

National Mental Health Commission
June 2023

Justice and Child Wellbeing Reform across Australia



Australian Government
National Mental Health Commission

Youth Justice and Child Wellbeing Reform across Australia

About the National Mental Health Commission

The National Mental Health Commission provides cross-sectoral leadership on policy, programs, services and systems that support better mental health and social and emotional wellbeing in Australia. There are three main strands to the Commission's work: monitoring and reporting on Australia's mental health and suicide prevention system; providing independent advice to government and the community; and acting as a catalyst for change.

The Commission launched the [National Children's Mental Health and Wellbeing Strategy](#) in October 2021. It provides a framework to guide critical investment in the mental health and wellbeing of children and families, including for those in contact with the youth justice system. Children in youth justice systems face low levels of mental health and wellbeing, with 60% of young offenders presenting with two or more disorders and 33% of young people in custody reporting high to very high levels of psychological distress.¹ The Commission supports the investigation of opportunities for reform of youth justice and related systems across Australia.

Response to questions

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

The conditions in which people are born, grow, work, and live, and the wider set of forces and systems shaping the conditions of daily life ('social determinants'), have a significant impact on life outcomes. A lack of systematic prevention and early intervention approaches designed to address social determinants early in life contributes to children and young people's involvement in youth justice systems. A report exploring social determinants of mental health commissioned by the Commission and developed by Nous found:

- People held in custody on remand or under a custodial sentence are more likely to have experienced socioeconomic disadvantage and have family members who have also been incarcerated, particularly for children and young people.²
- The drivers of incarceration include low socioeconomic status, poor education participation and attainment, unemployment, poor quality and unstable housing, and poor social connection.^{3,4,5}
- Colonisation, dispossession and displacement from traditional lands, separation of families through past government policies and ongoing racism and discrimination have contributed to the significant overrepresentation of Aboriginal and Torres Strait Islander people in custody.⁶

Additional associations include parental alcohol and substance misuse, exposure to domestic violence, entrenched parental unemployment, and involvement with child protection services.⁷ Children who are under the care of the State are also more likely to be in contact with the justice system. This group is an at-risk group identified in the National Children's Mental Health and Wellbeing Strategy who require additional supports, and who should be prioritised as a responsibility of governments.

Given that addressing social determinants will require sustained long-term action across jurisdictions and portfolios, young people who are most at-risk of experiencing negative outcomes should be prioritised when accessing services.

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 National Children's Mental Health and Wellbeing Strategy recommends that systems and criteria that prevent children with complex needs from accessing services should be redeveloped to ensure that the children who are in most need of support are not turned away due to a lack of capacity or capability (action 2.4.h). Children in contact with the justice system are one of the groups most likely to benefit from high-quality, well-coordinated mental health supports. Currently, these children are more likely to be turned away from services than other children as their needs can be more complex, and services report that they do not have the capacity to cater for them.⁸

Care and services delivered to this cohort must be trauma-informed – an approach that involves understanding individual experiences of trauma and recognising the consequences of a history of trauma.⁹ This includes ensuring the workforces interacting with this cohort are appropriately trained. Additionally, despite the high prevalence of poor mental health for young people in custody, they are excluded from Medicare Benefits Schedule (MBS) subsidised primary care for the development of a mental healthcare plan and MBS subsidised mental health care. This makes it even more difficult for them to access the supports they need. To improve healthcare outcomes for young people in the youth justice system, access should be provided to relevant MBS items.¹⁰

The National Children's Mental Health and Wellbeing Strategy also notes that points of transition (e.g., leaving secondary school) are challenging times for young people where additional support may be required. For this cohort, it is also important to provide adequate assistance for transitioning between youth and adult services and support programs across the health, social services and justice portfolios.

To further protect the rights and wellbeing of children, evidence suggests raising the minimum age of criminal responsibility to 14 years in all jurisdictions in Australia would be highly beneficial. Young children who are in contact with the criminal justice system have poorer education, employment and health outcomes, and research has found the younger a person enters the system the more likely they are to reoffend.^{11,12} Raising the age would also assist in decreasing the significant overrepresentation of Aboriginal and Torres Strait Islander children in detention.¹³

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?

The Youth on Track scheme in NSW is an example of a successful initiative supporting children aged 10-17 years who are at risk of becoming entrenched in the youth justice system.¹⁴ The program involves providing targeted support for children and families, including family interventions, behavioural interventions and strategies for engaging children with education. Elements of the program which were found to be particularly effective included the focus on early intervention, the holistic and tailored approach (including working with families), the trained and skilled professionals, and collaboration with other services. The program has been found to contribute to positive attitudinal and behavioural changes in young people referred to the scheme, as well as changes in lifestyle to reduce the risk of offending amongst young people, such as enrolling in vocational training and developing new friendships or community connections.⁹

Programs that are adequately resourced, provide in house vocational or life skills training, recruit and train good staff (including with a mix of gender identities, ages, cultural backgrounds and connections, and skills) will promote a sense of community and belonging resulting in positive outcomes for 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 Commission agrees there is benefit in taking a national approach towards youth justice and child wellbeing reform. The National Children's Mental Health and Wellbeing Strategy states that cross-portfolio action across the health, education, social services, and justice sectors is vital to improving outcomes for Australian children. The Service System and Evidence and Evaluation focus areas of the Strategy particularly speak to the need to improve coordination across sectors and jurisdictions, including through effective data sharing.

The Commission previously commissioned the University of Melbourne and the Queensland Centre for Mental Health Research to examine the policy environment in Australia relevant to mental health services for people who come into contact with the criminal justice system, including identification of policy gaps and potential opportunities for reform. While this report was not centred around youth justice specifically, some key insights may be relevant for the Australian Human Rights Commission's project. These include:

- The clearest opportunity for reform is through mental health policies explicitly incorporating justice settings and justice-involved people at a national level.
- The lack of evaluation tools for mental health services in justice settings reduces the ability to judge the effectiveness of services.

Recommended areas for potential reform in the report were:

- Systematically including justice settings and justice-involved people within population-level national mental health policies.
- Development of national, evidence-informed policy guidance on identification and screening of people with mental disorders at all stages of involvement in the criminal justice system.
- Improve connections and continuity between justice settings and community mental health providers, for example through incentives linked to Medicare funding, policy settings for Primary Health Networks, and through Commonwealth leadership on information sharing.
- Development of a justice/mental health evidence and research strategy addressing key gaps (such as scope and character of prison mental health services and effective continuity of care and information for people transitioning between prison and community).
- Supporting and expanding existing efforts to prevent involvement in the criminal justice system, such as through supporting Justice Reinvestment initiatives.

The full report can be found [here](#).

References

- ¹ Costello EJ, Maughan B. Annual research review: optimal outcomes of child and adolescent mental illness. *J Child Psychol Psychiatry*. 2015;56(3):324-41.
- ² Australian Institute of Health and Welfare. Youth Justice in Australia 2019-20. Canberra: AIHW; 2020.
- ³ Binswanger IA, Nowels C, Corsi KF, et al. "From the prison door right to the sidewalk, everything went downhill," A qualitative study of the health experiences of recently released inmates. *Int J Law Psychiatry*. 2011; 34(4): 249-55.
- ⁴ Baldry E, McDonnell D, Maplestone P, Peeters M. Ex-Prisoners, Homelessness and the State in Australia. *Australian & New Zealand Journal of Criminology* 2006; 39(1): 20-33.

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- ⁵ McNeil DE, Binder RL, Robinson JC. Incarceration Associated With Homelessness, Mental Disorder, and Co-occurring Substance Abuse. *Psychiatr Serv* 2005; 56(7): 840-6.
- ⁶ Australian Institute of Health and Welfare. Determinants of health for Indigenous Australians. Canberra: AIHW; 2022.
- ⁷ Baidawi, S. and Sheehan, R. '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. 2019.
- ⁸ National Mental Health Commission. Children's Mental Health and Wellbeing Strategy Consultations: justice, child protection and out-of-home care. July - August 2020.
- ⁹ Purkey E, Patel R, Beckett T, Mathieu F. Primary care experience of woman with a history of childhood trauma and chronic disease: trauma-informed care approach. *Can Fam Physician*. 2018;64(3):204-11.
- ¹⁰ Cumming C, Kinner S, Preen D, Larsen A. In sickness and in prison: the case for removing the medicare exclusion for Australian prisoners. *J Law Med*. 2018;26(1):140-58.
- ¹¹ Australian Medical Association, 'AMA calls for age of criminal responsibility to be raised to 14 years' (Media Release, 25 March 2019). Available at: <https://www.ama.com.au/media/ama-calls-age-criminal-responsibility-be-raised-14-years-age>.
- ¹² Australian Human Rights Commission, Children's Rights Report 2019 (2019) 244.
- ¹³ Thomas Crofts, 'A Brighter Tomorrow: Raise the Age of Criminal Responsibility' (2015) 27 (1) *Current Issues in Criminal Justice* 123, 131.
- ¹⁴ CIRCA for NSW Department of Justice. Youth on Track Social Outcomes Evaluation. 2017.