Frequently, young people in many of our consultations spoke about difficulties with police, ranging from a feeling that they are not supported by police when they need it, to feeling directly targeted<sup>7</sup>.

We have observed an increase in negative interaction between young people and police through survey feedback from Youth Action’s research, *COVID-19 Pandemic Recovery: Young People’s Perspectives*.

2. 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?

### Culturally appropriate services and programs

The need for First Nations young people to have access to services and programs provided by Aboriginal Owned and Controlled Organisations has been highlighted in our consultations with young people as well as the positive impact that can be achieved for young people in raising the age of criminal responsibility from 10 years to 14 years<sup>8</sup>.

Likewise, young people spoke about how cultural support is very important to how they feel about themselves and wanted more cultural programs taught by people from their backgrounds in schools. This was especially the case for First Nations young people who noted that they didn’t like it when ‘white’ teachers taught cultural programs because they didn’t have the right understanding.

Fams and Youth Action recommends that governments at all levels work with the youth sector and young people from socially excluded groups (regional, First Nations, culturally diverse communities, young people with disability, young people doing it tough, and LGBTQIA+ young people) to co-design a whole of Government approach to address the growing disadvantage experienced by these groups.

This should be supported by a greater commitment to Closing the Gaps targets, with concrete steps to address service gaps and deliver better outcomes for First Nations children and young people. Also critical is implementation of the landmark *Family is Culture: Independent Review of Aboriginal children and young people in out-of-home care*, commissioned by the NSW Government in 2016 to examine the reasons for the disproportionate and increasing number of Aboriginal children and young people in

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<sup>6</sup> <https://www.ed.ac.uk/news/2013/exclusionprison-280213>

<sup>7</sup> <https://publications.aap.org/pediatrics/article/131/3/e1000/30944/Out-of-School-Suspension-and-Expulsion?autologincheck=redirected>

<sup>8</sup> Youth Action Research summary: [COVID-19 Pandemic Recovery: Young People’s Perspectives](#)

OOHC in NSW. While progress on the 125 recommendations is reported on annually, there is still significant reform needed<sup>9</sup>.

### Greater support for young people who come into contact with the justice system

While there is a lot of focus on the conditions for young people in detention and minimum age of responsibility, there is also a need to prevent young people going into detention and providing the supports and services they need to get them back on track. Young people have flagged the need for greater support before and after entering detention. See Case study: [Youth Actions' Youth Justice Throughcare Initiative](#).

#### Case Study:

##### Youth Action - Youth Justice Throughcare Initiative

In response to feedback from young people requesting more help before and after entering detention, the *Youth Justice Throughcare Initiative* looks to improve supports and services for young people who come into contact with the justice system as a result of being suspected or accused of committing an offence.

This initiative looks to improve supports and services for young people before, during and after detention, with a focus on looking further into what needs to happen to stop young people coming into conflict with the law in the first place.

Our steering committee is comprised of First Nations organisations, regional service providers and NGOs across NSW who work with young people in conflict with the law. Our committees' key agreements to date include:

- There was broad agreement that there needed to be co-ordinated responses to improve supports and services for young people in contact with the justice system.
- It was agreed that the initiative would need to focus on First Nations young people as well as young people regional NSW.
- It was agreed that young people with lived experience need to be involved in determining suggested solutions.
- It was agreed that co-ordination of messages and information sharing was important and what has been missing in the current environment.
- There is a need to engage and consult more widely to support better outcomes.

We held the following roundtables and forums in 2022:

- 24 February 2022: Youth sector forum with 60 organisational representatives
- 15 March 2022: First government representatives roundtable about Information
- 11 August 2022: Youth Sector forum with 50 organisations to inform the second roundtable
- 30 August 2022: Youth Justice Throughcare Education Roundtable

<sup>9</sup> [https://www.facs.nsw.gov.au/data/assets/pdf\\_file/0004/823720/August-2021-Family-is-Culture-Response-Progress-Report.pdf](https://www.facs.nsw.gov.au/data/assets/pdf_file/0004/823720/August-2021-Family-is-Culture-Response-Progress-Report.pdf)



### Address siloes across systems and services

Collaborative approaches are needed break down the government silos that currently impede the effective delivery of services to protect the rights and wellbeing of children and young people that come into contact with the youth justice system.

Implementations of programs by both government and non-government organisations should focus on early intervention and prevention to understand the underlying issues that lead to young people entering the justice system and the support they need to overcome these. We need further investment into family intervention programs to assist in the reduction of children and young people that need to enter the child protection system. Justice responses to situations of child maltreatment frequently result in inadequate child protections measures and unsuccessful family intervention attempts.

Additional recommendations to improve collaboration across systems and services include<sup>10</sup>:

- Establishment of a state-wide interdepartmental and NGO working group on vulnerable young people ensuring that young people experiencing poverty, homelessness, and come into contact with the child protection and justice systems are well represented.
- Greater investment in alcohol and other drug support options for young people, particularly in regional areas, including intensive residential rehabilitation and inpatient programs, counselling, therapeutic groups, health education and information provision.
- Increased provision of after-hours and weekend programs to engage children and young people in meaningful activities. Activities should be free of cost, conveniently located, accessible to all children and young people and linked with opportunities to learn about and access support services.
- Raise the age of criminal responsibility for young people in NSW from 10- to 14 years. We note First Nations children are imprisoned at 17 times the rate of non-Indigenous children, despite making up just 6% of the Australian population aged 10-17. Of all children under 14 imprisoned between 2017-2021, 65% were Indigenous and 68% hadn't even been convicted of any crime<sup>11</sup>.
- Increase resourcing for whole-of-community youth programs, particularly in regional and First Nations communities, to help strengthen capacity to tackle systemic conditions such poverty, substance use, mental health difficulties, family violence, and intergenerational trauma to support children and young people and prevent them from entering the justice system.

### Introduce longer-term funding cycles for crime prevention programs

Longer term funding cycles for crime prevention programs are necessary to enable programs to be properly established and have a reasonable chance of success. The current approach of funding programs in short-term 1-2 year cycles means that many well-developed programs do not have the opportunity to have a significant impact within communities.

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<sup>10</sup>[https://assets.nationbuilder.com/youthaction/pages/1677/attachments/original/1677645849/Youth\\_Action\\_NSW\\_Election\\_Platform.pdf?1677645849](https://assets.nationbuilder.com/youthaction/pages/1677/attachments/original/1677645849/Youth_Action_NSW_Election_Platform.pdf?1677645849)

<sup>11</sup> <https://www.aihw.gov.au/reports/youth-justice/youth-detention-population-in-australia-2021/contents/summary>

Moving to a minimum 5-year funding cycles would enable supportive community responses that reduce the likelihood of young people entering the justice system. This includes effective crime prevention programs currently delivered by the NGO sector. Mapping and assessing the impact of this work is essential to build an evidence base around prevention and diversion programs and fund services accordingly.

### Improve access to mental health support and well-resourced youth services

During Youth Actions consultations, young people and the youth sector have spoken at length about the difficulties they experience in accessing mental health support across the full spectrum of treatment from early intervention programs through to crisis and ongoing clinical support<sup>12</sup>. Young people talked about difficulties with long waitlists for clinical mental health support.

Some waitlists were months long while other services had closed their books. Young people in regional areas reported experiencing limited access to mental health support, reporting that they've had to wait up to six months for support.

Some young people spoke about the particular difficulty of accessing good mental health support while in custody, noting that entering into and out of custody can result in changes to their medication and being unable to access prescriptions, making the transition even more difficult and impacting quality of life.

Young people spoke to Youth Action about the importance of having access to youth services, noting how crucial they have found the support they've been offered. Services consistently speak about the significant increase in the complexity of presenting issues since the pandemic, and for those regions affected by disasters, during disaster recovery. Many services are struggling to meet this increased demand and complexity of presentation, particularly in the regions.

### 3. 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?

A recent roundtable held by Youth Action with representatives from across government and the youth sector on education identified a number of programs a number of programs that are working effectively to support young people at risk of disengaging from school and making contact with the justice system, including:

- [Connected Communities](#)
- [Student Behaviour Strategy](#)
- [Inclusive, Engaging and Respectful Schools](#)
- [Perfect Presence Pilot](#)
- [Student Support Officers](#)
- [Education Court Liaison Officer \(ECLOs\)](#)
- [Get Back in the Game](#)
- [The Albury Project](#)

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<sup>12</sup> Research summary: [COVID-19 Pandemic Recovery: Young People's Perspectives](#)



- [School link](#)
- [TEEN GOT IT](#)

Other effective programs and strategies identified in Youth Action's roundtable on information sharing between government and NGOs include:

- Creating opportunities for caseworkers working across government community services, the justice system and the NGO sector to share knowledge and having opportunity to meet together and discuss.
- Face-to-face engagement with a range of organisations leads to better outcomes, supports knowledge-sharing and enables young people to information spreads.
- Having internal systems to centralise and have a case-management model, to ensure key players are together and young people in control of that process.
- Importance of consistency especially given the changing of support requirements and loss of momentum.
- When funding bodies are able to participate consistently in interagency processes to address issues, this build relationships and allows for more openness on all sides to explore solutions.
- Effective collaboration across Police, Justice and NGOs requires resourcing. The role of youth development officers in Councils or NGOs can be an asset as they often coordinate various youth interagency networks.

#### Case Study: A Place to Go

Penrith, NSW – *A Place to Go* is an example of effective collaboration to address homelessness. The service provides accommodation in Western Sydney for 10-17 year olds young people in contact with the youth justice system who are temporarily unable to return home, have unstable housing, or are experiencing homelessness.

It provides access to therapeutic, trauma-informed short term accommodation for young people who are unable to return home, while longer-term planning is undertaken. After care support for up to 12 weeks to support young people to maintain their longer-term accommodation is also provided.

[https://www.nsw.gov.au/sites/default/files/2022-05/A\\_Place\\_to\\_Go\\_overview\\_and\\_referrals.pdf](https://www.nsw.gov.au/sites/default/files/2022-05/A_Place_to_Go_overview_and_referrals.pdf)

4. 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?

We believe that there is a benefit to taking a national approach to youth justice and child wellbeing reform, particularly regarding the matter of the raising the age of criminal responsibility and implementing a strategy targeted at prevention in the early years.

The next steps we believe need to be considered from a rights-based lens of child wellbeing, moving away from siloing of areas of government.

There needs to be a strategic approach that focuses on identifying, responding and preventing the determinants of childhood trauma and maltreatment. This includes providing supports to families to capacity build in order to provide whole of family responses, acknowledging that families provide the most influential factor in a child's life.

It is essential that we ensure that the system around the child is working to support healthy child development, and that not all responsibility for change is located in the child. We need to address the development needs that are correlated with offending behaviour and involvement in the justice system.

## Contact

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