

## **Youth Justice and Child Wellbeing reform across Australia: Submission to the Australian Human Rights Commission**

### **Key Insights**

- Complex factors such as experiencing economic, political and environmental disadvantage contribute to bringing children in to contact with the justice system. These factors begin in the earliest stages of life, highlighting the need for strong support systems for families and communities, early intervention, and investment in prevention measures.
- The alternatives to incarceration as well as the systems, programs and supports outside of the criminal justice system need to be strengthened in order to improve child wellbeing outcomes.
- Reforms to bail legislation and to the age of criminal responsibility are key to limiting unnecessary youth contact with the justice system, which increases the risk of further contact later in life.
- Wholistic initiatives that rebuild children and young people's sense of identity, belonging and wellbeing, improve outcomes for First Nations young people, especially when these programs are run by First Nations community members and First Nations-led organisations.
- It is vital to ensure children and young people are provided with opportunities to participate and have a say in decisions and matters that affect them.
- It is also vital to ensure that Aboriginal and Torres Strait Islander peoples have a dedicated voice. PRF supports an Aboriginal and Torres Strait Islander Voice that includes youth representation because the evidence shows this will make a practical difference to the lives of First Nations peoples, including by improving justice and wellbeing outcomes.
- Community-led, place-based approaches such as justice reinvestment have been shown to have positive impacts on reducing levels of youth criminal justice contact.
- The voices of regional representatives and Elders need to actively inform the design and implementation of initiatives to improve child wellbeing and safety.

### **Introduction**

The Paul Ramsay Foundation (PRF) welcomes the opportunity to provide a submission to the Australian Human Rights Commission about Youth Justice and Child Wellbeing reform across Australia.

Our mission is to help end cycles of disadvantage in Australia by enabling equitable opportunity for people and communities to thrive. As one of Australia's largest philanthropic organisations, we grant approximately \$150 million each year. Since 2020, PRF has invested approximately \$110 million to contribute to reducing the amount of contact that people in Australia, particularly First Nations people, have with the criminal justice system. Currently, PRF has active grants totalling \$59.3 million in support of this goal.

Through our Justice & Safety Portfolio, we support initiatives and advocacy focusing on prevention and diversion, post-release support, and domestic and family violence that address the drivers of incarceration, especially those that use a justice reinvestment approach. We believe in a redesigned justice system that improves lives, a legislative and policy environment that promotes just outcomes, and a safe, accessible social services environment that minimises contact with the justice system.

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

There are multiple and complex factors that bring children and young people into contact with youth justice systems such as experiencing economic, political and environmental disadvantage. The foundation for some of these are laid in the earliest stages of life, underscoring the need for strong support systems for families and communities, early intervention, and investment in prevention measures. In research published in April 2023, McCausland and Baldry identify a number of factors such as “social determinants of justice”<sup>1</sup>, some of the most influential intersecting issues are included below. Where appropriate, we have noted key supporting information from our sector partners and funded partners.

- Limited access to quality education:
  - Children and young people who have limited or no access to quality education miss the opportunity for early intervention and detection of developmental vulnerabilities such as cognitive impairment and/or complex support needs, which have implications for schooling, employment, accessing housing and amelioration of parental risk factors. In 2021, A report published by the Front Project describes that more than 60,000 children we assessed as developmentally vulnerable when starting school<sup>2</sup>.
- Growing up in out-of-home care:
  - Children and young people who have experienced out-of-home care are ten times more likely to be under youth justice supervision.
  - Parental experience of the care system is a key risk factor for future criminal justice system contact.
  - Research developed for Social Ventures Australia by the Centre for Evidence and Implementation in 2018 found children who’ve experienced out-of-home care were less likely to meet minimum standards for NAPLAN<sup>3</sup>.
- Homelessness/unstable housing
  - People who have had no fixed permanent address at different points in their lives, including as children and young people, are overrepresented in prisons.
  - The importance of safe accommodation for mothers exiting the justice system who are aiming to regain care of children is evidenced by Griffith University’s *Transforming Corrections to Transform Lives* project<sup>4</sup>.
  - The extreme housing crisis in remote parts of the country affects First Nations communities especially, which in turn increases their risk of contact with the criminal justice system.
- Early police contact
  - The lower the age of first contact with police, the more likely a significantly higher number of interactions with police, arrests, and a lifetime of criminal justice involvement.
- Unsupported mental health and cognitive disability

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1 Who does Australia Lock Up? The Social Determinants of Justice | International Journal for Crime, Justice and Social Democracy ([crimejusticejournal.com](http://crimejusticejournal.com))

2 [supporting-all-children-to-thrive-report\\_updated-1.pdf](https://thefrontproject.org.au/supporting-all-children-to-thrive-report_updated-1.pdf) ([thefrontproject.org.au](http://thefrontproject.org.au))

3 [SVA-Perspective-Education-Evidence-scan-for-Children-in-OOHC.pdf](https://socialventures.com.au/SVA-Perspective-Education-Evidence-scan-for-Children-in-OOHC.pdf) ([socialventures.com.au](http://socialventures.com.au))

4 [transformingcorrections.com.au](https://transformingcorrections.com.au)

- People with multiple diagnoses of mental health disorders and cognitive disability are significantly more likely than their peers without complex support needs to have earlier contact with police, and more system contact throughout their lives.
- Disadvantaged location
  - People from places that lack the services and infrastructure needed to respond appropriately to the disadvantage experienced there are overrepresented in Australia's prisons.
  - A BOCSAR linkage study found that "factors such as later age of initial engagement with disability-related services, remoteness of residence, frequency of child protection contact were strongly associated with the likelihood of a young person with disability having contact with criminal justice system before age of 18."<sup>5</sup>
- Structural racism experienced by First Nations Australians
  - Disconnection from culture, language and kinship structures as a result of colonialism, and the experience of systemic discrimination undermines the wellbeing of First nations children and youth and exposes them disproportionately to criminal justice contact.

Other factors that contribute to youth justice system contact include:

- Employment
  - Growing up in household where one or more parents are jobless increases the risk that a young person will interact with the criminal justice system.
  - There is a clear link between unemployment and recidivism: young people with a conviction history will also experience economic exclusion and hostility from employers – this is compounded for First Nations youth. This is why we support Work Integrated Social Enterprises (WISE) working directly with youth recently released from incarceration (e.g., through the YMCA ReBuild Program).
- Exposure to domestic & family violence (DFV)
  - Child victim-survivors of DFV and children who have witnessed a parent/family member inflict violence on somebody else are at greater risk of criminal justice contact.

**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?**

Things that need to change to improve the wellbeing of children and young people:

- Governments need to strengthen the alternatives to incarceration as well as the systems, programs and supports outside of the criminal justice system. For example:
- Strengthening community-led youth justice initiative that directly respond to the needs of local youth.
- Increase partnering with First Nations-led organisations to lead wholistic initiatives that rebuild children and young people's sense of identity, belonging and wellbeing,

and ensuring these programs being run by First Nations community members as staff.

- State and Territory Governments sharing decision-making with regional representative bodies, and consistent engagement with Elders (also working towards Closing the Gap Priority Reforms 1 & 2).
- Making sure children and young people are provided with opportunities to participate and have a say in decisions and matters that affect them, a fundamental right to make sure lived experience informs policies, programs and initiatives. This is a critical right arising from human rights law, particularly the Convention on the Rights of the Child.<sup>6</sup>

The Justice Reform Initiative (JRI) has recently published an Alternatives to Incarceration Report which outlines positive evaluations of community and place-based responses.<sup>7</sup> Examples of positive programs that governments should be investing in:

- Community-led, place-based approaches have been shown to have positive impacts on levels of youth criminal justice contact. For example:
  - action taken by the Yuwaya Ngarra-li project in Walgett has increased the number of local youth diverted from the criminal justice system.<sup>8</sup>
  - Justice reinvestment approaches by Maranguka in Bourke<sup>9</sup> and Just Reinvest NSW in Moree and Mount Druitt, and in particular a recent bail project in Moree, have also increased diversion.<sup>10</sup>
  - Tailored youth programs run by Weave<sup>11</sup> have had positive effects on rates of youth reoffending in Redfern, Waterloo, City of Sydney, and La Perouse and surrounding areas. A 2020 evaluation of their Creating Futures Justice program found the average rate of reoffending for clients (aged 18-30) was 4.11%, compared with the NSW average rate of 57.3% for Aboriginal people in the same age range.<sup>12</sup>

Barriers to overcome include:

- The current age of criminal responsibility is too low, meaning that children are caught up in the system at far too young an age. PRF is supporting the campaign and advocacy of the Justice Reform Initiative<sup>13</sup>, Change the Record<sup>14</sup>, Human Rights Law Centre<sup>15</sup>, the Public Interest Advocacy Centre and Social Reinvestment Western Australia<sup>16</sup> who outline pathways to reform. Support programs should replace jail terms.
- Bail laws that deny bail to young people without a fixed address or who do not have ready access to services through no fault of their own, leading to an increase in the youth remand population.

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6 United Nations Convention on the Rights of the Child (UNCRC) ([unicef.org.au](http://unicef.org.au))

7 JRI\_Alternatives\_QLD\_FULL\_REPORT.pdf ([nationbuilder.com](http://nationbuilder.com))

8 Yuwaya Ngarra-li | Institute for Global Development ([unsw.edu.au](http://unsw.edu.au))

9 Home - Maranguka Community Hub

10 home - Just Reinvest NSW Inc

11 Weave Homepage - Weave Youth & Community Services

12 Creating Futures Evaluation Report 2020 \_ with images.pdf ([apo.org.au](http://apo.org.au))

13 Justice Reform Initiative | Jailing Is Failing

14 Raise the Age ([changetherecord.org.au](http://changetherecord.org.au))

15 126 organisations call on Attorneys-General to #RaiseTheAge to 14 | Human Rights Law Centre ([hrlc.org.au](http://hrlc.org.au))

16 Raise The Age WA Campaign — Social Reinvestment WA

- Systemic racism and colonial structures have led to laws and policies that, throughout Australia's history, have disproportionately criminalised First Nations People: see PIAC's Towards Truth website.<sup>17</sup> Such laws continue to be made.
- Many intervention programs aren't developed locally, meaning they are not suited to addressing local needs and lack credibility in the community. The importance of First Nations-led programs and ACCOs cannot be understated in First Nations communities.
- A lack of long-term funding commitments from government and other funders often means programs are expected to solve long-term issues in short periods of time, quality staffing can't be retained and when results aren't obtained speedily, they are scrapped.
- To secure government funding, organisations often design programs to align with the priorities of government departments (e.g., health, social services, communities & justice) rather than designing programs with joint funding to allow greater flexibility and collaboration across sectors, and consequently more holistic support for children and young people. The Government's siloed funding pools encourage this approach.
- Making sure children and young people are provided with opportunities to participate and have a say in decisions and matters that affect them, a fundamental right to make sure lived experience informs policies, programs and initiatives. This is a critical right arising from human rights law, particularly the Convention on the Rights of the Child.

**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?**

- The increased use of police discretion to divert young people from the justice system has been shown to have a positive impact on rates of criminal justice contact in the NSW regional town of Walgett, although efforts need to be maintained to ensure systemic change is embedded: see Yuwaya Ngarra-li briefing paper *Criminal Justice Contact for Young People in Walgett*.<sup>18</sup>
- The Bail Project by Just Reinvest NSW in Moree, which aims to lower bail breaches and short-term remand by ensuring young people granted bail, and those in community on bail have fit for purpose/lawful bail conditions, is showing promising signs of success: see Just Reinvest NSW Annual Report 2020-2021.<sup>19</sup>
- Specialist courts like the NSW Youth Koori Court that tailor processes and supports to the needs of young people have been shown to reduce the likelihood of a custodial penalty a reconviction.<sup>20</sup>

Some international examples:

- Hawaii has achieved a goal of having no young women incarcerated<sup>21</sup>

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17 Towards Truth | Towards Truth

18 New Briefing Paper: Criminal justice contact for young people of Walgett | Institute for Global Development - UNSW Sydney

19 Just-Reinvest-NSW-Annual-Report-2020-2021-2.pdf (justreinvest.org.au)

20 The impact of the NSW Youth Koori Court on sentencing and re-offending outcomes

21 No Hawaiian girls in jail - ABC Radio National

- The Diagrama youth justice approach used in Spain has had positive results<sup>22</sup>

**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?**

The disparate levels of state and territory funding for youth justice and child wellbeing measures across Australia highlights how a national approach could help promote greater consistency, knowledge sharing and stronger outcomes for children and young people.

- We encourage the growth of justice reinvestment sites nation-wide to build the evidence base and further increase the number of young people being diverted from custody: we encourage the National Justice Reinvestment Body to work closely and meaningfully with communities to understand their needs and make systems changes that respond to them.
- A national approach should result in greater resourcing for ACCOs, acknowledging the vast overrepresentation of First Nations children in the OOHC and youth justice system. This investment is critical to enable ACCOs to do the work of *Safe and Supported: National Framework for Protecting Australia's Children*. ACCOs are currently not resourced to do this work.
- However, a national approach should not obscure the fact that First Nations communities have the solutions to remedy these systems and that community-led responses have demonstrated strong results. These solutions are often based on intergenerational knowledge-sharing and cultural authority of communities to respond to need. The *Safe and Supported: National Framework for Protecting Australia's Children* intends to structure shared decision-making between governments and communities.
- It is important to highlight the intersections with emerging national, Commonwealth-led approach and place-based work, and build on the excellent domestic evidence base. Place-based alternative programs aimed at youth wellbeing and justice will be explored by Nexus Centre, and justice outcomes are entwined with the Stronger Places, Stronger People Program (approved for phase 2 in the recent Budget).
- As mentioned above, the voices of regional representatives and Elders need to actively inform the design and implementation of initiatives to improve child wellbeing and safety. For example, the Dharriwaa Elder's Group (DEG) have advocated for safe drinking water in their community and are co-designing an approach to improve educational and wellbeing outcomes for young people in their community.<sup>23</sup>
- A national approach requires change to portfolio-level siloing within government. Community-led initiatives to address incarceration focus on a range of social determinants, and therefore strict categorisation of funding is unhelpful.

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22 A European alternative approach to juvenile detention | RMIT Centre for Innovative Justice (cij.org.au)

23 Home (dharriwaaeldersgroup.org.au)

PRF welcomes the opportunity to engage with the Commission and Commonwealth Attorney-General in future consultations to further elaborate on the points above.

Regards,



Professor Kristy Muir  
Chief Executive Officer  
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**END**