



30 June 2023

To the Australian Human Rights Commission

**Submission: [Youth Justice and Child Wellbeing Reform across Australia](#)
via email**

Introduction

Thank you for the opportunity to contribute to this important Inquiry. The Commission has a unique role to play in coordinating national action in relation to best practice youth justice and child wellbeing reform and influencing the actions of states and territories.

We are Smart Justice for Young People (SJ4YP); a coalition of over fifty leading Victorian social services, health, legal and youth advocacy organisations, calling for evidenced-based and effective responses to children and young people involved in the criminal legal system. The coalition provides a coordinated and expert voice on youth justice initiatives and reforms so that children and young people will have the best chance to succeed in life, supported by their families and in their communities.

The problem: Here in Victoria while our overall youth incarceration rate is falling, this is not true for particular groups of young people.ⁱ Every child and young person in Victoria deserves the care, opportunities, support and stability necessary for them and their families to flourish. But right now, some children and young people are not getting this support. Instead, they are being pushed into the criminal justice system.

There are four groups of children and young people who are chronically overrepresented in the criminal-justice system:

- First Nations children and young people.
- Culturally and linguistically diverse (CALD) young people.
- Children who have lived in residential or out of home care; and
- Girls and young women with complex needs.ⁱⁱ

There are other groups of young people that are likely over-represented in the criminal justice system for instance young people with a disability; lesbian, gay, bi-sexual, transgender, intersex, queer ('LGBTIQ') youth. Being Middle Eastern/Muslim is also linked to higher rates of unnecessary police contact.ⁱⁱⁱ However there is insufficient data collection, including by the census to clearly identify the broad extend of over-representation of specific groups. Clear data collection including baseline data is required to understand the trajectory of over-represented groups within the criminal justice system, see Recommendation 3.^{ivv} We also are cognisant of the challenges and inequities experienced by youth living in regional areas through for example inaccessibility to services and the intersectional overlay for overrepresented youth.

This Submission is endorsed by the Centre for Multicultural Youth (CMY), Youth Support and Advocacy Service (YSAS), Youth Affairs Council Victoria (YACVIC), Human Rights Law Centre (HRLC), Westjustice (WJ) and YouthLaw.

We acknowledge and pay our respects to the custodians of the lands on which we work and recognise that sovereignty was never ceded.

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

To date, young people overrepresented in the criminal justice system have been framed as the problem. However, our practice experience, combined with published research and what clients tell us from across the cohorts, reveals that their over-representation is due to problems with the way key government and community systems and organisations interact with them and their families.

The key contributing factors to **over-representation** in the criminal justice system of these young people include:

- **Their underrepresentation** in terms of access to stable housing; physical and mental healthcare; family and personal safety; and positive educational and employment outcomes^{vi}
- Underrepresentation in diversion and caution statistics and other reforms aimed at improving outcomes for young people in the criminal justice system.^{vii}
- Systemic racism particularly in relation to discretionary decision-making
- Over-criminalisation due to over-policing, poverty and criminal and civil justice policies and practices in particular bail laws, remand practices and infringements.^{viii}

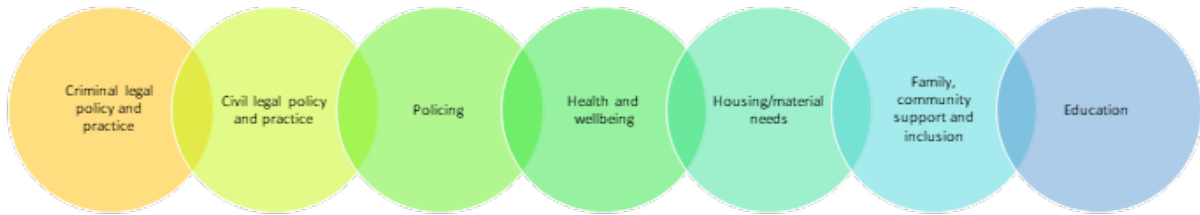
Our knowledge comes from expert reports and recommendations, research and our practical experience in working with communities.^{ix} There are common problems across all these domains – including, but not limited to, attitudes and biases (conscious and unconscious) held by decision-makers and affecting their use of discretion; a lack of diversity in decision-makers; competitive, short-term grant cycles and funding insecurity for programs and services (which stifle long-term initiatives); and lack of a shared focus on ending over-representation and measuring the success of policies or programs designed to end it.

In our view, a collective focus on these different over-represented groups of children and young people together, aged 10-25 years old is essential. It allows us to spotlight the common problems, systems and policies that lead to their over-representation. In doing so, we acknowledge and continue to endorse the critical work calling attention to the over-representation of particular groups of young people e.g., children in residential care, Aboriginal and Torres Strait Islander children and young people, young people from diverse multicultural backgrounds and more recently South Sudanese and Pasifika Australian children and young people.^x

However, by highlighting the systemic and structural factors that overlap between these groups and continue to hold their collective overrepresentation in the criminal justice system in place, we can make clear that the problem is not young people or their families or communities. And if these systemic failures are fixed, it would end the overrepresentation of these young people and reinforce calls for change being made in relation to the individual cohorts and deepen the impact of key Government reforms underway here in Victoria.

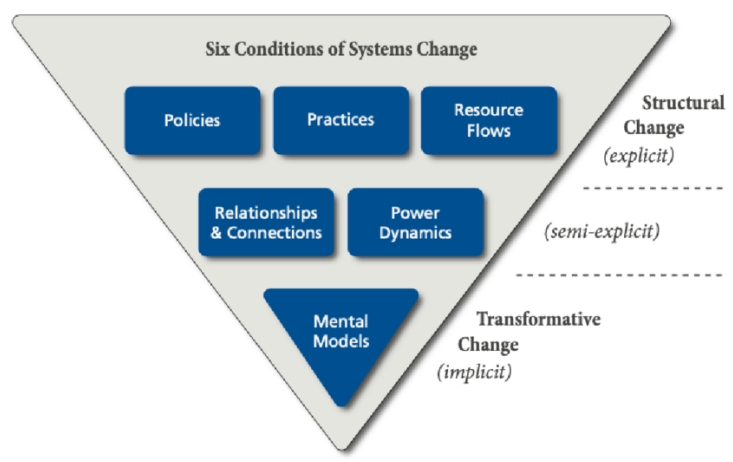
2. What needs to be changed so that youth justice and related systems protect the rights and wellbeing of children and young people? What are the barriers to change, and how can these be overcome?

To end the overrepresentation of these children and young people, systems change is required, and not solely to the justice system. A whole of government response is required across the following seven areas:



Further when referring to systems change, we are referring to the need to make shifts within the following six interdependent conditions.

FIGURE 1. SHIFTING THE CONDITIONS THAT HOLD THE PROBLEM IN PLACE^{xi}



It will require everyone working together: key government departments, social service systems, agencies, workers and communities. A best practice, whole of government response would be based on key rights principles:

- non-discrimination.
- best interests of the child.
- right to life, survival and development.
- right of young people to participate in decisions affecting them; and
- self-determination of Aboriginal and Torres Strait Islander people.

The first challenge is that all decision-makers working with children, young people and their families would need to first acknowledge that over-representation is:

- A discrete but inextricably related issue to youth crime prevention and youth justice.
- an urgent problem; and
- a shared responsibility, requiring collective and immediate action.

A related challenge is the systemic racism and institutional biases which make this acknowledgement difficult to make.

Another challenge is demonstrating that the way forward is a system that bases current and future decisions for children and young people aged 10-25 years old on their human rights - as opposed to reactive policy decision-making based on single incidents which receive intense media attention.

We think reframing the conversation and instead posing the following series of questions to decision-makers may assist in overcoming this challenge.

- Are we committed to equality and non-discrimination?
- Are committed to addressing over representation of these cohorts?
- Are we committed to detention as a last resort?
- Are we committed to preventing offending behaviours in the first place?
- Are we committed to minimising re-offending?
- Are we committed to enabling wellbeing and social integration of young offenders?
- Are we committed to using evidence to inform policy and practice?
- Are we committed to collaborating with all relevant actors including young people themselves?
- Do we want to create a youth justice system that maintains public safety and uses states' resources efficiently?

Here in Victoria, based on recent Government announcements, evidence given at Yoorrook and reforms we assume the answer is yes. Further, we could link the effort required to the mandatory 11 Child Safe Standards introduced on 1 July 2022 in making our case.

Next, we must set about taking the necessary action. The task of ending of over-representation needs to be part of existing and future policies, processes and law reform. A critical challenge here is the siloed and fragmented way we currently support children, young people and their families and view ending overrepresentation in the criminal justice system as the sole province of Youth Justice as opposed to a responsibility shared across government departments, including but not limited to the Department of Fairness, Families and Housing; Early Childhood; Education; Health and Employment (or other State and Territory equivalents).

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?

Here in Victoria, to end overrepresentation, we are recommending a combination of thirteen whole of government 'turnkey' reforms, as well as reforms across the seven interlinking systems identified above. Given the national focus and word restrictions we will only share our recommended whole of system asks for now. The remainder will be made available in our forthcoming Action Plan. We also commend to you our 2022 **Election Platform** which contains many of the high level asks (**Attachment 1**) as well as our 2021 **Submission to Victoria's Criminal Justice System (Attachment 2)**.

Whole of System 'Turnkey' Asks

To demonstrate their commitment to ending to over-representation:

1. **All government departments, statutory agencies, and government-funded organisations working with young people and their families from overrepresented cohorts in the criminal justice system acknowledge the systemic drivers of overrepresentation**, including their underrepresentation in positive health, education, housing, employment and safety outcomes and over-criminalisation, and actively commit to ending it.
2. **By the of end 2023, Government creates a whole of government strategy to end overrepresentation in the criminal justice system focusing on reducing harmful criminalising**

processes and increasing representation in positive health, education, housing, employment and safety outcomes covering all government departments, statutory agencies and government-funded organisations. To succeed the strategy would need to mandate commitment and require:

- a. it to be built into standard operational policies, practices and strategies; and,
- b. that decisions relating to children and young people most impacted and affected by over-representation comply with these principles:
 - the prohibition against discrimination,
 - best interests of the child,
 - right to life, survival and development.
 - young peoples' right to participate in decisions that affect them; and
 - Aboriginal self-determination.

Responsibility should be shared across Justice, Corrections, Education, Health, Families and Housing and Employment.

3. **By mid-2024, Government develops a framework to measure the outcomes of this strategy** across justice, policing, health, education, well-being, housing, employment. This outcomes strategy should be linked to *Youth Strategy Outcomes Framework*. The outcomes should comply with Indigenous data sovereignty and Indigenous data governance principles and include the introduction of data collection legislation. **Data should be collected and publicly reported on regularly.** The process should begin with the establishment of a baseline.

See for example [Ontario's Race-Based Data Collection Standards](#).

4. **All government departments, statutory agencies, and government-funded organisations regularly review how all inquiries, law reform, policies, practices impact on the groups (present and future) identified in this report** and make adjustments to end over-representation and under-representation in compliance with the *Ending Overrepresentation Strategy and Outcomes Framework*.^{xii}

For example, things that could be regularly reviewed include access to diversionary options, access to therapeutic and community-based sentencing options, policing outcomes e.g. stop, question, search and arrest data; residential care data; civil and criminal summary and indictable prosecution outcomes; fines enforcement outcomes; Victims of Crime, police complaints; access to community service outcomes e.g. mental health, housing, AOD and family violence; legal assistance outcomes.

5. **Deepen collaboration and collective impact** approaches to end overrepresentation and underrepresentation by:
 - including it as a key criterion across all government funding and programming in time for the 2024-25 Victorian Budget for new and renewed funding opportunities.
 - increasing government funding cycles to 5-7 years, as recommended by the Productivity Commission.
 - promoting and prioritising funding for collaborations between mainstream and grassroots community organisations and across disciplines.
 - providing support to community and grassroots organisation to meet new reporting requirements.
6. **Mandate all government and government funded community delivered services** across justice, policing, education, health, housing, community services to regularly undertake

foundational and booster training on cultural safety, anti-racism, gender inequity, disability awareness and trauma-informed practice as part of the whole of government strategy.

7. **Fully fund the Office of Youth and Youth Affairs Council Victoria (YACVic)** to facilitate the implementation of Victoria's Youth Strategy, along with other key organisations such as the **Centre for Multicultural Youth, Koori Youth Council, and Youth Disability Advocacy Service.**
8. Spread responsibility for youth crime prevention across the key portfolios making decisions and investments that affect the life course of a young person and their family (especially DFFH, DE, DH and DJCS); commit to and fund community-based prevention and early intervention, and justice reinvestment.
 - EG. collaborate and contribute to the development of whole of family model of care to support children, young people and their families when they need it, to break the cycle of disadvantage and help prevent children and young people entering and re-entering the criminal justice system. (e.g., Victoria's *Putting Families First pilot*);^{xiii}
 - *Invest in training and funding youth workers in community settings, to take a strengths-based, relational, holistic approach to supporting young people to deal with issues in their lives, and re-engage with their families, school and community. They can also forge trusted referral pathways to other services as needed. Deloitte analysis shows a return on investment of at least \$2.62 for every \$1 invested in youth work programs, which are proven successful in diverting young people from youth justice.*^{xiv}
9. **Commit to genuine Aboriginal self-determination and community control.** This means prioritising the actions that First Nations people say will enable self-determination and end over-representation and under-representation, including power, money and resource transfer and sharing.
10. **Fully implement all recommendations** from the following inquiries:
 - *Our Youth, Our Way* Inquiry, Commission for Children and Young People
 - Inquest Findings into Death of Veronica Nelson
 - Inquest Findings into the Death of Tanya Day
11. Develop a whole of government Multicultural Youth Justice Strategy for young people aged 10-25 ensure proper focus on the unique needs of girls and young women with complex needs to work alongside the *Framework to End the Criminalisation of Young People in Residential Care* and *Wirkara Kulpa*.
12. **Develop a Childhood Strategy** (to complement Victoria's Youth Strategy) underpinned by a whole government Child & Youth Wellbeing Outcomes Framework.

A Child Outcomes Framework will outline what children and their families need and want to be well and thrive in life, what government needs to do to enable this, and how the community sector can contribute to this vision (see Recommendation 4, Inquiry into Victoria's Criminal Justice System, Parliament of Victoria, 2022).

13. **Create a Minister for Children and their Families** (complementing the Minister of Youth) responsible for the implementation of the Childhood Strategy and a dedicated portfolio within the relevant Department divided into early childhood, middle childhood, adolescence and young adulthood to support effective implementation.

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?

Absolutely. We think a National Approach would be highly beneficial and could bring together existing national advocacy efforts to increase effectiveness and coherence, as seen for example in the context of the national campaign to #RaiseTheAge. We suggest the establishment of a standing working group that could for example be broken into different points in the system. Government from state and territory governments, and strong investment and leadership from the Federal Government, will be essential.

References

ⁱOver the 5 years to 2021–22, on an average day, in Victoria:

- the number of all young people under supervision fell by 30% (from 1,036 in 2017–18 to 727 in 2021–22) (Table S129a), while the rate fell from 11 to 5.8 per 10,000 young people aged 10–17 (Table S12a)
- in community-based supervision, the number fell by 27% (Table S129b), while the rate fell from 8.7 to 4.6 per 10,000 young people aged 10–17 (Table S45a)
- in detention, the number fell by 41% (Table S129c), while the rate fell from 2.0 to 1.3 per 10,000 young people aged 10–17 (Table S83a)
- The rate of Indigenous young people aged 10–17 under supervision fell from 111 to 53 per 10,000 (Table S12a).

Youth justice in Australia 2021-22, Victoria - Australian Institute of Health and Welfare (aihw.gov.au). Note as well Victoria's Youth-diversion-statement.pdf (justice.vic.gov.au) but see recent Crime Statistics Agency data which says that alleged offender incident data up for 10-17 yo. Youth crime Victoria: Offences by children aged 10 to 14 increase by more than a third (theage.com.au)

ⁱⁱ As highlighted by Victoria's Youth Justice Strategy 2020-2030 -Youth Justice Strategic Plan 0.pdf, Wirkara_Kulpa_AYJS.pdf (aboriginaljustice.vic.gov.au); and A Framework to reduce criminalisation of young people in residential care.PDF (dffh.vic.gov.au)

ⁱⁱⁱ Tamar Hopkins, 'Understanding Racial Profiling in Australia' (PhD, UNSW, 2022).

^{iv} . The use of the data collected through these schemes must comply with the data sovereignty principles developed by Indigenous scholars including Walter and Trevitt and in particular, not be used for deficient framing or blaming narratives Maggie Walter et al, 'Indigenous Data Sovereignty in the Era of Big Data and Open Data' [2020] *The Australian journal of social issues* 1.

^{vi} See for example p 26 Youth Parole Board of Victoria | Department of Justice and Community Safety Victoria

^{vii} Only 8% of African Australians; 6% of Maori and Pasifika Australians in the 2019-20 financial year were placed on the Children's Court Youth Diversion program here in Victoria for example.

^{viii} In this Guide we define overrepresentation as the higher rate of contact with the justice system and in particular custody of these groups as opposed to their youth counterparts aged 10-25 yo. We define overcriminalisation as including but not limited to over policing and prosecuting of these communities.

^{ix} There is a disconnect between what the data tells us, what expert reports recommend as action to reduce overrepresentation, parliamentary process, and Government decision-making. For example, there have been multiple inquiries and reports that speak to the issue of overrepresentation of Aboriginal children and young people in custody, complete with detailed recommendations for change and action developed by experts; notably, the Royal Commission into Aboriginal Deaths in Custody, the CCYP Our Youth Our Way Report, and the Koori Youth Council's *Ngaga-dji* Report.

^x Commission for Children and Young People, *Our Youth, Our Way: Inquiry into the over-Representation of Aboriginal Children and Young People in the Victorian Youth Justice System* (Commission for Children and Young People, 2021). Felicity Stewart, *Crossover Kids: Vulnerable Children in the Youth Justice System: Report 1*. (Sentencing Advisory Council, August 2019). Charis Mentoring, *Village Response Plan, a Grassroots Response to Reducing Recidivism amongst Pasifika Youth* (2020). ^{xi} South Sudanese Australian Youth Justice Expert

Working Group- <https://www.premier.vic.gov.au/targeted-support-risk-south-sudanese-youth>; [A Framework to reduce criminalisation of young people in residential care.PDF \(dffh.vic.gov.au\)](#)

^{xi} John Kania, Mark Kramer, Mark Senge, *The Water of Systems Change, June 2018, p 4*< [30855.pdf \(issuelab.org\)](#)>

^{xii} Linking closely with Victoria’s Gender Equality Strategy and learning from the introduction of the Gender Equality Act 2020.

^{xiii} <https://www.dffh.vic.gov.au/publications/children-young-people-and-families-are-safe-strong-and-supported>.

^{xiv} <https://www.yacvic.org.au/assets/Uploads/Youth-Affairs-Council-Victoria-Social-Return-on-Investment-Study-of-Youth-Work-Final-Report-V2.pdf>