

Preface

It is with a due sense of gravity that I make this submission to the National Children's Commissioner's Project for Reform of the Youth Justice and Related Systems Across Australia (the Project).

I welcome that the Project has been afforded a remit to explore ways to reduce children's involvement in crime, including through prevention and early intervention, rather than maintaining an exclusive, and inherently insufficient, focus on the detention that lies at the end of long pathways of causality that stretch through families, communities, policies, systems and, indeed, history.

Any consideration of youth justice in Australia must take into account the framework of wellbeing that has the child at the centre, but held in the concentric rings of 'the world of the child', the 'world around the child', and the 'the world at large', as UNICEF usefully described it in their Innocenti Report Card 17 in 2022.

I also welcome that the Commissioner has committed to including the voices of children and young people in this project, along with the views and expert opinions of stakeholders and researchers who have lines of sight into the rolling crisis that youth justice in Australia has become.

And I welcome that the findings and recommendations of this Project will be reported to the Commonwealth Attorney General through a National Children's Commissioner's Statutory Report under section 46MB(3) of the Australian Human Rights Commission Act 1986.

It is my sincere hope that this Project is successful to the extent that it marks a turning point from which we, as a nation, begin to genuinely address the root causes of youth crime rather than just rage at its consequences while perpetuating and deepening the cycles of despair and disadvantage that manifest it.

And I urge the Commissioner, the Attorney General, and everyone involved in creating, and responding to this project to step up to the moment to which they have been called. It is a moment of great consequence for our nation.

General Comment

In this submission I will provide responses to the four questions posed by this Project. However, in taking into account the Project's stated aim of "exploring ways to reduce children's involvement in crime, including through prevention and early intervention," I will at times re-frame my responses to the question of Youth Justice to one of Justice for Children and Young People.

This re-framing involves taking account of a series of injustices suffered by children and young people that are inextricably linked to the health and neurodevelopmental problems which the vast majority of children who offend and become the subject of Youth Justice live with.

I would point to four primary injustices; the injustice of the continued dispossession of our First Nations people; the health injustice that sees vast disparity in the health and developmental outcomes among Australian children; the economic injustice that results in growing gap between the haves and have-nots in this country; and the environmental injustice that is resulting in children and young people inheriting an increasingly warming and degraded planet.

As an epidemiologist, Distinguished Research Professor in the University of WA's School of Paediatrics and Child Health and as the author of more than 350 published papers in scientific journals, it is abundantly clear to me that these injustices are overwhelming contributor to the ecosystem of disadvantage and complexity that results in children offending and becoming subject to our youth justice system. And that the only effective and dignified solution to the spectrum of maladies and maladjustments faced by the cohort of those children is a significant increase in the investment of focus, resources and effort into supports and services for families and children from pregnancy and into the early years.

This is not new. More than 20 years ago, we (a large group of child and youth health researchers and practitioners) were alarmed by the rapid increases in the new morbidity and wicked problems in Australian children.

The suicide rate in males aged 15-19 had risen 4-fold between 1980s and 2000 and 2-fold for girls. More children had developmental disorders and a range of mental health problems, other than suicide.

More children were unable to navigate the school system and when we introduced a national measure of early child development (the Australian Early Development Census - AEDC) the social divide between wealthy and poorer areas was increasing and disturbing. The AEDC data also showed the worrying differences between geographic locations.

We made clear that investing in the early years was an important vehicle to improve our society, socially and economically. That call to invest in early childhood was international, with most OECD countries, the World Bank, and others, making the argument that it would be the way to improve whole of society outcomes.

But this argument, based on extensive research, and with the best interest of our society in mind, was countered by governments around the world with a myopic focus on GDP and wealth creation and a punitive response to child offending that was ineffective and morally bankrupt. And the early interventions we called for were not delivered.

Thus, as we predicted, many of the measures of childhood health and wellbeing are worse now than they were then, and we continue to confront the tragedy of social inequity and entrenched disadvantage in our Aboriginal communities. We are seeing very worrying increases in overweight and obese children and those suffering from mental health issues and the ongoing crisis in Youth Justice.

Our children are being damaged by the uncivil nature of our society – a fact that has a direct correlation to the youth justice crisis of which this project has been tasked to reform. Justice for our children and young people must be about providing the circumstances of equity and support that enable, rather than disable, their healthy development and adjustment.

The inequity which is threatening our social cohesion sits at the heart of inequity in health, learning and life outcomes for children – the so-called social determinants of health - and they demand our immediate attention, particularly when reform of our Youth Justice systems are being contemplated.

Failure to do so entrenches disadvantage and costs our children and our society dearly in ways that extend into every aspect of our society, including youth justice. And they also come with direct financial costs in services that try, and routinely fail, to mop up the issues created in the early years, and with the opportunity costs of failing to maximise the potential of our children who are the workforce of tomorrow.

There must be a real understanding by those in power that early pathway investment is **far** more cost-effective, humane and sensible than huge costly ineffective spending at the ends of pathways. The costs of not implementing effective early interventions, reducing risk and increasing preventive strategies are now enormous in many wealthy countries. The significant increases in poor outcomes in Australia mentioned earlier have been estimated at \$15.2 billion¹ per annum with costly (and mostly ineffective) services in health(overweight), mental health, education, child protection, disability, and justice.

Further, to be effective in exploring ways to reduce children's involvement in crime, including through prevention and early intervention this project must engage with other significant projects and enquiries currently underway in Australia including:

- The South Australian Royal Commission into early Childhood
- The National Early Years Strategy
- The Productivity Commission Review in Early Childhood
- The Voice Referendum

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

Failure to adequately address the injustices faced by Australian children, particularly Aboriginal children, mentioned in the General Comment above, combined with a lack of sufficient investment in early childhood development, are the principal factors contributing to children and young people's involvement in the youth justice system in Australia.

Any genuine reform of the Youth Justice System, that seeks to explore prevention and early intervention, must take them into account.

Reducing children's involvement in crime can only be contemplated from a holistic perspective that considers the social, historical and economic contexts in which children grow and develop.

Dispossession: For most Australian's living in our prosperous society, in a country of great beauty, and with the optimism of opportunity and prospect, is a great privilege. But that privilege has, without question, come at the cost of the First Nations people who have been dispossessed to varying degrees of country, culture, kin, and of the means of survival, and who make up a grotesquely disproportionate number of children in our Youth Justice system. It is an injustice that extends beyond the dispossession, to legislation and policy that has, since the arrival of Europeans, shut them out from the rewards of the Australian project and wrought great physical, psychological,

¹ How Australian can invest in children and return more; A new look at the \$15b cost of late action.
<https://www.minderoo.org/thrive-by-five/#resources>

and developmental harm on First Nations children. The policies that lead to the Stolen Generations is one, but far from the only, poignant example of this harmful legislative injustice.

Dispossession continues to profoundly impact First Nations communities and to contribute to the disadvantage of Aboriginal children that makes them significantly more likely to come into contact with the youth justice system.

Tackling this profound national tragedy will require systemic changes the funding and empowerment of Aboriginal Community Controlled Organisations (ACCO's), support for Aboriginal Community Controlled Child and Family Centres that can deliver culturally safe early childhood development services and family supports, and movement toward self-determination of First Nations peoples and ultimately a treaty – of which the referendum on The Voice is an important first step.

Health: There is also great injustice in the health of our nation's children. First Nations communities face far higher prevalence of non-communicable disease including diabetes, kidney disease, cardiovascular alcohol and other drug addictions and have a life expectancy 17 years shorter than the non-Aboriginal community.

The antenatal and early developmental pathways into juvenile crime are the very same pathways that lead to poor health (physical, mental, dental etc), child maltreatment, poor school attendance and achievements, complex disabilities (eg FASD and Early Life Trauma (ELT), ADHD and intellectual disability, depression and suicide) and eventually in to contact with police and the justice system.

Heart-wrenchingly, rates of foetal alcohol syndrome disease (FASD) are profoundly higher among Aboriginal children than non-aboriginal children. And we know that in the only juvenile detention centre in WA, nearly 90% of children aged 10 to 18 years, have serious neurodevelopmental disorders (Bower et al, 2019). These include Foetal Alcohol Spectrum Disorders (FASD), intellectual disability and ADHD, with many of these children having their disabilities worsened by early life trauma. A large proportion of these children are Aboriginal.

If similar studies had been done in NT, Qld and Tasmania, there would have been similar levels of problems. The Banksia study also showed that the staff were not trained to manage these children who have behaviour problems which are made worse by the punitive detention experiences they have (Passmore et al, 2019).

We know that these pathways are mostly **preventable** by:

1. early intervention in pregnancy and the early years to prevent FASD and other disabilities;
2. early assessment and remediation in high-risk families and children;
3. investing in a range of suitable diversionary programs to avoid children being detained; and,
4. if in detention, delivery of appropriate therapeutic programs based on the neurodevelopmental assessment of each child.

It is anguishing that politicians and bureaucrats who are aware of these pathways, still put children in punitive environments which ensure that they will never improve but come out more damaged and more dangerous to the public. Not only is it inhumane but the costs to the community and taxpayers are much greater compared with intervening earlier.

The impact on our society and on our economy of not addressing these issues early and effectively cannot be overestimated. And the same is true of early childhood education and care.

Economic: Economic injustice is not only creating a profound and growing gap between the haves and the have nots, but is also subjecting all, including our most disadvantaged, to extraordinary marketing powers of the petro-chemical, sugar, alcohol, gambling, and technology industries.

A growing number of Australian families are living well below the poverty line, putting their children at increased risk due to overcrowded housing, poor diet, and the comparative absence of supports including early childhood education and care.

Environmental: Children and young people globally are subject to an environmental injustice that sees them inheriting an increasingly warming and degraded planet. Climate anxiety is now a recognised contributor to the mental health crisis facing children and young people.

Further to the global environmental context, there is a localised environmental context that sees children and young people in remote communities more likely to live in overcrowded housing, have poorer access to clean water and to healthy food, and be more likely to be exposed to alcohol and drug use and domestic violence.

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?

To protect the rights and wellbeing of children and young people in the youth justice system it is critically important that screening instruments are put in place for the recognition of young people with FASD and neurodevelopmental disability² and that those working within the system have adequate training and understanding of neurodevelopmental disability and trauma informed practice. It would be better practice if children were assessed at the time of contact with the court system, and before they are detained or sentenced. This should result in the best preventive and therapeutic care being delivered to each child.

This need is highlighted in a recent set of studies which showed that 89% of children and young people in that facility had at least one domain of severe neurodevelopmental impairment, and 36% were diagnosed with FASD 36%, and of even greater concern the majority had not been previously identified³.

Unless workers in youth justice have awareness of these conditions, and training on how to respond to them, children in youth justice are unlikely to have their health and wellbeing needs met and their

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'He Has Problems; He Is Not the Problem . . . ' A Qualitative Study of Non-Custodial Staff Providing Services for Young Offenders Assessed for Foetal Alcohol Spectrum Disorder in an Australian Youth Detention Centre

³ **Fetal alcohol spectrum disorder and youth justice: a prevalence study among young people sentenced to detention in Western Australia**

difficult behaviours are likely to be met with punitive responses that fail to support the needs of the children in question, or effectively address the behaviours in question.

It is also fundamentally important that sufficient staffing levels are maintained at detention centres to ensure that clinical programs can be safely run and that unnecessary lockdowns can be avoided.

I also support the recommendation of a recent review Banksia Hill that called for the establishment of “a specialist youth care role to work alongside custodial officers”⁴.

I also direct this project to Social Reinvestment WA’s outstanding Blueprint for a Better Future: Paving the Way for Youth Justice Reform in Western Australia. This work provides a framework for a whole of government strategy and system coordination that highlights the need for:

- Thriving and equipped communities for all children all the time
- Responsive support when children need a little extra help
- Prioritised diversion at the first sign of offending behaviour
- Rehabilitation-focussed justice once a young person comes into contact with the justice system
- Therapeutic care focussed on reintegration when community-based sentencing is not suitable.

The Blueprint was developed by a large group of both relevant Aboriginal organisations and others with expertise in youth justice pathways (eg WACOSS).

More broadly, my research has focussed on getting the best population data to identify the pathways in to all the major problems affecting children, families, First Nations etc with the aim of intervening to enhance preventive factors and reduce risk factors - to invest early in pathway, not waiting till the process has become irreversible where costly interventions don’t work.

The developmental and behavioural outcomes for children are no different to other areas of wellbeing or disadvantage – they respond positively to early intervention. The support of positive developmental outcomes requires early intervention based on research and data. And those supports must be available to all children irrespective of postcode or parental income.

Without high-quality, universally accessible, early childhood support we will continue to see poor outcomes, particularly in Aboriginal, regional and remote communities. And as a nation we will continue to fall down international education rankings and to face crisis in juvenile justice like the one in my home state of Western Australia, and the one currently gripping Alice Springs.

It is no coincidence that when commenting on the unrest in Alice Springs on the 7.30 Report in February this year, Pat Turner focussed on the importance of early learning and care centres.

⁴ 2023 Inspection of Banksia Hill Detention Centre and Unit 18 at Causarina

“We have to have proper family support, wrap around services, and we have to have an increased level of programming for children, and that is from early childhood, (to support) normal neurological development and physical development as well as their psychological wellbeing,” she said.

“I am a big advocate of early learning centres for Aboriginal kids, and for all Australian kids, the whole society would benefit from that.”

Like most of the wicked problems which disable wellbeing, providing high quality, affordable, and universally accessible child and family supports and services demand whole of government, whole of society, cross disciplinary approach.

A most important aspect of developing effective services that work for all families is to engage with those who will be recipients of such services. The wellbeing approach being considered currently by our Federal Government has this on their agenda.

It aims to identify those values that Australians feel are important for an equitable and sustainable future for their children and their nation. The most effective services will be those which are developed and delivered with a close understanding of the variable lived experiences of the populations for which they are being planned. Whilst this underpins the rationale for the First Nations Voice to Parliament, it is also relevant for the development of services for all of us.

Australia is lucky to have excellent total population data sets on all births, childhoods and youth across all the domains (health, development -AEDC-, education, disability, child protection, living conditions, mental health and justice) that underpin early childhood development systems.

This data needs to be located, properly curated, linked to enable pathway analyses and analysed nationally and by each state and territory.

To provide the ECEC agenda for all, and to measure its impact over time, these data should be used to:

1. Identify populations of children by geographic location, socio-economic status, other potential risk factors and sub-population (e.g. First Nations) to enable planning of appropriately located and properly resourced services;
2. Identify the acceptability and use of these services by all groups in the population – who are using these services and who are not? (the question ‘*why*’ then needs to be addressed);
3. Develop a regular dependable, trusted series of outcomes for all children and young people to evaluate the success or otherwise of these services. These data need to be collated and reported on annually by the proposed national body recommended in section 3.5.

We do not have to choose between the safety of our community and the wellbeing of our children – the two are inextricable. Rather, we have the chance to create the Australia that we want to live in, and it starts with investing in our children.

3. Can you identify reforms that show evidence of positive outcomes, including reductions in children’s and young people’s involvement in you justice and child protection systems, either in Australia or internationally?

Aboriginal controlled family centres provide a valuable example of a pathway to supporting healthy early childhood development which is the most effective way of preventing children and young people from offending.

Two programs that focus on the early years and secondary prevention are the June Oscar initiated Program in the Fitzroy Valley: Marninwarntikura Women's Resource Centre and a metropolitan Melbourne program Bubup Wilam: Bubup Wilam June has also tackled primary prevention of FASD by focussing on pregnancy health – we need to get more evidence on what works for Aboriginal women as their alcohol drinking patterns are very different from non-Aboriginal women.

How wonderful it would be if centres like these were in every Australian community.

Instead, we saw funding to 75 centres like this cruelly cut by the Federal Government in 2014, along with the introduction of policy settings that impede access to early education and care to many of those who would benefit from it the most. Policies that have, I would argue, contributed to the rise in juvenile offending in our most disadvantaged communities.

I would also suggest that moving to a system of measuring wellbeing, such as is now being tested in many countries with OECD guidance, rather than focussing exclusively on economic measures, could be important in shifting our collective focus to prevention and intervention rather than punishment.

This approach has been effectively taken in Wales. Inspired by the UN survey of The World We Want and the Sustainable Development Goals, Wales initiated a comprehensive community conversation called The Wales We Want. Started in 2014, it resulted in a Wellbeing of Future Generations Act – probably unique in the world, that legislates for sustainable development.

An explosion of community participation followed into subgroups, clubs and organisations eg The Wales that Women want, the Wales that young farmers want, schools etc. There were 7 foundational goals from these conversations which the community thought were the most important for the wellbeing of future generations.

This kind of holistic and community led approach to future-making has great promise for addressing the cycles of injustice and disadvantage discussed earlier in this document.

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?

Right now, the attention of this nation is turned to investing in the early years. A fact driven by decades of research and advocacy and highlighted by this very project of the National Commissioner for Children and Young People. That attention is a once in a generation opportunity to open the aperture of our view of the value and impact of how we choose to invest in the early years.

This new government is giving us the best opportunity we have ever had to collectively deliver for the early years. The Prime Minister (Albanese) started his acceptance speech by promising to implement the Uluru Statement from the Heart and to provide universal early childhood education and care. And we have a Treasurer (Chalmers) committed to wellbeing over GDP to measure his budget impact.

To make the most of this opportunity we must not allow ourselves to consider the elements of our system that impact children in isolation. We require a national approach that brings together all the important work being done in this space including the National Early Years Strategy, the Productivity Commission Review of Early Childhood Education and Care, the Voice Referendum and the South Australian Royal Commission into Early Childhood Education and Care.

And finally we should support each state and territory to increase the age of criminal responsibility to at least 14 years of age; a National approach to this would assist and be in line with the UN Conventions.