

**SUBMISSION TO THE AUSTRALIAN HUMAN RIGHTS COMMISSION
TELETHON KIDS INSTITUTE**

30 JUNE 2023

Via email to: youthjusticereform@humanrights.gov.au

About the Telethon Kids Institute

The Institute was founded 32 years ago by Professor Fiona Stanley. Under the leadership of the current Executive Director, Professor Jonathan Carapetis, the Institute is Western Australia's largest medical research institute with a dedicated and diverse team of more than 1200 staff and students.

With a vision of "happy, healthy kids", the Institute has its head office in Perth WA, and offices in Joondalup, Cockburn, the State's North-West and in South Australia. The Institute prides itself on the translation of research into impact to improve the lives and wellbeing of children and young people in Australia and around the world.

The Institute's commitment to Aboriginal children and families has seen the integration of their needs into all aspects of our research, and our release last year of Guidelines for Standards for the Conduct of Aboriginal Health Research. As an Institute, we cannot ignore, nor accept, the disparity in outcomes for Aboriginal kids compared to other Australians. We recently

Responses to Questions posed by AHRC:

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

- Risk factors are complex and can include:
 - a. neurodevelopmental disability including foetal alcohol syndrome (FASD), Attention Deficit Hyperactivity Disorder (ADHD) and intellectual disability;
 - b. poor mental health including severe mental health conditions such as psychosis and post-traumatic stress disorder (PTSD);
 - c. trauma and maltreatment including adverse childhood experiences and significant traumatic events; traumatic brain injury;
 - d. involvement with child protection especially out of home care particularly residential care/group homes.

(Hughes [https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642\(19\)30347-5/fulltext](https://www.thelancet.com/journals/lanchi/article/PIIS2352-4642(19)30347-5/fulltext); Malvaso 2021 DOI: [10.1177/15248380211013132](https://doi.org/10.1177/15248380211013132),

Malvaso 2018 [Young People Under Youth Justice Supervision With Varying Child Protection Histories: An Analysis of Group Differences \(sagepub.com\)](#)).

- ACEs and maltreatment have been demonstrated as risk factors but there is minimal evidence from high quality studies to demonstrate that this mediates offending behaviour (Malvaso 2021). There is also likely to be a cumulative effect of ACEs and maltreatment (Malvaso 2021).
- Socioeconomic disadvantage and inequality further exacerbate the risk factors for youth criminalisation (Hughes) this partially explains the over representation of Aboriginal and Torres Strait Islander young people in the youth justice system (Doonan <http://dx.doi.org/10.1016/j.chiabu.2012.12.005>).
- Compared to non-Indigenous children, First Nations children are:
 - a. 11 times more likely than non-Indigenous children to be placed in out of home care (OHC) and this inequality begins in infancy.
 - b. 5.5 times more likely to be reported to child protection authorities.
 - c. 10.2 times more likely to be subject to a child protection order.
 - d. 10.4 times more likely to be in out-of-home care (including on permanent care orders).

https://www.racp.edu.au//docs/default-source/advocacy-library/health-care-of-children-in-care-and-protection-services-australia-position-statement.pdf?sfvrsn=6325d21a_4
- Historical maltreatment and intergenerational trauma of First Nations people through colonisation and the stolen generations contribute to the risk factors (Cunneen, 2011; White & Perrone, 2015; Cited in D'Antione 2022 DOI: 10.1080/13218719.2021.200326).
- Over policing of Aboriginal young people is also considered a risk factor (D'Antione 2022 DOI: 10.1080/13218719.2021.200326).
- The impact of peer relationships and disengagement with education are further risk factors, and the intersection and crossover of all these risk factors must be considered, for example the link between socioeconomic disadvantage, FASD and education disengagement.
- The age children are at when they are likely to come into contact with the youth justice system, 10-14 years, correspond with a time of profound development - physical, social, cultural – and also neurocognitively. Just as we do our outmost to support the healthy development of young children (early learning, parenting programs, child protection) we must do the same for young adolescents.
- If it is accepted that 10-14 years is a critical developmental stage, it helps to place in context the impacts of care and protection on life-trajectories and human capital. There is no doubt that young people exposed to harm need to be protected - but how they are protected is

what is critical here - and there is no doubt that for many incarceration and care in unstable settings is harmful.

- The health and wellbeing of Indigenous and non-Indigenous adolescents in Australia, including 10-14 year olds at risk of being placed in care and protection, experience many of the health needs and challenges of children (infectious disease, developmental problems). They also experience health needs and issues more commonly thought of as older adolescent problems (injuries, SRH, mental disorder), and this is often in the context of unresolved trauma, together with some unique health issues that are otherwise rare (scabies, RHD, T2DM).

[https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(17\)32141-4.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(17)32141-4.pdf)

<https://www.sciencedirect.com/science/article/pii/S2468266719302178>

<https://www.sciencedirect.com/science/article/abs/pii/S2352464219303475>

Question 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 Institute supports the RACP in saying: “Radical change is needed within services and systems and between sectors to deliver the health care that children and young people involved with care and protection services need, at the right time, in the right place.”
https://www.racp.edu.au/docs/default-source/advocacy-library/health-care-of-children-in-care-and-protection-services-australia-position-statement.pdf?sfvrsn=6325d21a_4
- There is a critical need for Indigenous leadership and the leadership/voice of young people (<https://www.ngaga-djiproject.org.au/> Smallwood, 2021 DOI: 10.1111/jocn.16308) to help to better understand the needs of Aboriginal and Torres Strait islander young people who are in contact with the justice system. This would help to acknowledge the impact of ACEs and mental health/social and emotional wellbeing of Aboriginal and Torres Strait Islander young people involved with youth justice (D’Antoine et al 2022 DOI: 10.1080/13218719.2021.200326)
- Children and young people must be involved with care and protection services and need to be at the forefront of decision making about their health. Aboriginal children and communities must have self-determination and participate in decision-making concerning the care and protection of their children and young people. Culturally appropriate approaches are needed at all levels and stages of the system.
- A more sensitive and responsive approach is needed to complex psychological needs and suicide prevention strategies in this cohort (D’Antoine et al 2022 DOI: 10.1080/13218719.2021.200326), and for trauma informed approaches that move from a deficit model to a strength based approach.

- It is important to acknowledge that some children are placed into care for appropriate reasons and are supported by Aboriginal families and communities. Similarly some children may need to be placed in custodial care where all other options have either not been available or worked where they have. Law and access to justice is an essential of a civil society – Aboriginal people have always lived by traditional lore and in recent times have been “tough” on crime and there are examples where communities have led strong responses. For example, in WA the Fitzroy Women Leaders sought to address harm from alcohol in their community, and there have been a of number Royal Commissions and inquiries where Aboriginal people have spoken out and advocated for tough measures.
- The high numbers of Aboriginal children in care and custody speaks to a deeper level of intergenerational trauma and poverty which has created the cycle that starts with child protection and graduates to juvenile justice with these children ending up in adult incarceration which results in single parent families living in poverty which create the next generation.
- Although detention is almost certainly harmful to young adolescents in multiple ways, there is actually very limited empirical evidence for this, and indeed some evidence that detention can be associated with better health outcomes (a case of ‘the lesser of two evils’). A global review of the evidence on these issues was undertaken for the [UN Global Study on Children Deprived of Liberty](#) and provides as an important reminder that if we divert children away ***from*** detention, we must divert hem ***to*** other well-resourced settings, where we can better meet their needs.
- The data on children in youth justice is currently very poor in Australia. Institute researchers are currently working with the AIHW to create the first ever profile of the health of these children, using linked administrative data. This work builds on a [scoping report](#) AIHW published about 5 years ago, and needs further support and funding as we know that “what gets counted gets done”.
- What is needed is an approach that focuses on:

Prevention - understanding (and addressing) the complex determinants of out of home care/ incarceration is critical to improving the health of children in care and youth custody (complex intergenerational trauma, racism, unmet complex health needs, poverty etc). Prevention is the number one priority, but it must not come at the expense of efforts to ensure the highest attainable standard of health for children already in these systems (particularly those in detention).

Protection - recognising that out of home care/ incarceration is a toxic exposure / adverse event for young people during an important developmental stage – so protecting young people from incarceration (raise the age etc), diversionary programs, addressing complex health needs is key. For children who commit less serious offences and are at low risk of reoffending, diversion programs (where charges are dropped or

reduced subject to the child completing programs such as drug rehabilitation) allow children to avoid a criminal record and diverts them away from the criminal justice system. Diversion can be thought of a “tertiary prevention” and requires energy and investment to be focused on not only the diversion programs but also in what we are diverting these children to, not just what we are diverting them from.

Care – we need to take an approach where we provide therapeutic (not punitive) care, and where their health and social needs are addressed during and post discharge. Continuity of care is also critical, and our thinking needs to be person centred not system centred.

Question 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?

- The Institute advocates for an enhanced focus and investment on diversionary programs and for raising the age of criminal responsibility from 10 years of age (in Western Australia) to 14 years of age.
- In relation to diversionary programs, a meta-analysis of 45 studies found that rates of recidivism were reduced compared to conventional judicial interventions [The Effect of Youth Diversion Programs on Recidivism \(sagepub.com\)](#) & [Providing a pathway to community-based psychosocial or mental health support services for young people \(tandfonline.com\)](#)
- A prevention approach based on risk factors (see above) is urgently needed, for example, routine assessment, engagement at key times for example disengagement with education and first contact with justice system (Hughes) also out of home care placements (Malvaso).
- A holistic approach involving reinvestment in community services, health, education and family is needed across Australia. There is some evidence that the use of psychological and psychosocial interventions reduce recidivism [*Psychological Resilience Interventions to Reduce Recidivism in Young People: A Systematic Review \(springer.com\)](#) and that community settings are generally more efficacious than institutional settings for therapeutic interventions [The Effect of Youth Diversion Programs on Recidivism \(sagepub.com\)](#)
- The Institute’s ground breaking 2015/16 Banksia Hill Project involved comprehensive neurodevelopmental assessments of children aged 10-17 who were detained at the Banksia Hill Detention Centre in Western Australia at the time. 36% were found to have FASD and 89% had a least one neurodisability, with virtually all being undiagnosed. This means their health needs had not identified and support services had not been provided to cater to address them.

- The most essential recommendation from the study was that multidisciplinary assessments by a team comprising paediatricians, neuropsychologists and speech pathologists, be carried out on all young people who have contact with the youth justice system at the earliest possible opportunity to identify opportunities for therapy and diversion. At the earliest, comprehensive and culturally appropriate assessment on entry to Banksia Hill, and by extension to all juvenile justice facilities in Australia, is needed to identify the child's strengths and difficulties.
- The Institute has advocated for improved multidisciplinary assessments, health services for Aboriginal children to be provided by ACCHOS, and for children to be taught by the relevant Department of Education not inhouse teachers, as critical reforms needed in the juvenile justice system. We have also argued that the department responsible for juveniles in detention should be that overseeing human services not corrections/justice departments.
- The Institute further recommends better coordination across Government, and between Federal and State government agencies, is needed. In the WA government there are some positive developments – the development of a 10 year plan to reduce the numbers of Aboriginal children in State Care; a 10 year plan to rebuild the Aboriginal Community Controlled Organisation sector, a 10 year Homeless Strategy and a Family and Domestic Violence Strategy; the Department of Justice is working on a Youth Justice Services Strategy and a plan that we understand will reflect the Social Reinvestment Blueprint. But without the direct involvement of the Aboriginal community in the design and implementation of these strategies and at the different levels from State to community and the family level by way of a programmatic place based approach, they will only repeat what's gone before - random reaches into the lives of families.

Question 4 - From our 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?

- The Institute strongly supports a National approach to youth justice and reform. There is a critical need for greater coordination and alignment of funding and uniform approaches, and for national agreement (and implementation) on the age of criminal responsibility. A national approach would better support families who are spread across borders.
- Fundamentally the rights of children should be the basis for a national approach and should be the standard applied across the board. As recommended by the RACP, a National Framework for Protecting Australia's Children 2021-31 and a National Clinical Assessment Framework is needed to focus attention on ensuring:
 - Funding a comprehensive health assessment and health management plan for each young person entering or involved with care and protection services.
 - Investing in specialised multidisciplinary services to deliver integrated primary health, specialist, and mental health care.

- Developing specific Medicare item numbers for initial comprehensive and follow-up health assessments delivered by health care workers for children and young people in care and protection services.
- The Federal Government is best placed to invest in and support evidence informed prevention, early intervention, support programs and best practice models of healthcare. Such an approach should aim to reduce the number of children and carer/s involved with care and protection services and the risk of statutory intervention. It should also be aligned with Target 12 under Closing the Gap, which aims to reduce the rate of over-representation of Aboriginal and Torres Strait Islander children in out-of-home care by 45% by 2031.
- The Federal Government is also best placed to lead and implement the development of a national system that puts health care at the centre of youth justice and child well-being. This should include national indicators to measure outcomes and regular annual reporting by the States.

Thank you for the opportunity to provide this submission.

Should you require any further information, please contact [REDACTED], Head of Government Relations on [REDACTED].

30 June 2023