



Youth Justice Reform Team
Australian Human Rights Commission

By email: youthjusticereform@humanrights.gov.au

Dear Youth Justice Reform Team

The Northern Territory Office of the Children's Commissioner (OCC) welcomes the opportunity to make a submission to the Australian Human Rights Commission's call for submissions on Youth Justice and Child Wellbeing Reform across Australia.

In addition to this submission, the OCC endorses the submissions of the following groups/organisations:

- the Australian National Preventive Mechanism (NPM) Member's Network (the OCC is a member of this Network and a signatory to the NPM Members' Joint Submission to this consultation);
- SNAICC – Voice for Our Children; and
- Jesuit Social Services (JSS) – in particular, JSS's responses to questions 2 and 3 of the consultation.

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

Significant research and review has been done on the factors that contribute to children's involvement in youth justice systems in Australia. While the following list is certainly not exhaustive, we encourage the review team to consult the following resources which provide in depth detail as the factors contributing to children's involvement in youth justice systems:

1. Royal Commission into Aboriginal Deaths in Custody (RCIADC) (in particular volumes 1 and 2)¹
2. Royal Commission into the Protection and Detention of Children in the Northern Territory (NT Royal Commission) (in particular chapters 4, 25, 27, 28, 33, 35 and 39, along with their corresponding recommendation sections)²
3. Pathways to Justice Report – Australian Law Reform Commission (in particular pages 61-82)³
4. Bringing them Home Report – Australian Human Rights Commission⁴
5. Position Paper on the Use of Spit Hoods and Restraint Chairs on Children – Office of the Children's Commissioner (NT)⁵

¹ Royal Commission into Aboriginal Deaths in Custody (Final Report, April 1991)

<<http://www.austlii.edu.au/au/other/IndigLRes/rciadic/>>.

² Royal Commission into the Protection and Detention of Children in the Northern Territory (Final Report, November 2017)

<<https://www.royalcommission.gov.au/child-detention/final-report>>.

³ Australian Law Reform Commission, *Pathways to Justice—An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples*, (Final Report No 133 (2017) <https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf>.

⁴ National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from Their Families, *Bringing Them Home* (Final Report, April 1997)

<https://humanrights.gov.au/sites/default/files/content/pdf/social_justice/bringing_them_home_report.pdf>

⁵ Office of the Children's Commissioner (Northern Territory) 'Use of Spit hoods and Restraint Chairs on Children' (Position Paper, June 2023) <<https://occ.nt.gov.au/resources/occ-publications/other-reports>>.



6. Working Paper on Implementation of the Royal Commission into Aboriginal Deaths in Custody – Australian National University (CAEPR Working Paper)
7. AIFS research into the link between child maltreatment and adolescent offending⁶
8. The State of the Incarceration Nation – Justice Reform Initiative⁷
9. Youth justice in Australia: Themes from recent inquiries – Australian Institute of Criminology⁸

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?

Existing sources

The sources noted above provide numerous recommendations for governments to undertake in order to protect the rights and wellbeing of children.

We also note the work of the OCC in this space, in particular the following reports:⁹

1. Alice Springs and Don Dale Youth Detention Centre annual monitoring reports
2. NT Safe Care Facility monitoring report
3. Saltbush Social Enterprises Bail Supported Accommodation Monitoring Report
4. Own Initiative Investigation in Abuse in Care in the Northern Territory
5. Residential Care in the Northern Territory

Genuine partnership and participation

The lack of genuine partnership with young people, communities and Aboriginal Community Controlled Organisations (ACCOs) remains a significant barrier to change. While the priority reforms under the new Closing the Gap National Agreement were drafted in partnership with the community sector and are welcome in their intent, the execution of these reforms by government remains unsatisfactory. In the experience of the OCC, there is a reluctance to engage in genuine, shared decision making and to commit funding to ensure such decision making occurs.

For example, in many forums and stakeholder committees involving government, NGO and community representatives, community representatives are either not remunerated for their time and contribution or are provided with a nominal amount. The effect is that government and NGO employees are paid for their time on such committees, while community members must effectively fund themselves. In the Northern Territory this can be a prohibitively high amount, given the sparsely dispersed population and concentration of government services in Darwin.

⁶ Australian Institute of Family Studies, *The link between child maltreatment and adolescent offending* (2011) <https://aifs.gov.au/sites/default/files/fm89d_0.pdf>

⁷ Justice Reform Initiative, *“The State of the Incarceration Nation” A Briefing to Australia’s Members of Parliament (Briefing Report, 6 September 2020)* <https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1681695665/1_JRI_The_State_of_the_Incarceration_Nation_Paper_V5_APPROVAL-2.pdf?1681695665>.

⁸ Garner Clancey, Sindy Wang and Brenda Lin, ‘Youth justice in Australia: Themes from recent inquiries’, No. 605 October 2020, Trends & issues in crime and criminal justice, *Australian Institute of Criminology* <https://www.aic.gov.au/sites/default/files/2020-09/ti605_youth_justice_in_australia.pdf>.

⁹ Office of the Children’s Commissioner (Northern Territory), Other Reports (Web Page, accessed 16 June 2023) <<https://occ.nt.gov.au/resources/occ-publications/other-reports>>.



Many of the same forums and committees continue to be characterised by one way consultation and information delivery, in which government representatives update NGOs and community members on recent developments. On some occasions government representatives may be open to feedback, however there is no equitable decision making authority to make meaningful change. Where feedback is received (often in good faith) but not followed in practice, such committees and engagements take on a character of tokenistic consultation for the sake of compliance. As a result, ACCOs and community members decide that their time is better spent serving their clients than attending numerous meetings with no meaningful outcome.

This approach leads to broader cynicism of government's intent to make meaningful change. The priority reforms under Closing the Gap require genuine sharing of decision making power, along with the funding commitments to support this. In practice, this could include having equivalent decision making authority at committee meetings (e.g. executive/high level authority levels from government, NGO and communities) so that the people with power and authority from both government and community can make decisions.

As an extension of this, long term, needs based funding is essential and of itself shows a genuine commitment by government to change approaches which currently are not working. Many service providers have advised the OCC that the funding of youth services in the Northern Territory is complicated, short-term focused, subject to whims of governments and has burdensome administrative requirements for relatively small funding grants. Long-term, simplified, needs based funding is necessary to show that government is committed to addressing the causes of youth justice involvement.

Finally, genuine participation is similarly crucial to policies which actually achieve outcomes of lowering the number of children in the youth justice and child protection systems. Embedding the contribution of young people and families with lived experience of these system - at every level of policy making, implementation and evaluation - will ensure that policies are responsive to the needs of those they are targeting.

Public perceptions

The effective use of "tough on crime" politics, particularly at the state level, is a key barrier to change. There is a persistent perception in some parts of the community that "naughty" kids need to "learn a lesson" when they engage in anti-social or criminal behaviours. This can lead to a belief that the consequence of detention is the only way to change the behaviour of children and make the community safer. Such perceptions seem to be particularly strong in relation to Aboriginal children. Many people have genuine individual concerns for personal safety as a result of their experiences. This fear, along with the broader perception noted above, is often exploited by politicians and media to promote a "youth crime crisis" which requires a "tough on crime" response. This sentiment can be intensified through social media platforms and lead to vigilante sentiments and behaviour, particularly towards First Nations communities.¹⁰ The effect is circular, as the persistent crime crisis narrative can then reinforce an individual's belief that the only way to "break the cycle of crime" is for children to be incarcerated in detention centres. As the evidence shows, this has negative outcomes for children and actually makes the community less safe.¹¹

¹⁰ Chris Cunneen and Sophie Russell, 'Social Media, Vigilantism and Indigenous People in Australia' (2017) *Oxford Research Encyclopedia of Criminology and Criminal Justice* <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3094091>.

¹¹ The Sentencing Project, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (Report, 1 March 2023) <<https://www.sentencingproject.org/reports/why-youth-incarceration-fails-an-updated-review-of-the-evidence/#part-3>>.



There is a similar community perception that parents and families need to be “held accountable” for their children. This is based on a presumption that families have social and economic ability to adequately support themselves. In many cases, through no fault of their own, this is not the case for families as they face housing and food insecurity, intergenerational trauma and the ongoing impacts of colonisation, and high rates of physical and neuro disability.

Rather than laying both the blame and the job of improving outcomes at the feet of children and families who are experiencing severe social disadvantage, public perceptions must be shifted so that it is the responsibility of government and service providers to improve outcomes. Increasing public discourse of the drivers of social disadvantage, crime and anti-social behaviour, including historical factors like colonisation and intergenerational trauma, will assist in changing this narrative. One format this can take is through truth telling processes. The Yoorrook Justice Commission is a formal truth-telling process into historical and ongoing injustices experienced by First Peoples in Victoria. This can then be coupled with consistent public education on evidence based approaches addressing underlying causes in order to counter emotional, short-term responses focusing only on punishment of children and families which, ultimately, has negative outcomes for children and make the community less safe.¹²

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?

Below are some Australian and international examples of evidence based youth justice reform and we encourage the AHRC to consider them as part of its work. The OCC would endorse the adoption of similar measures in Australia, however we emphasise that any reform must be the result of genuine local partnership with young people, families, communities and ACCOs involved in youth justice and child protection. If those groups are not included in design of reforms, they will not be successful.

1. **New Zealand youth justice model** - New Zealand’s journey of reforms since the *Oranga Tamariki Act 1989* (NZ) are often cited exemplars in Australia and internationally for systemic youth justice reforms. While there remain ongoing issues in the New Zealand youth justice system (most notably the persistent over-representation of Māori young people in the system), these reforms remain far ahead of any Australian jurisdictions and offer a road map from a very similar social and cultural context. We encourage the AHRC to engage with government departments, NGOs and community members involved in the New Zealand youth justice system to gain insights into that system and how it may guide reforms in Australia. We also recommend you consider Melissa Goemann’s review of the New Zealand system and the lessons it holds in the context of youth justice in the US.¹³
2. **Justice Reform Initiative (JRI)** – JRI’s Alternatives to Incarceration in the Northern Territory report sets out evidence-based alternatives to custody in all aspects of the youth justice continuum (e.g. detention, early prevention, policing, remand).¹⁴

¹² The Sentencing Project (n 11).

¹³ Melissa Goemann, *New Zealand’s Youth Justice Transformation: Lessons for the United States* (Report, The National Juvenile Justice Network, Washington, D.C., 2018) 1 <<http://www.njjn.org/uploads/digital-library/New%20Zealand's%20Youth%20Justice%20Transformation%20--%20Lessons%20for%20the%20United%20States%20Final%204.25.18.pdf>>.

¹⁴ Justice Reform Initiative, *Alternatives to Incarcerations in the Northern Territory* (Report, May 2023) <https://assets.nationbuilder.com/justicereforminitiative/pages/337/attachments/original/1684122983/JRI_Alternatives_NT_Full_FINAL-2_copy.pdf?1684122983>.



3. **Aboriginal Justice Agreement (NT)** - an example of bipartisan political leadership seeking to genuinely engage with the Aboriginal community in the Northern Territory. While it is in the early stages of implementation and is focused on adults, it offers a blueprint for political leadership in collaboration with philanthropy and the community sector.
4. **Wirkara Kulpa (Victorian Aboriginal Youth Justice Strategy)** – similar to the NT’s AJA, this is an example of political leadership as part of an existing justice agreement.¹⁵
5. **The Sentencing Project** – is a US organisation dedicated to ending mass incarceration. Its report, *Why Youth Incarceration Fails: An Updated Review of the Evidence*, sets out numerous alternatives to incarceration and policy and practice reforms that achieve equal or better outcomes at far lower costs.¹⁶
6. **Child protection** – the OCC strongly advocates for a public health approach to child protection (sometimes referred to as a “differential approach”) as recommended by the NT Royal Commission,¹⁷ along with the establishment of an Aboriginal Child Care Agency to administer child protection services for Aboriginal children in the Northern Territory. An adequately funded and legislated agency would provide cultural safety for families and children and ensure that Aboriginal Family Led Decision Making and Aboriginal and Torres Strait Islander Child Placement Principles are adhered to. Such an approach has shown improved outcomes for children and families in the context of the Victorian Aboriginal Childcare Agency (VACCA).¹⁸ This is needed in the NT as, although the ATSI CPP have been enshrined in law, they are not implemented in practice. The Australian Institute of Health and Wellbeing reported that, as at 30 June 2022, 61.5% of Aboriginal children in care in the NT were not placed in accordance with the ATSI CPP, and over half of these children did not have a current cultural support plan.¹⁹
7. **Measuring outcomes** – any national approach to youth justice and child wellbeing will need to have clear monitoring and evaluation standards which incorporate the voices of children and families, Aboriginal and Torres Strait Islander people, people with disability and people with experience of these systems. We note the work of Commonwealth Treasury in its Measuring What Matters initiative and **enclose** our submission in that regard. In particular, we encourage any government response to create indicators and data sets that capture a broader array of outcomes than traditional data sets for child wellbeing. A good example of this is the Welsh Well-being of Future Generations Act.²⁰ Any monitoring and evaluation should also consider and, ideally, integrate with the Australian Institute of Health and Welfare’s “Linked Child Wellbeing Data Set”, which is an ongoing initiative under the National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030.²¹

¹⁵ Victorian Aboriginal Justice Agreement, *Our journey developing Wirkara Kulpa* (web page, accessed 16 June 2023) <<https://www.aboriginaljustice.vic.gov.au/wirkara-kulpa-aboriginal-youth-justice-strategy-2022-2032/our-journey-developing-wirkara-kulpa>>.

¹⁶ The Sentencing Project (n 11).

¹⁷ *Royal Commission into the Protection and Detention of Children in the Northern Territory* (Final Report, November 2017) Findings and Recommendations, Recommendation 39.1, 59 <<https://www.royalcommission.gov.au/child-detention/final-report>>.

¹⁸ VACCA, *Annual Reports* (Web Page, accessed 16 June 2023) <<https://www.vacca.org/page/resources/annual-reports>>.

¹⁹ Office of the Children’s Commissioner, *Annual Report 2020-21* (2021) 10 <<https://occ.nt.gov.au/resources/occ-publications/annual-reports>>.

²⁰ Llywodraeth Cymru Welsh Government, *National indicators and national milestones for Wales* (Web Page, accessed 16 June 2023) <<https://www.gov.wales/well-being-future-generations-national-indicators-2021-html>>.

²¹ Commonwealth of Australia, Department of the Prime Minister and Cabinet, *National Strategy to Prevent and Respond to Child Sexual Abuse 2021-2030* (2021) 51 <<https://www.childsafety.gov.au/system/files/2022-09/national-strategy-2021-30-english.pdf>>. We note that the Social Resource Centre has been engaged to conduct this scoping study and recommend reaching out to them for further detail <<https://srcentre.com.au/>>.



8. **Prevention** - any response to the issues raised in relation to youth justice and child wellbeing should have equal focus on prevention (i.e. primary and secondary responses) alongside tertiary response to supporting children in the youth detention and child protection systems. In particular, we note:
- a. **Early childhood system reform** – significant research has been done on the importance of early years learning and health to long term life outcomes. We encourage the Reform Team to consider the various preventative approaches that can be taken to limit young people entering the child protection and youth justice systems, including:
 - i. First 1,000 Days²²
 - ii. Perry School Model²³
 - iii. Head Start²⁴
 - iv. Children’s Ground²⁵
 - v. Tangentyere Council²⁶
 - b. **Health** – in addition to early childhood reform, increased services in secondary responses is necessary to create supports for those living with health conditions. In particular, large scale assessment and supports for neurodisability for young people and their families involved in the child protection and youth justice systems is needed to identify people living with functional impairments and provide individuals and their families with the supports to address those impairments. The Banksia Hill study is an excellent example of such large scale assessment for young people in youth detention,²⁷ and the OCC recommends a similar approach be broadened to other jurisdictions and to children and families involved in child protection system. The recent announcement of increased federal funding for Central Australian Aboriginal Congress to expand its assessment programs is welcome, however such funding needs to be broadened to cover all people involved in these systems.²⁸

²² 1000 Days, *Why 1000 Days?* (Web Page) <<http://www.thousanddays.org/about/>>; Ritte et al ‘An Australian model of the First 1000 Days: an Indigenous-led process to turn an international initiative into an early-life strategy benefiting indigenous families’ (2016) 1 *Global Health, Epidemiology and Health* <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5870429/>>;

²³ James Heckman et al, ‘The Rate of Return to the High/Scope Perry Preschool Program’ (2010) 94(1-2) *Journal of Public Economics* 114-128 <<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3145373/>>; *Research Summary: Perry Preschool and Character Skill Development*, Heckman Equation (Web Page, accessed 19 May 2023) <<https://heckmanequation.org/resource/research-summary-perry-preschool-and-character-skill-development/>>; *Invest in Early Childhood Development: Reduce Deficits, Strengthen the Economy*, Heckman Equation (Web Page, accessed 19 May 2023) <<https://heckmanequation.org/resource/invest-in-early-childhood-development-reduce-deficits-strengthen-the-economy/>>

²⁴ Robert Nix et al, ‘The randomized controlled trial of Head Start REDI: Sustained effects on developmental trajectories of social–emotional functioning’ (2016) 84(4) *Journal of Consulting and Clinical Psychology* 310–322 <<https://psycnet.apa.org/doiLanding?doi=10.1037%2Fa0039937>>; Patrick Kline et al, ‘Evaluating Public Programs with Close Substitutes: The Case of Head Start’ 131(4) *The Quarterly Journal of Economics* 1795-1848 <<https://academic.oup.com/qje/article/131/4/1795/2468877>>; Head Start: Early Childhood Learning & Knowledge Centre (Web Page, accessed 19 May 2023) <<https://eclkc.ohs.acf.hhs.gov/programs/article/head-start-programs>>.

²⁵ Children’s Ground, *Evidence* (Web Page, accessed 16 June 2023) <<https://childrensground.org.au/evidence/>>.

²⁶ Tangentyere Council, *Early Childhood Education Program* (Web Page, accessed 16 June 2023) <<https://www.tangentyere.org.au/education-and-learning#EarlyChildhoodEducationProgram>>.

²⁷ ‘Nine out of ten young people in detention found to have severe neuro-disability’ Telethon Kids Institute (online, 28 February 2018) <<https://www.telethonkids.org.au/news--events/news-and-events-nav/2018/february/young-people-in-detention-neuro-disability/>>.

²⁸ Laura Stimpson, Charmayne Allison and Stewart Brash, ‘How the \$250m promised for Central Australia will be spent’ ABC (online, 11 May 2023) <<https://www.abc.net.au/news/2023-05-11/federal-funding-package-for-central-australia-explained/102326322>>.



- c. **Domestic violence** – any response to youth justice and child wellbeing needs to address or integrate with family and domestic violence programs. Advocates in the Northern Territory have long pushed for a needs based funding model to address the extremely high rates of domestic and family violence experienced in the Northern Territory, especially by Aboriginal women and children. We **enclose** our previous relevant submissions relating to this issue and evidence based reforms that are possible.

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?

It is the OCC's position that a national approach to youth justice and child wellbeing will only be beneficial if has the following aspects:

1. A commitment to systemic change through genuine local partnership between government, NGOs and the community. In particular, there must be recognition of the overrepresentation of Aboriginal children in child protection and youth justice systems and a focus on the urgent need to genuinely partner with ACCOs and Aboriginal and Torres Strait Island communities to implement meaningful change. The current system is culturally unsafe and it requires equitable involvement of the affected communities for any meaningful change to occur.
2. Long-term funding commitments from the Commonwealth Government. If this is not present, there will be limited incentives for state and territory governments to take bold action and make reforms that run counter to existing "tough on crime" political campaigns. The lack of Commonwealth funding for the implementation of Australia's OPCAT obligations is an example of the protracted stalemate that can occur if the Commonwealth government makes broad strategies or commitments without dedicated funding.
3. Establishment and adequate resourcing of a National Aboriginal and Torres Strait Islander Children's Commissioner to advocate for the rights of First Nations children. Given the level of overrepresentation of First Nations children in these systems, and the particular vulnerable of their rights to be breached, such an office is necessary to keep this issue at the front of mind for all governments.

The OCC believes the following steps would be appropriate in implementing a national approach, however this is subject to receiving further details and proposals resulting from the various submissions and the Reform Team's work:

1. Draft a national strategy which sets out what a national approach would look like, including:
 - a. How it would operate
 - b. How it would be funded
 - c. Comprehensive monitoring and evaluation mechanisms, including extension participation of affected individuals and communities
 - d. Integration with existing projects which align with principles of the national approach (for example Closing the Gap National Agreement and any Human Rights Act or Voice to Parliament that may come into effect in the medium term.
2. Funding – secure long term funding commitment from Commonwealth, state and territory governments.



08 8999 6076



GPO BOX 3779, Darwin NT 0801



occ.nt.gov.au

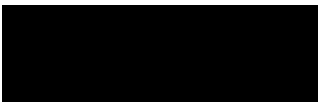


occ@nt.gov.au

3. Establish a National Aboriginal and Torres Strait Islander Children’s Commissioner office to provide advocacy for First Nations children. In conjunction with the National Children’s Commissioner, this office could also provide oversight of establishment and ongoing implementation of the national strategy.

Thank you for considering this submission. If you have any queries please do not hesitate to contact Shaun Rich, Strategy Officer via email at shaun.rich@nt.gov.au.

Yours sincerely



Nicole Hucks
A/Children's Commissioner
30 June 2023



08 8999 6076



GPO BOX 3779, Darwin NT 0801



occ.nt.gov.au



occ@nt.gov.au