



Youth justice and child wellbeing reform across Australia

Submission to Australian Human Rights Commission

16 June 2023

This submission is made by Save the Children and 54 reasons.

Save the Children is a leading global non-government organisation focused on children's rights which has been active in Australia for over 100 years. 54 reasons is our Australian service delivery arm, working alongside children and their families and communities in accordance with the 54 articles in the United Nations Convention on the Rights of the Child (CRC).

This submission reflects our perspective as Australia's leading child rights organisation. It is informed by our extensive experience translating global child rights standards and principles into practical policy and service delivery reforms at the national and state and territory level.

Our views are informed by our experience working with children and their families and communities in every State and the Northern Territory. Our youth justice services span prevention, early and secondary intervention, bail support, throughcare and transition from detention, child rights education in detention settings, and other supports, delivered through a child-centred, evidence-informed child rights practice framework. A snapshot of our services and approach is at [Attachment 1](#).

This submission draws extensively on our comprehensive recent report, *Putting children first: A rights-respecting approach to youth justice in Australia*¹ ([Attachment 2](#)).

A rights-respecting approach to youth justice and child wellbeing reform across Australia

The current approach to youth justice in Australia is clearly not working. Across Australia, youth justice systems harm children and young people, fail to uphold their rights, are not evidence-based, and are ineffective in preventing offending and reoffending. They are discriminatory, reinforce intergenerational cycles of disadvantage, and perpetuate the shameful over-representation of Aboriginal and Torres Strait Islander children and young people in youth justice.

A fundamental shift is needed in how youth justice systems operate and their ability to achieve their goals. A child rights-based approach – or a rights-respecting approach – can enable this change.

Rather than punishing and incarcerating children and young people, a child rights-based approach focuses system effort on addressing root causes, preventing contact with youth justice, and providing effective support to change trajectories. It is a better and more effective basis for youth justice reform.

Children's rights are globally accepted minimum standards enshrined in the CRC, and contextualised and elaborated in other instruments such as the UN Declaration on the Rights of Indigenous Peoples. This includes services, supports, and material, social, economic and other conditions necessary for all children to have the chance to develop to their fullest potential. These rights are held by all children and

¹ Save the Children and 54 reasons, 2023, *Putting children first: A rights-respecting approach to youth justice in Australia*, available at https://www.savethechildren.org.au/getmedia/4befc9d7-c9de-4088-b591-547714fc8673/Putting-children-first-A-rights-respecting-approach-to-youth-justice-in-Australia_April-23.pdf (cited in this submission as '*Putting children first*'). Please refer to the report itself for detailed references.



young people aged up to 18. Governments are responsible for ensuring they are upheld for all. However, Australian governments have not fully incorporated the CRC into law and policy, contributing to ongoing rights violations and harming children's wellbeing.

A child rights-based approach starts with children themselves, rather than existing government portfolio, policy or service settings. It is about centring children and young people, taking them seriously in their own right, and focusing on their developmental needs and circumstances. It focuses attention on children's holistic wellbeing and development.

A child rights-based approach is strongly aligned with child development science and the evidence about what works to prevent children and young people from coming into or continuing contact with youth justice.

As such, a child rights framework provides a roadmap for system-wide reform in youth justice and child wellbeing. It includes overarching principles and specific standards and minimum requirements that must be met for youth justice systems to be rights-compliant and achieve their goals.

In summary, we recommend that:

1. Australian governments adopt a child rights-based approach to youth justice and child wellbeing reform.
2. Australian governments ground youth justice and child wellbeing reform in comprehensive plans for children aimed at upholding children's rights, including a National Children's Plan and coordinated State and Territory children's plans.
3. Australian governments fully incorporate the CRC into Australian law and policy.
4. State and Territory Governments prioritise reform to:
 - (a) Raise the minimum age of criminal responsibility to at least 14
 - (b) Increase access to diversion
 - (c) Invest in early intervention
 - (d) Review bail and remand laws and invest in bail supports
 - (e) Improve detention practices
 - (f) Support workforces.These reforms should be underpinned by focuses on addressing over-representation of Aboriginal and Torres Strait Islander children and young people, and ensuring greater respect for children's right to be heard across the youth justice system.
5. The Australian Government work with State and Territory Governments to:
 - (a) Develop national youth justice standards
 - (b) Lead a national approach to raising the minimum age of criminal responsibility to at least 14
 - (c) Ensure adequate oversight of youth detention facilities.
6. The Australian Government withdraw Australia's reservation to Article 37(c) of the CRC and ratify the Third Optional Protocol to the CRC.

We provide more detail about these recommendations below.



Responses to consultation questions

*What factors contribute to children's and young people's involvement in youth justice systems in Australia?*²

Intersecting historical, environmental, institutional and system factors contribute to children and young people encountering the youth justice system.



Source: *Putting children first*, p 19

The significance of the extremely high rates of severe maltreatment, neurodevelopmental and other disorders (often undiagnosed) and trauma (commonly intergenerational) experienced by children and young people in contact with youth justice cannot be overstated. These are characteristics of children and young people that, in any other context, would be rightly recognised as a clear sign of the need for appropriate support, not punishment. The large crossover between children in contact with both child protection and youth justice systems is particularly damning.³

Aboriginal and Torres Strait Islander children and young people are severely over-represented at all points of the youth justice system. This is primarily due to historical and ongoing systemic racism and the impacts of colonisation, dispossession and intergenerational trauma. It is perpetuated by the lack of system-wide support for culturally appropriate, Aboriginal and Torres Strait Islander-controlled and delivered services for children and young people.

These are the clearest possible indications that youth justice systems in Australia are causing harm and driving inequity through their impacts on children and young people and their communities.

² For more detailed discussion and references, see *Putting children first*, pp 17-22.

³ For a child rights-based perspective on child wellbeing and safety, see Save the Children and Child Wise, 2021, *Children's rights, wellbeing and protection: A new paradigm*, available at https://www.savethechildren.org.au/getmedia/4869aa4e-a685-49fd-ab0a-8079bfba16a4/2021-07-30-save-the-children-and-child-wise-submission-successor-plan-to-the-national-framework-for-protecting-australia-s-children_final.aspx.



Almost invariably, children and young people who have contact with youth justice experience complex and intersecting challenges and barriers. These include:

- Environmental barriers, including homelessness, overcrowding, experiences of domestic and family violence, and social disconnection
- Health and development complexities and barriers, including neurocognitive disability, mental health challenges, foetal alcohol spectrum disorder (FASD) and substance misuse
- Employment and societal barriers, including difficulties accessing employment and recreational activities
- Education barriers, including challenges in engaging with education and feeling a sense of belonging at school and connection with peers and trusted adults.

Long-standing service system deficiencies compound these challenges and contribute to youth justice contact. This encompasses many services and interventions that are not typically regarded as relevant to, or part of, the youth justice system and which operate in siloed, disconnected ways that are not centred on the needs and circumstances of the children and young people they should be serving.

Child poverty commonly underpins these circumstances, as the root cause of untold harm to children and young people in Australia and breaches of their rights.⁴ In effect, the youth justice system punishes children and young people for being poor.

These factors contribute to children and young people coming into contact with youth justice, and in turn are exacerbated by contact with youth justice itself. This creates a vicious cycle which drives repeated and escalating youth justice involvement.

In other words, the operation of the youth justice system itself directly drives children and young people's continued involvement with youth justice. Any contact with youth justice makes further contact more likely. The earlier a child's first contact is with youth justice, the more likely they are to reoffend, including into adulthood.

Australia's youth justice systems are strongly influenced by punitive, 'tough on crime' approaches that harmfully emphasise incarcerating children and young people, both before and after sentencing. This results in the criminal justice system itself retraumatising children while signally failing to respond to the impacts of trauma, medical and developmental challenges and institutional racism.

Ultimately, this makes the community less safe, by subjecting children – including very young children – to the criminogenic impacts of contact with the criminal justice system and making it more likely that they will reoffend and engage in escalating anti-social behaviour.

⁴ Save the Children and 54 reasons, 2023, *Getting to the root of it: How a child rights approach can end child poverty in Australia*, available at <https://www.savethechildren.org.au/getmedia/4e31fead-5b6c-4532-8b78-b8015d6ec9c5/2023-02-17-inquiry-into-poverty-in-australia-save-the-children-and-54-reasons-submission.pdf.aspx>.



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?⁵

Youth justice systems and other systems affecting children, young people and their families and communities are currently not focused on, or organised around, children and young people themselves. They are not grounded in an understanding of child development and the impacts of trauma.

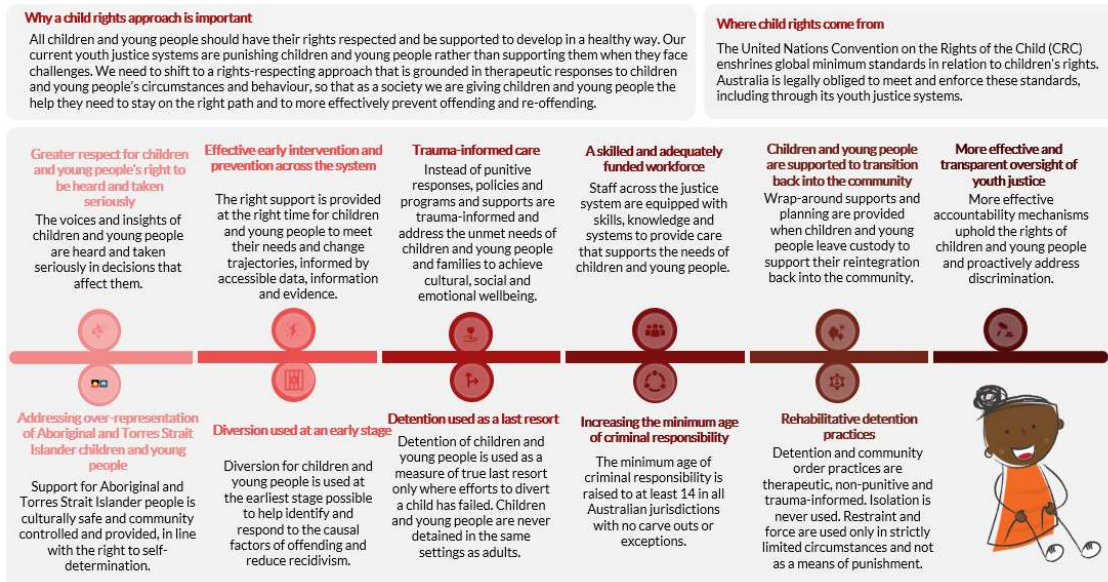
It is therefore unsurprising that children and young people's rights and wellbeing are suffering, and that youth justice systems are persistently failing to shift their focus to prevention, early intervention and diversion, and instead continue to focus disproportionate effort on punitive and acute responses.

There is significant evidence that therapeutic, trauma-informed and culturally safe and appropriate services and supports are far more effective than punitive approaches.

A **child rights-based approach** would represent a fundamental shift from the current approach, to instead organising all relevant policy and services around children and young people. It would address the structural and systemic factors that shape children's lives and outcomes. It would put children first.

Implementing a rights-respecting approach to youth justice would involve comprehensive system-level reforms that are centred around children, taking in existing youth justice systems and services and other policy, service and system arrangements affecting children and young people. These reforms should be grounded in a coordinated, holistic approach to children's policy and services more broadly, with the overall objective of protecting, respecting and fulfilling children's rights.

Key elements of a child rights-based approach to youth justice in Australia are summarised below, as are the barriers to positive change and how they can be overcome.



⁵ For more detailed discussion and references, see *Putting children first*, pp 6-7, 23-8.



Barrier to change	Solution
<p>Children and young people are not respected or taken seriously as rights-holders</p> <p>Child development and impacts of trauma are poorly understood</p>	<p>Adopt a child-rights based approach to ensure that children and young people are:</p> <ul style="list-style-type: none"> • taken seriously in their own right • centred in decision-making affecting them • listened to, understood, and supported in ways that are child-centred, therapeutic, trauma-informed and responsive to their contexts, cultures and developmental needs
<p>Government policy-making and service delivery is siloed by ministerial and departmental portfolio and programs rather than organised around people, communities and outcomes</p> <p>Lack of accountability for outcomes and lack of incentives to invest in prevention and early intervention</p> <p>Lack of focus on root causes and structural drivers of contact with youth justice – racism, poverty, intergenerational harm and trauma</p>	<p>Develop coordinated approaches to policy-making and services affecting children – through a comprehensive National Children’s Plan, and state and territory equivalents – that are holistic and organised around children’s rights, with a strong focus on addressing root causes and prioritising prevention over late intervention</p>
<p>Government policy and strategies are not well implemented, even when well-designed</p>	<p>Focus on, and invest in, effective implementation, including clear accountability and monitoring mechanisms and workforce reform and support</p>
<p>Political will is lacking</p> <p>Governments respond to alarmist media-driven public sentiment about outlying incidents with knee-jerk, unevidenced ‘tough on crime’ measures</p>	<p>Educate and change the public and political conversation about youth justice to focus on what is causing youth offending and anti-social behaviour</p>

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?⁶

When children and young people come into contact with youth justice, society and governments have let them down. To achieve meaningful youth justice and child wellbeing reform, children and young people themselves must be at the centre of all decision-making affecting them. A coordinated approach and plan for children more broadly is needed to achieve this.

A National Children’s Plan is needed to establish a clear vision for children – aged up to 18 – in Australia and a practical roadmap to achieve it. This Plan would establish a long-term and comprehensive framework for how governments organise all policies, services, investments and decisions that affect children. It would unify across existing arrangements, with a child-centred focus, and strongly focus on

⁶ For more detailed discussion and references, see *Putting children first*, Chapters 4 and 5.



addressing underlying causes and drivers of risk and harm to children.⁷ Each State and Territory should also develop a coordinated children's plan in its own jurisdiction.

Australia lacks a legislative framework to uphold children's rights as a whole. This absence manifests in the ongoing significant violations of rights seen in youth justice and child wellbeing broadly across Australia, and in the lack of direction and accountability by governments to address these violations. To remedy this, Australian governments should **incorporate the CRC into Australian law and policy**, drawing on successful experiences elsewhere. The implementation of a National Children's Plan and its state and territory counterparts could begin and outline a clear pathway to comprehensive incorporation of the CRC in Australia.

In relation to existing youth justice systems, we recommend State and Territory Governments prioritise six reform areas to align with a child rights approach. Our assessment is informed by a review of the many inquiries, consultations and reviews into youth justice undertaken in recent years, the egregiousness of current breaches of children's rights, the opportunity for reform (including alignment with stated government priorities), and the practicability of the change:

1. Raise the **age of criminal responsibility** to at least 14 across all jurisdictions, with no exceptions for specific offences, and accompanied by adequate investment in services providing effective alternatives to criminalisation.⁸
2. Increase access to, and availability of, evidence-informed **diversion** programs.⁹
3. Invest in and evaluate **early intervention** programs.¹⁰
4. Review restrictive **bail and remand laws** and invest in **bail supports**. In several jurisdictions, regressive bail and remand laws and measures are a key source of rights breaches and driving high rates of young children being detained without being sentenced, causing significant harm.¹¹
5. Reform **detention conditions and practices** to reflect international standards and the evidence about effective, rights-respecting practices. Youth detention arrangements require a complete overhaul, including to meet minimum child rights standards by:
 - (a) ensuring children are never detained in adult facilities or with adults
 - (b) prohibiting solitary confinement of children
 - (c) ending restrictive practices and others such as the use of force, restraint and strip-searching, particularly ensuring these are never used for punitive purposes or without stringent safeguards in place.¹²
6. Implement **workforce** reform to ensure all parts of the youth justice system deliver therapeutic, trauma-informed and culturally-responsive support and care, in detention and more broadly.¹³

These policy reform directions should be pursued in the context of two overarching objectives.

- Addressing **over-representation of Aboriginal and Torres Strait Islander children and young people** should be a priority of the highest order. This starts with recognising the fundamental

⁷ For more detail, see Australian Child Rights Taskforce, Save the Children and 54 reasons and UNICEF Australia, 2023, *A Blueprint for a National Children's Plan* (forthcoming).

⁸ *Putting children first*, pp 41, 42 and 54.

⁹ *Putting children first*, pp 35, 36 and 53.

¹⁰ *Putting children first*, p 52.

¹¹ *Putting children first*, pp 33 and 34.

¹² *Putting children first*, pp 43, 44 and 57.

¹³ *Putting children first*, pp 45, 46 and 61.



importance of self-determination and design, control and delivery of services and solutions at a community and system level. It requires addressing the devastating effects of structural racism, colonisation, dispossession and institutional violence experienced by communities today.¹⁴

- Ensuring greater respect for **children's right to be heard** across the youth justice system is essential to improve the operation of the system and its outcomes. This includes ensuring individual children and young people who are in contact with youth justice understand their rights and participate meaningfully in goal-setting and other decisions affecting them. It also entails creating mechanisms for children and young people to be heard and taken seriously at a system level, in policy-making and service design.¹⁵

*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?*¹⁶

There is significant opportunity and need for a national approach to youth justice and child wellbeing reform in Australia. While youth justice is primarily a state and territory responsibility, the Australian Government should play a stronger leadership and stewardship role.

Australia consistently fails to meet its human rights obligations in relation to youth justice. The Australian Government is responsible for these rights violations. Moreover, true system reform requires Australian Government involvement. To shift the orientation of youth justice and child wellbeing systems towards prevention and early intervention, a coordinated service response and focus on underlying causes of involvement with youth justice is needed. The Australian Government holds many of the policy levers needed to enable such a shift, particularly 'upstream'. It also has a role in supporting learning and collaboration between jurisdictions, including co-investment to improve outcomes for specific geographic areas and communities.

We recommend the Australian Government pursue the following priority national reforms, working with State and Territory Governments:¹⁷

- Develop **national youth justice standards**, drawing on international best practice and reflecting child rights standards and requirements. There is a clear case for comprehensive national youth justice standards, accompanied by guidance material for implementation by states and territories. Existing state-based arrangements are resulting in persistent violations of children's rights and systems that are ineffective in achieving their aims. A national approach underpinned by a child rights-based framework could drive meaningful change.
- Lead a **national approach to raising the minimum age of criminal responsibility** to at least 14 across Australia. This could include establishing commitment by all jurisdictions to raise the age to at least 14, with no exceptions, along with agreement on the evidence-based service system reforms that would establish an effective system-level alternative to criminalisation.
- Ensure adequate **oversight of youth detention facilities**, including through full implementation of the Optional Protocol to the Convention against Torture (OPCAT). This should include establishing appropriately resourced and empowered National Preventive Mechanism bodies in each Australian jurisdiction. It should also include developing best practice standards reflecting child rights requirements – as opposed to lower 'minimum standards' – for states and territories to comply with OPCAT, in the context of national youth justice standards.

¹⁴ *Putting children first*, p 60.

¹⁵ *Putting children first*, p 51.

¹⁶ For more detailed discussion and references, see *Putting children first*, pp 62-9.

¹⁷ *Putting children first*, p 68.



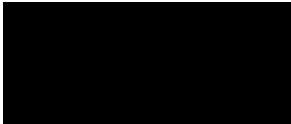
The Standing Council of Attorneys-General (SCAG) is a natural mechanism to drive reform. For example, the Age of Criminal Responsibility Working Group did valuable work in reviewing the minimum age of criminal responsibility, ultimately recommending that all Australian governments should raise the age to 14, without exceptions.¹⁸ It is now considering adequate supports and services for children.¹⁹ Another example, in a different context, is SCAG's current work developing National Principles to Address Coercive Control.²⁰

Additionally, we recommend the Australian Government immediately:²¹

- Withdraw Australia's reservation to **Article 37(c) of the CRC**, which prohibits detaining children in the same settings as adults unless in the child's best interests to do so. Australia continues to refuse to be bound by this obligation, and to detain children in adult facilities and with adults. The UN has repeatedly criticised Australia for its reservation.
- Ratify the **Third Optional Protocol to the CRC**, which enables individual children to raise concerns about their rights directly with the UN. Australia refuses to ratify this treaty. This reflects poorly on Australia's commitment to children's rights and denies children in Australia access to this ultimate forum for upholding their rights.

Further information

To discuss this submission or for more information, please contact [REDACTED], Australian Policy and Advocacy Lead at [REDACTED].



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Attached:

1. Overview of 54 reasons youth justice services and approach
2. Save the Children and 54 reasons, 2023, *Putting children first: A rights-respecting approach to youth justice in Australia*

¹⁸ Council of Attorneys-General Age of Criminal Responsibility Working Group, *Draft Final Report 2020*, released December 2022. As the report's title indicates, it is technically a 'draft'.

¹⁹ SCAG communique, 9 December 2022.

²⁰ <https://www.ag.gov.au/families-and-marriage/publications/national-principles-address-coercive-control-consultation-summary>.

²¹ *Putting children first*, p 69.