

19 JUN 2023



Department of
Youth Justice,
Employment,
Small Business
and Training

Our Ref: 02110-2023

Ms Anne Hollonds
National Children's Commissioner
Australian Human Rights Commission
[REDACTED]

Dear Ms Hollonds

I refer to your letter dated 11 May 2023 to the Honourable Leanne Linard MP, former Minister for Children, Youth Justice and Multicultural Affairs regarding the Australian Human Rights Commission Youth Justice and Child Wellbeing Reform project. As this matter now falls within the Honourable Di Farmer MP, Minister for Employment and Small Business, Minister for Training and Skills and Development and Minister for Youth Justice, your correspondence has been forwarded to me for reply and consideration.

Thank you for the opportunity to provide a submission to inform such a valuable project, which shares a common goal with my department in reducing the number of young people who engage in criminal-related behaviours.

Please find attached my department's submission which responds to the four questions you have raised as part of the consultation process.

My departmental officers are available to engage further with you in interviews and roundtable discussions, which I understand will focus on cross-jurisdictional responses to youth involvement in the criminal justice system.

If you require further information or assistance, please contact [REDACTED] Senior Executive Director, Strategy Performance and Commissioning, Department of Youth Justice, Employment, Small Business and Training on [REDACTED]

Yours sincerely

[REDACTED]
Robert Gee APM
Director-General

Enc: departmental submission

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Australian Human Rights Commission

Youth Justice and Child Wellbeing Reform Project

Submission from the Department of Youth Justice, Employment, Small Business and Training (Queensland)

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

The rate of young people (aged 10-17 years) committing offences across Australia has decreased since 2020-2021 (Australian Bureau of Statistics [ABS], 2023). However, in Queensland a small cohort of repeat youth offenders continue to offend at an increased intensity and severity compared to the general youth offending population.

An increasing body of evidence has led to the identification of a broad range of factors found to contribute to children and young people becoming involved in youth justice systems across Australia. Underpinning this evidence is a clear association between antisocial behaviour and exposure to domestic family violence, child maltreatment and socio-economic disadvantage and poverty (Australian Institute of Family Services [AIFS], 2011; AIFS, 2015; Piotrowska et al., 2015). Often, young people who come into contact with the youth justice system have untreated mental health issues compounded by problematic substance use, have disengaged from education and are subject to adverse living circumstances (Malvaso et al., 2022). Young people with developmental disorders and cognitive and intellectual disabilities are also overrepresented within youth justice systems (AIFS, 2018), and these conditions affect decision making ability, consequential thinking and increase engagement in risk-taking behaviour.

Assessment tools used by Youth Justice Caseworkers in Queensland determine specific risk factors that precipitate offending behaviour, and this contributes to a young person's engagement with the youth justice system. These tools also show the wider contextual factors that drive youth offending in general, allowing for the identification of trends and patterns that may predict the likelihood of offending or reoffending behaviour. This has the added benefit of allowing Youth Justice Caseworkers to target their interventions and support. The youth justice system in Queensland administers the Youth Level of Service/ Case Management Index (YLS/CMI) tool, which is guided by the 'Risk, Needs, Responsivity' framework to identify and target the causes of youth offending. Under this framework, the following eight criminogenic needs have been identified as increasing a young person's risk of offending and subsequent involvement in the youth justice system:

- (a) Prior and current offences/ orders
- (b) Family circumstance/ parenting
- (c) Education/ Employment
- (d) Peer relations
- (e) Substance abuse
- (f) Leisure/ recreation
- (g) Personality/ behaviour
- (h) Attitudes/ orientation

Please see Appendix 1 for additional information on each factor.

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?

The United Nations Convention on the Rights of the Child (UNCRC) outlines the rights of children, to which Australia is a signatory. Queensland is also guided by the *Human Rights Act 2019* (QLD) which specifically address the rights of families and children, including the rights of children in the criminal process (section 33) which states a child charged with committing a crime or who has been detained without charge must not be held with adults. They must also be brought to trial as quickly as possible and treated in a way that is appropriate for their age. Children are entitled to opportunities for education and rehabilitation in detention.

Queensland is seeking to expedite court proceedings for young people through fast-track sentencing pilot programs, to support children spending less time on remand and more time accessing criminogenic and therapeutic supports.

Most young people who come into contact with youth justice in Queensland do not receive a custodial sentence. For those young people who are remanded at Youth Detention Centres (YDCs), the department ensures that separation, force and restraints are used in strict compliance with the *Youth Justice Act 1992* and *Youth Justice Regulation 2016*. Multiple internal and external review and oversight functions support and promote compliance and best practice service delivery. Spit hoods are prohibited in Queensland YDCs. While force, restraints and separation are sometimes necessary, the department recognises that these practices may perpetuate a young person's trauma and lead to emotional or psychological harm. In this context, the department strives for safety responses that promote physical, emotional, psychological and cultural safety.

It is acknowledged that while there is an increase in number of young people being remanded in custody, Queensland YDCs have one of the highest ratio of young person to staff member across Australia to support and promote safety, health and wellbeing of young people whilst in custody (Department of Youth Justice, Employment, Small Business and Training [BESBT], 2023).

The *Youth Justice Act 1992* upholds the rights of a child engaged with youth justice in Queensland, including the right to special protection allowed during an investigation or proceeding in relation to an offence committed, or allegedly committed by the child. This includes the right to privacy, also stated within the UNCRC.

Current offending trends and patterns amongst particularly complex cohorts of youth has led to the posting of youth crime to social media, either by the young person themselves or their friends, a member of the public, or a victim. This has contributed to growing public perception that the rate and severity of youth offending is increasing and may compromise the privacy and protection the *Youth Justice Act 1992* affords children and young people during the judicial process. Such sentiment, coupled with an increase in coverage of youth offending in the media, has led to instances of vigilantism within the community targeting alleged youth offenders, which has the potential to lead to harm for those young people.

There is therefore a need to maintain a strong collaboration between cross-government agencies and other organisations to ensure the right to public safety is balanced with the rights and protection of children and young people. This cooperation has been established upon a foundation of robust preventative measures and appropriate reactive responses.

The UNCRC states that children with a disability or particular vulnerabilities should receive special care and support.

It is common for young people engaged with the Youth Justice system to have witnessed acts of family and domestic violence perpetrated within the home. Such exposure to trauma, particularly if prolonged, can increase the likelihood that those young people will become vulnerable to other adverse life outcomes. These include homelessness, poor mental health, substance abuse and increased likelihood of entry into the adult criminal justice system. A whole of government-led approach is required to support those young people to divert those trajectories, as well as provide interventions that reduce the likelihood of perpetrating domestic and family violence within their own relationships over the lifespan.

Further efforts are required to continue supporting the healing of First Nations families. Stronger partnerships between government agencies and First Nations peoples and communities are being put in place by our department to prevent First Nations young people from getting involved in the youth justice system. Focusing more on community-led local solutions to prevent crime will also divert young people from the justice system and assist in reaching goals of the *National Agreement on Closing the Gap*, which includes reducing the rate of Aboriginal and Torres Strait Islander young people (10-17) in detention by 30 per cent by 2031.

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?

Access to early childhood education, health services, support to families during challenging times and connection to culture are key to the healthy development of children and a well-functioning and safe society. Strengthening families and addressing challenging behaviours as early as possible are some of the best ways to help children avoid contact with the youth justice system and prevent crime.

The earlier issues are identified, the better chance there is of preventing anti-social behaviour and offending. Early intervention and prevention are a significant focus to reduce the risk that children will come into contact with the youth justice system. This includes proactive health responses, including mental health, wellbeing, and alcohol and other drug diversions and supports; responses to domestic and family violence; increasing education outcomes for children and young people; as well as disability and housing supports. Local communities play a large role in making sure activities are available for young people. Children and young people can also benefit from the support and guidance of responsible adults through mentoring programs. When delivered well, mentoring programs provide safe, supportive role models who encourage at-risk children towards positive, non-offending futures.

For older children and young people, staying connected with education, developing vocational skills, and gaining employment provide important pathways away from crime.

Our department's evaluations, and the reducing number of young people in the youth justice system, demonstrates that we have effective diversionary responses in place in Queensland. Police can caution young people and refer them to support services. Police and courts can also refer young people to restorative justice processes, which assist young people to acknowledge the harm their behaviour has caused and begin to make amends. Reviews of restorative justice conferencing consistently show higher victim satisfaction and reduced re-offending compared to offending that is dealt with solely by standard justice processes (see: [Restorative justice conferencing program evaluation - Department of Children, Youth Justice and Multicultural Affairs \(cyjma.qld.gov.au\)](https://www.cyjma.qld.gov.au) and [Benefits of restorative justice conferencing | Your rights, crime and the law | Queensland Government \(www.qld.gov.au\)](https://www.qld.gov.au)). Other successful diversion programs include those where young people are referred by police and other first responders to support services. Young people already engaged in the youth justice system are supported to divert their offending trajectories with programs, interventions and services that match

identified risks and needs, and delivered at a time when the young person is most responsive to change. This might include referral to suitable alcohol and drugs service providers and participation in effective harm minimisation strategies with their Youth Justice Caseworker. Cognitive behavioural therapy (CBT) is also identified as one of the most effective approaches for reducing youth offending. CBT-based programs assist offenders to recognise, control and redirect harmful thought patterns and, when based on specific offenders needs, tend to have a much greater effect at reducing re-offending.

Our department is committed to ensuring our programs are effective, targeted and responsive to the needs of the young people engaged with our service and are delivered by Youth Justice Caseworkers and facilitators adequately trained in the Risk, Need, Responsivity framework. Regular independent evaluations are undertaken across the range of interventions and programs offered by youth justice to ensure their ongoing efficacy.

The Transition 2 Success (T2S) program is one such program in Queensland that has demonstrated its effectiveness at preventing at-risk young people from entering the youth justice system and disrupting trajectories for further entrenchment of those young people already engaged. Please see [Transition to success program evaluation - Department of Children, Youth Justice and Multicultural Affairs \(cyjma.qld.gov.au\)](#) for further information.

Intensive Case Management (ICM) is another Queensland initiative found to be successful in breaking the cycle of crime, by addressing risk and encouraging pro-social decision making and behaviour. More information can be found on the departmental website ([Intensive case management evaluation – Department of Children, Youth Justice and Multicultural Affairs \(cyjma.qld.gov.au\)](#)).

Program evaluations demonstrate the effectiveness of services delivered to young people and can be found on the departmental website- [Youth Justice Reform - Young people in the youth justice system \(cyjma.qld.gov.au\)](#).

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?

There may be some benefit in creating a nationally consistent approach to how children and young people are supported, including a standardised approach for prevention and early intervention responses. Benefits may see all young people across the country receiving a standard level of care and provide benefit to young people and families that are transient across jurisdictions, and where representative supervision and delivery of service responses can maintain greater levels of continuity of service.

However, there is also significant benefit in maintaining localised approaches to supporting children, young people and their families. Local communities play a key role in preventing youth crime and are critical in supporting and encouraging young people to thrive and safely transition to adulthood. They are the first to see when a young person starts disconnecting from kin or community, stops attending school, shows signs of distress, or is acting out through anti-social behaviour.

The Queensland Government is proactively seeking to better understand the issues specific to a local area and how communities would like to act to reduce youth offending in their area. This includes knowing what concerns communities the most, supporting local responses that are already working, and encouraging new ideas to reduce youth offending and keep the community safe.

Australian Youth Justice Administrators

The Australian Youth Justice Administrators (AYJA) operates as a collective body of senior executives from each of the Australian state or territory departments and New Zealand responsible for the delivery of youth justice services. The purpose of AYJA is to share information of relevance for all youth justice jurisdictions, support the collection of youth justice data, support and contribute to research in the area of youth justice and promote and maintain national principles, standards and guidelines for youth justice.

The Standards Review project commenced in 2019. The purpose of the project is to review, revise and contemporise the existing Standards (2009 – last reviewed 2012) to better align with the significant changes that have happened within youth justice over the past 10-years (i.e. best practice evidence, child safe principles, Royal Commissions and other major reviews/inquiries etc.). The National Youth Justice Policy Forum (a sub group of AYJA, led by an AYJA member) is undertaking this work, with significant input from the Aboriginal, Torres Strait Islander and Māori Advisory Group and the Detention Centre Management Advisory Group, which are further sub-groups of AYJA.

The AYJA Standards are aspirational standards for youth justice service delivery required for child- and-family-centred youth justice services in Australia. The Standards align with the AYJA Principles of Youth Justice in Australia and are informed by research evidence and youth justice best practice and acknowledges the need for inclusive services that reflect the cultural and linguistic diversity of Australian communities.

The Standards are not prescriptive, nor are they intended to create boundaries for youth justice services. AYJA members intend to use the Standards to conduct peer service delivery reviews of each other's jurisdictions. It is hoped that the revised Standards will promote a consistent, coordinated and best practice national approach to youth justice. Currently, the final draft Standards are with the designers for formatting prior to jurisdictional informative consultation. AYJA intends to launch the Standards in October 2023.

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APPENDIX 1

(a) Prior and current offences/orders

Young people who have a prior history of anti-social and offending behaviour are more likely than those who do not to be at increased risk of involvement with the youth justice system. Such young people are also more likely to maintain contact with youth justice by way of reoffending. For some of those young people, the association between past and future criminal behaviour increases as the perceived rewards for criminal behaviour increase.

(b) Family circumstances/parenting

Family members serve as interpersonal sources of reward for prosocial behaviour and as costs for criminal behaviour. The absence of positive supports and guidance increases the likelihood of the young person engaging in anti-social behaviour. In some situations, family members may unfortunately act as models and direct supports for offending-related behaviour. For many young people involved in the youth justice system, unstable parenting, family conflict, family criminality, low income and unstable housing, are risk factors that have contributed to involvement in the youth justice system.

(c) Education/Employment

Achievement and participation in regular activities, such as those offered through education or employment, are important indicators of a prosocial lifestyle and help instil a sense of purpose. Involvement and commitment to the social institutions of education and employment also serve to occupy a significant proportion of a young person's life, leaving less time for antisocial activities. Many young people involved with youth justice have had limited access to education or have disengaged completely from education and/or employment.

(d) Peer relations

Criminology has long recognised the influence of friends and acquaintances on an individual's behaviour, values and attitudes. Having friends who also participate in offending-related behaviour is one of the single best predictors of criminal behaviour. Acquaintances and friends serve as models for behaviour and as interpersonal sources of rewards and costs.

(e) Substance abuse

Substance abuse creates obstacles to prosocial behaviours and interactions. Severe abuse can interfere with performance in school or employment, alter social networks, create family stress, and can even impact directly on offending-related behaviour through disinhibition and the need to obtain money illicitly to support a habit. The high prevalence of substance abuse among youth offending populations makes alcohol and/or drug problems one of the most common criminogenic need areas targeted by treatment programs.

(f) *Leisure/ recreation*

Young people who have access to excessive unstructured time, often because of disengagement from education and/or employment, coupled with limited or no parental supervision, and lack of involvement in prosocial and leisure activities, are at an increased risk of becoming involved with the youth justice system. Often these young people gravitate towards other young people in similar circumstances to themselves and can engage in criminal conduct as a means of satisfying the need to fill time through exciting means.

(g) *Personality/ behaviour*

Some young people involved with the youth justice system may exhibit personality and behavioural patterns associated with antisocial behaviour. Factors such as: inflated self-esteem; physical and verbal aggression; being prone to tantrums; inattention; poor frustration tolerance; and poor impulse control, are often indicators of what some forensic experts consider as hallmarks of Conduct Disorder or Oppositional Defiance Disorder, as described by the Diagnostic and Statistical Manual of Mental Disorders (DSM-5). Failure to obtain early diagnosis and treatment can exacerbate these behaviours and place a young person at risk of engaging in high risk and offending-related behaviours.

(h) *Attitudes/ orientation*

Expressing a pro-criminal attitude alongside a disdain towards authority and the law is often a significant correlate of offending behaviour. This is exacerbated in the presence of other attitudinal factors, such as the inability to demonstrate empathy and remorse, rejection of help and disinhibited support seeking behaviour, as well as a disregard towards the welfare of others. Many of these factors, however, may be learnt behaviours as the result of exposure to Adverse Childhood Experiences.

The above factors are known to directly influence offending behaviour for young people. However, other compounding circumstances which may lead a young person to become involved with youth justice include adverse housing conditions and homelessness; communication issues; involvement in gangs; marginalisation; engaging with peers outside of a young person's age range; poor problem solving, social or self- management skills; and being a victim of neglect, physical and/ or sexual abuse.

What is crucial to note, however, is that most young people who offend do not become repeat offenders and early and swift diversion by way of a warning, a reprimand or a caution is effective for the majority. Research also shows that early, unnecessary involvement in the criminal justice system is harmful to young people.