

# Australian Human Rights Commission

## Call for Submissions: Youth Justice and Child Wellbeing Reform across Australia

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## About the Author

### Ms Peta Lowe

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Ms Peta Lowe is Principal Consultant with Phronesis Consulting and Training. She holds a Bachelor of Social Work (Hons I), a Masters of Social Work (Couples and Family Therapy) and Masters of Terrorism and Security Studies (Postgraduate University Medal). She is an accredited member of the Australian Association of Social Work. She is the former Director Countering Violent Extremism for Juvenile Justice in the NSW Department of Justice, where she led the Juvenile Justice NSW responses to countering violent extremism and counter terrorism including the assessment, intervention and management of young people charged with terrorism related offences. She has over 15 years experience in Juvenile Justice NSW across a variety of roles within both community and custodial contexts including as: Drug and Alcohol Counsellor, Sex Offender Program Counsellor, Intensive Supervision Program Clinician (delivering Multi-Systemic Therapy to families), Assistant Manager Client Services Frank Baxter Juvenile Justice Centre, Centre Manager Juniperina Juvenile Justice Centre, Senior Program Officer Practice, Area Manager New England North West and Director Operational Standards and Compliance. In 2016 she received a Secretary's Commendation for exceptional contribution to culture and relationships in the workplace through the delivery of specific behaviour management training to custodial staff designed to improve the skills and knowledge of custodial staff and ensure practices in custody are based on evidence and aimed at building positive culture for staff and young people. The training was delivered to more than 250 staff and had positive impacts on the use of punitive measures to manage challenging behaviours.

Peta is now a Consultant MHPSS/PVE Advisor to IOM in Iraq advising the Government of Iraq on the rehabilitation and reintegration of Iraqi citizens from camps in North East Syria. She is Specialist Consultant for the Countering Violent Extremism Unit, The Commonwealth Secretariat, a vetted Countering/Preventing Violent Extremism expert with United Nations Development Program and an Expert Consultant for The International Institute of Justice and The Rule of Law Foundation (IJ) where she implemented numerous successful workshops on the IJJ Juvenile Justice Initiative: Justice for Children in Terrorism providing training to investigators, judges, prosecutors, defence counsel and detention personnel from countries including Niger, Ethiopia, Indonesia, Philippines and Tunisia regarding the rehabilitation and reintegration of children in terrorism cases. She is an International Consultant for United Nations Office on Drugs and Crime (UNODC) Regional Office for Eastern Africa, Kenya and delivered a 'Training Curriculum and Manual on Preventing and Countering Violent Extremism for the Department of Children's Services in Kenya'. She has provided similar training to the Nigerian Federal Ministry of Justice and the Presidential Committee on Correctional Service Reforms. She was previously engaged as an International Expert for UNODC Programme Office Indonesia and authored a report 'The Benefits and Challenges of a Human Security Approach to Countering Violent Extremism and Terrorism in the Criminal Justice System in Indonesia'. She has presented at multiple national and international conferences, including the 2021 '14th United Nations Congress on Crime Prevention and Criminal Justice' on the identification, assessment and reintegration interventions with children and young people at risk of violent extremism and in relation to the vulnerabilities of children and young people in contact with the children/youth justice system. She is a current Institutional Member of the Working Group on Children Recruited to Terrorist Groups, working to influence international bodies and governments to protect the rights and well-being of child victims and survivors of terrorist use and exploitation. Additionally, she continues to work as a practitioner, undertaking assessments and interventions for adults and juveniles who have committed terrorism related offences, including providing Independent Expert Reports and has provided expert witness evidence for Supreme Court sentencing hearings. She continues to provide advice and training to various youth justice organisations within Australia and internationally.

## National Children's Commissioner Questions Addressed in this Submission

For the purpose of responding to these questions, I wanted to draw on my extensive and unique experience in working with children and young people in the youth justice context. I have worked with children and young people for my entire working life, initially working in supervised access services, youth housing and youth and family counselling roles until I joined NSW Juvenile Justice at the completion of my undergraduate degree. Since leaving Juvenile Justice in 2019 I have continued to focus on working with children and young people in a variety of contexts; I am an Official Community Visitor, visiting and monitoring out of home care services, a teacher with TAFE NSW at Mt Druitt Campus teaching youth work to students and continuing to provide advice, training and support to various youth justice and youth services organisations including Victorian Youth Justice, Tasmanian Youth Justice and NSW Multicultural Youth Affairs Network (MYAN NSW). I have also completed postgraduate studies in Equine Psychotherapy and have commenced delivering equine therapy to young people and veterans through my organisation Pegasus Connections as a way of offering evidence informed alternative therapies for those with trauma and attachment issues.

I continue to stay up to date with the latest research and literature regarding youth justice and youth work more broadly, and am very committed to maintaining evidence based and evidence informed approaches to working with children and young people. I am aware you will be well informed of the evidence and so considered it may be more helpful to provide my observations and professional opinions on the matter and not just reiterate the well established literature.

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

The factors contributing to children and young people's involvement in youth justice systems in Australia have been well researched in terms of the individual and systemic drivers for offending behaviours. These factors include the criminogenic needs identified in the "What Works" body of literature and the accepted Risk, Needs, Responsivity (RNR) model. These criminogenic risks are; anti-social (or pro-criminal) attitudes and beliefs, anti-social behaviour patterns, anti-social associates, previous offending history, problems at school/work, problems with family/relationships, substance use and lack of pro-social activities/recreation. These factors, which well-researched, don't explain how children and young people end up with the needs and for me this is the biggest issue which needs to be addressed. Research shows that young people in out of home care and Aboriginal and Torres Strait Islander children and young people are overrepresented in the youth justice system, both of these things tell us something about the macro or social level drivers which contribute to children and young people's involvement in youth justice systems in Australia, and these are the factors which require attention. In my experience, once a young person has come into contact with a youth justice system, particularly once they have spent any time in a custodial facility, many of these macro factors have been impacting on that child/young persons life for a significant period of time and have resulted in

behavioural (survival) patterns forming in that child or young person which continues to bring them in contact with the youth justice system and out of contact with the protective systems which could support them. Experiences of trauma, attachment disruption and social/systemic isolation are often seen in children and young peoples behaviour and labelled as anti-social attitudes and beliefs, anti-social behaviour patterns and anti-social associates.

In my experience, the majority of young people who come into contact with the youth justice system have previously demonstrated vulnerabilities or risk factors which, if addressed effectively, could substantially decrease the likelihood the child or young person would escalate to engagement with the youth justice system. Early intervention and diversion efforts are considered far more effective than rehabilitation, however the approach to early intervention and diversion has often only been considered once contact with the justice system commences. By this I mean, diverting a young person from contact with the courts through legal mechanisms such as Youth Justice Conferencing or Cautions is diversion from the system, but not diversion from the behaviours or behaviour patterns. By the time these diversion methods are enabled, it is likely the child or young person has exhibited behaviours at home or at school which could have been more effectively responded to. Supporting families and parents/caregiver and schools/teachers to identify behaviours early and intervene in effective and meaningful ways at these early stages in a child's life could significantly reduce the number of children and young people who enter into the youth justice system.

In my experience, and a big part of the training I delivered within Juvenile Justice NSW reflected, often the children or young people who need the support and intervention the most, are the ones who don't receive it because the patterns of behaviour they exhibit are difficult and challenging, and the systems are not designed to respond individually to more to complex needs.

- **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?**

Protecting the rights and wellbeing of children and young people within youth justice and related systems requires the adoption of several key changes. The most significant change required is to raise the age of criminal responsibility across all Australian jurisdictions to 14 years of age in line with United Nations recommendations. Raising the age of criminal responsibility reflects the contemporary research that children's brains are still developing and they do not fully understand the consequences and severity of their actions, which also means that the traditional principles of natural justice and sentencing are ineffective when applied to children. For example, deterrence as a concept requires that the individual is able to consider the consequences of their actions and make a decision to avoid the negative consequences which may occur as a result of their actions, what we know about brain development, this is clearly not possible for a child or young person who has not yet developed this particular capacity.

The major barrier to this change is a lack of education and understanding among the general population and the politicisation of crime and justice within politics and the media. The majority

of general population has limited understanding as to the ineffective nature of punitive measures, particularly with regards to childhood development and behaviour and this needs to be addressed in order to gain more public support for such measures to be taken. Public support would also address the ability of different political influences and agendas which are often exacerbated by media reporting. Reactive policy and strategy has long been problematic in the youth justice system, and as someone who worked within the system for over 15 years and was involved in many incidents, riots and widely publicised cases, it has far more impact on the way the system functions than it should. Evidence based practices and interventions are often ignored when political or public perceptions require attention.

Many countries such as Kenya, see youth justice matters as an extension of child protection matters and view young people in contact with the law as children in need of care and protection. This focus allows for more holistic, developmentally appropriate responses focused on support rather than punishment.

Further to this, there needs to be a shift in the workforce within youth justice organisations. The majority of those who work in youth custodial settings are not education or trained in issues such as attachment, child development, trauma or de-escalation. This was the very reason my colleague and I developed and undertook training of custodial officers in NSW Juvenile Justice on these issues. Many custodial staff are trying to do their best when confronted with challenging and often aggressive/reactive behaviours from young people, however they don't have the foundational understanding of why young people engage in these behaviours and what are the most effective and long term ways of intervening and supporting young people to learn more effective behaviours to meet their needs. It always surprised me that those children and young people who have 'fallen through the cracks' of other organisations and agencies with educated and trained staff (such as education, mental health/health services and child protection services) end up in a custodial environment being cared for by staff who have no education/training or understanding of the young person and their behaviours. If young people are going to spend time in custody, it is an environment where behaviour change can occur if the staff supporting that young person around the clock can understand and intervene/support in effective and trauma informed ways.

- **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?**

I was part of the pilot Intensive Supervision Program within NSW Juvenile Justice which utilised Multisystemic Therapy approaches to work with high risk young people and their families. Internationally, MST is evidenced as having positive outcomes for children and young people, and for their families. It is however expensive to run and a review by BOCSAR into the pilot demonstrated its outcomes were no better than 'business as usual' approaches within NSW, although I have my reservations about the methodology and research. It is being used in a child protection context in Australia across many jurisdictions to date.

Restorative justice practices which are being embedded in schools and across youth justice systems are increasingly demonstrating positive outcomes as practices become more sophisticated and holistic.

The Sanctuary Model of Care in the US is a trauma-informed model which guides facility level practices is being adopted and integrated in various forms due to the positive outcomes it is having for both young people and staff who work within the framework.

Positive Youth Justice (PYJ) model is an approach which focuses on encouraging positive behaviours and outcomes rather than focusing on identifying and responding to risks and needs.

Additionally alternative therapies to those traditional “talk therapies” based on cognitive behavioural therapy are also having many positive benefits for working with children and young people with complex needs, those with trauma and attachment issues and neurodiverse individuals. Alternative therapies such as art therapy and play therapy have been increasingly being incorporated into approaches, and there is a growing body of literature regarding nature and animal therapies, when they are founded in existing theoretical models (such as Gestalt psychotherapy). These alternative therapies, especially those including animals, are used in a variety of ways, from traditional therapeutic relationships to more integrated practical approaches, and many organisations are utilising these approaches as foundations for more focused therapeutic work. Backtrack is an example of the success of integrating approaches between traditional therapeutic models and more practical approaches which include pet therapy frameworks. Backtrack has been recognised for the unique success it has at engaging those young people often considered “difficult” or “too hard” for other organisations, including Juvenile Justice. Backtrack has extended to include Rufftrack as well which is based on the same model. Addressing basic needs such as housing and food, while engaging in strengths approaches to building young peoples sense of self and self-esteem, while using animals to aid development of emotional regulation, empathy and positive relationship building, these programs are a very good example of alternative approaches to traditional structural responses which are having positive impacts on the lives of many young people who other services and organisations had been able to provide responsive services too.

There is no one answer, as children and young peoples needs and responsivity issues are different and therefore require a range of services which can meet their individual needs. There is no “one size fits all”, but improving the knowledge and foundation of the youth justice systems, and having flexibility and options to be able to provide services on an individual needs basis can provide for positive outcomes for young people specific to them.

- **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?**

A national approach to youth justice will allow for national standards and principles to be enforced. Currently the AYJA supports state government organisations to remain informed about research and data relevant to youth justice and works to promote national principles,

standards and guidelines, but there is no ability to enforce these across jurisdictions. Additionally, a national approach allows for more robust and standardised accreditation and monitoring across Australia. Currently each jurisdiction is monitored in line with their State's legislative requirements and this inconsistency in both the application and monitoring of services and importantly custodial facilities across Australia causes a number of issues for children and young people, their families and also the organisations delivering these services. Children protection and youth justice requires a consolidated national approach which recognises the mobility of families and individuals throughout the country and which requires consistent programming, policies and monitoring and evaluation so that we can ensure all Australian children and young people are receiving support and services in line with our international Human Rights obligations, and contemporary best practice principles.

I think the **formation of a national body, with regulatory powers, is the first step in reviewing, consolidating and aligning youth justice service delivery across Australia.** Such a body will also serve to end the political 'back and forth' with regards to guiding principles and approaches in youth justice jurisdictions and enable consistent, long-term programming in order to actually achieve intergenerational outcomes. As we continue to see in the media, constant political and paradigm shifts in approaches stifle the ability for more long term and systemic change which is fundamental to achieving positive outcomes.