

June 2023

Youth Justice and Child Wellbeing Reform Across Australia



ACWA's Submission to the National Children's Commissioner

Table of Contents

Table of Contents	1
Background:.....	2
ACWA Response to Key Questions:	3
1. What factors contribute to children’s and young people’s involvement in youth justice systems in Australia.	3
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?.....	5
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?	7
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?	8

Background:

About the Association of Children's Welfare Agencies

The Association of Children's Welfare Agencies (ACWA) is the NSW peak body representing non-government community organisations that deliver services to children, young people and their families in vulnerable circumstances.

For more than 60 years ACWA has worked with our members, partners, government and non-government agencies, and other peak bodies, to bring about positive systemic reform that will deliver better outcomes to the lives of children and young people. ACWA's work is informed by 80 member agencies who deliver child and family services to vulnerable people, including children living in out-of-home care. Many of these services are responding to harm caused to children and their families as a result of their needs not being met early in the life of their children, due to gaps in primary and secondary prevention and early intervention systems, and experiences of significant trauma.

ACWA has also recognised that domestic and family violence (DFV) is a key contributor of harms to children and young people, and in 2022 initiated a Domestic and Family Violence and Child Protection Integration Project, aiming to build collaboration between adult DFV and child protection sectors to improve outcomes for families.

The focus of this submission

ACWA welcomes the opportunity to address the key questions posed by National Children's Commissioner regarding opportunities for reform of youth justice systems across Australia. Our response focusses on children and young people who have experienced DFV who intersect with the justice system, including those in residential and out of home care, and children and young people who are charged with domestic violence offences.

This submission urges greater investment in a spectrum of prevention and early intervention and whole of family support, to break intergenerational cycles of DFV and related trauma that can increase the likelihood of justice system involvement. For children and young people who have been exposed to DFV, we argue for greater access to therapeutic support. For young people involved in the justice system for DV offences, we advocate for investment in behaviour change interventions and therapeutic support programs, and more consistent diversion from justice processes.

Endorsement by Domestic Violence NSW

This submission is endorsed Domestic Violence NSW (DVNSW). DVNSW is the peak body for specialist domestic and family violence services in NSW. DVNSW has over 130 member organisations across NSW, and works to improve policy, legislative and program responses to domestic and family violence and to eliminate violence through advocacy, partnerships and promoting good practice. DVNSW has a strong commitment to the recognition of children and young people as victims of domestic and family violence, and to collaborative, trauma-informed responses.

ACWA Response to Key Questions:

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

ACWA recognises that domestic and family violence is a key contributor to children and young people's involvement in the justice system, and other adverse outcomes.

- The 2023 Australian Child Maltreatment Study (ACMS)¹ noted that childhood exposure to domestic violence was the most prevalent and sustained form of abusive behaviour reported by young people and recognised its cooccurrence with other forms of abuse including physical, sexual and emotional abuse and neglect.
- Of young people aged 16-24 years asked in the ACMS about their childhood experiences, 43.8% had been exposed to DFV. For those exposed, the median number of incidents was 11.8, and 32 % had been exposed more 50 times. Where multiple forms of child maltreatment were present, exposure to DFV was the most common form of abuse co-occurring with other types.
- The term 'exposure to domestic violence' can be seen to imply that children may be observers or witnesses to DFV rather than directly harmed, however ACWA advocates that children and young people experience and are impacted by domestic and family violence in numerous ways: as victims of a parent, step-parent, family member or caregiver's physical, sexual and emotional abuse; impacted by violence and coercive control directed by one parent towards another, usually their mother; and young people may be impacted by violence in their own relationships. At its worst, children and young people can be victims of filicide in the context of domestic violence.

Experiences of domestic violence can contribute to children and young people's involvement in the justice system in multiple ways:

- Barnardos Australia 2022 research surveying adult survivors of childhood domestic violence² noted that in addition to physical harm, DFV caused children and young people to experience a range of serious short term and ongoing psychological impacts including fear, low self-esteem, lack of trust, isolation; loss of confidence; anxiety and hypervigilance; and self-harm and suicidal ideation.
- Many experienced difficulties regulating emotion, leading to increased risk of engaging in antisocial behaviour and aggression towards others, and difficulties engaging in education and other prosocial activities and developing positive peer relationships.
- Not feeling safe at home also increases the risk of homelessness and/ or time spent in public places, leading to greater contact with Police. For example, as part of ACWAs place based project, the Family Safety Collaboration in Dubbo and Wellington, Police have identified an increased presence of children and young people unsupervised in public places at night because of DFV at home, increasing their risk of harm through exposure to the antisocial behaviour of older young people, exploitation, and becoming involved in criminal activity.

- DFV can also impact on children and young people’s perceptions and understanding of healthy relationships, leading them to perceive DFV as normal behaviour and adopting gender norms and attitudes that support gender-based violence. In 2022 there were 2,781 young people under 18 years proceeded against for domestic violence related offences in NSW³.

Children and young people in residential and out of home care are particularly vulnerable to being caught up in the justice system.

- Almost universally, children and young people in residential and out of home care have had long-term experiences of domestic violence and other forms of child maltreatment. Resulting childhood trauma frequently leads to problems with emotional dysregulation, difficulties in relationships with peers and adults including carers and authority figures, and behavioural problems.
- In residential and foster care settings, behaviour that is difficult to manage can sometimes result in Police being called to intervene, sometimes resulting in legal action against children and young people. Where the behaviour includes violence toward another resident or carer, this can result in domestic violence charges and apprehended domestic violence orders. (In NSW a joint protocol between police and residential care providers has been developed to address this concern, explained further below).

Gaps in support systems can contribute to young people intersecting with the justice system.

- Children and young people experiencing DFV have higher risk of homelessness and mental illness, and frequently live in poverty. These problems compound the trauma impacts of sustained exposure to violence, but failure to recognise children and young people as direct victims of domestic and family violence is resulting in a paucity of whole of family early intervention, crisis and supported accommodation for young people and families, and specialist child and adolescent focussed, trauma informed services and mental health interventions. Failure to address these needs results in repeated trauma, and contacts with child protection and justice systems.

Aboriginal young people are overrepresented in the justice system in relation to domestic violence offences and diverted less often.

- The following table outlines the number and proportion of Aboriginal young people charged with DV assault and intimidation, stalking and harassment offences in NSW, in the year to 2021 (the most recent published data). Non-domestic assault is included for comparison.⁴

Offence type	Non-Aboriginal young people	Aboriginal young people	Unknown	Total	Aboriginal young people as a proportion of all young people charged with offences
Domestic violence related assault	252	183	39	474	38%

Intimidation stalking and harassment	644	372	126	1,142	32.6%
Non-domestic assault	496	357	162	1,015	35 %

- Notably, Aboriginal young people are overrepresented in key DV and non-DV assault offences. However Aboriginal young people are half as likely to be diverted for domestic violence offences than their non-Aboriginal peers, and less likely to be diverted than if they had committed a similar assault outside the home. The following table outlines the percentage of non-Aboriginal and Aboriginal young people proceeded against by Police who were diverted through youth justice conferencing and cautions⁵.

Offence type	Percentage of Non-Aboriginal young people diverted	% of Aboriginal young people diverted
Domestic violence related assault	55%	27%
Intimidation, stalking and harassment	29%	12%
Non-domestic assault	55 %	38%

- While these data focus on NSW, they are evidence of a systemic difference in the outcomes for Aboriginal children and young people within the justice system, that is likely replicated across states and territories to varying degrees.

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?

ACWA advocates the following areas be prioritised so that children and young people impacted by domestic violence are not caught up in the justice system:

- **Recognise children and young people as primary victims of domestic violence and provide an appropriately specialised response.** This includes funding an appropriately skilled therapeutic and trauma informed workforce to work with children and young people, with a mandate to work collaboratively with adult domestic violence, child protection and health workforces, to comprehensively address children and young people’s trauma and associated needs.
- **Invest in prevention to challenge gender norms and attitudes that support violence against women,** including partnering with Aboriginal and CALD community leaders to build on community strengths and challenge violence against women and girls in culturally appropriate ways. A clear and well-resourced universal prevention approach is needed to reduce the impact of DFV children and young people at a population level, and over time to reduce the number of children and young people in contact with child protection and justice systems.

- **Invest in genuine early targeted intervention, focussing on whole of family, to break intergenerational cycles of violence.** Current unmet demand for child protection intervention is frequently causing nominally early intervention services to work with families where there is an imminent risk of children going into care. There is a need to resource strengths-focussed support to families at the earliest opportunity when domestic violence and other forms of abuse and neglect are first identified. It is essential that services are accessible to families in rural and remote locations, that they are culturally safe, and equipped to respond to families with complex needs including intergenerational trauma, mental health, substance abuse, and work with men who use violence, as well as support children and young people. Strengthening early responses will also require a long-term strategic focus on workforce development, to build the range of skills required.
- **Invest in the development of age appropriate therapeutic and behaviour change and support interventions for young people who have used violence,** including evaluation, and ensure there are early diversion pathways to these programs. Young people who have used violence in the home frequently have experienced victimisation themselves, underscoring the need for trauma informed, strengths focussed approaches, that are culturally informed and inclusive of diverse genders.⁶ A variety of interventions is also needed for young people for whom group interventions are not feasible, in both Youth Justice and community NGO settings to ensure there are early diversion options.
- It is also essential that there are **diversion pathways supported by legislation,** that engage young people in therapeutic intervention wherever possible. Diversion into therapeutic and healing interventions is particularly important for Aboriginal young people, noting the data provided above.
- **Improve interagency collaboration and governance to support coordinated responses to families including children and young people.** Domestic violence affects many domains of a child or young person's life and can't be addressed separately from their family context. Young people involved in the justice and child protection systems and their families are faced with added layers of complexity. Agencies leading the commissioning of youth, family and domestic violence interventions should mandate interagency collaboration and provide sufficient resources and flexibility to enable interagency practice.

The ability of agencies working with vulnerable children and young people to provide a quality response to families also requires robust systems for identifying potential clients and the nature of client need. Agencies working in silos have limited information about needs and can miss opportunities to engage and support families to address multiple complex needs. The systematic identification, sharing and analysis of information, and streamlined, effective and accountable governance structures are also critical to the implementation of effective place-based solutions.

Importantly, these priorities align with the National Plan to Reduce Violence against Women and Children 2022-2032. The National Plan sets out the national policy agenda to end violence against women in one generation, and targets four domains of Prevention, Early intervention, Response, and Recovery and Healing. Appropriately resourcing the national plan is a critical step towards breaking cycles of intergenerational violence, reducing children and young people's trauma, and reducing child protection intervention and justice system contacts.

Early intervention, improving information sharing, and improving outcomes for Aboriginal children and young people are also consistent with *Safe and Supported: the National Framework for Protecting Australia's Children 2021-2031*.

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?

Reducing contact with the justice system for young people in out of home care

- The *NSW Crimes (Domestic and Personal violence) Act 2007* defines a domestic relationship to include 'a person who is living or has lived as a long-term resident in the same residential facility as the other person and at the same time as the other person (not being a facility that is a correctional centre within the meaning of the *Crimes (Administration of Sentences) Act 1999* or a detention centre within the meaning of the *Children (Detention Centres) Act 1987*'. This definition does not exclude young people in residential intensive therapeutic care, and this omission has resulted in the risk that young people will be charged with domestic violence offence against a carer or fellow resident.
- In 2016 NSW introduced the *Joint protocol to reduce the contact of young people in residential out of home care with the criminal justice system*⁷. The protocol was developed by the NSW Ombudsman after extensive consultation with stakeholders and has proven to be an important mechanism to reduce unnecessary police action against young people in care in NSW. The Protocol applies to young people under 18 years of age living in residential out of home care settings which are part of the NSW Government's Intensive Therapeutic Care services.
- The protocol aims to reduce police involvement in responding to behaviour by young people residential and ITC services, promote the principle that criminal charges will not be pursued against a young person if there is an alternative; promote the safety, welfare and wellbeing of young people by improving relationships; increase communication and information sharing between police and residential services; facilitate a collaborative early intervention approach; increase appropriate diversion from the criminal justice system; and ensure appropriate responses to young people who are victims.

Implementing domestic violence informed practice across all systems working with families, including youth justice and child protection systems.

- *Safe and Together* is an internationally recognised model of domestic violence informed practice that moves away from traditional 'failure to protect' approaches that have dominated child protection contexts. *Safe and Together* is underpinned by the principles of keeping children safe and together with the non-offending parent, partnering with the non-offending parent to improve safety, and intervening with the perpetrator to reduce risk and harm to children.
- The *Safe & Together Model* fills the gaps in knowledge and practice and assists all systems touching on domestic violence and child well-being to become domestic violence informed, supporting child well-being and safety across all partners in the domestic violence community.

When considering young people who uses violence, the model world recognise the behaviour of the young person as a consequence of their own experience of violence, and work with them to understand and modify behaviour, to improve their own safety as well as that of others, and heal from their own experiences.

- Importantly, the Safe and Together model is gaining early momentum in some Australian jurisdictions and contexts (including for example in the Federal Circuit and Family Court of Australia) but widespread adoption is needed across all systems working with adults, children and young people affected by violence. A key benefit of the model is that when agencies share concepts and language, collaboration is enabled and creates an ecosystem of accountability for people who use violence, and safety and care for adult and child and youth victims.

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?

Recognise the interconnectedness of responses to domestic violence and vulnerable young people, and the role of the Commonwealth in key policy areas in implementation.

- A national approach to supporting Australia's young people, with positively framed strategic objectives would clarify states' responsibilities for young people, including in domains that ensure safety, freedom from homelessness and reduced likelihood of justice system involvement. Closing the Gap is an example of this national focus on specific outcomes. Notably, its focus on reducing the over-representation of Aboriginal young people in the justice system is beginning to show clear reductions.
- It is also relevant that the *National Plan to Reduce Violence Against Women and their Children 2022-2032: Ending Gender-Based Violence in One Generation* recognises young people as victims in their own right and acknowledges the vulnerability of some young people to using violence in family and intimate relationships, but there are not yet sufficient concrete actions or funding to address this, beyond universal prevention activity. A specific focus on funding the development of programs for young people who have used violence in family and intimate relationships would be an important next step.
- The Commonwealth Government also has a key role in funding services that can improve outcomes for families and individuals impacted by DFV including young people, promoting prevention, safety, healing and recovery, and reducing the likelihood of ongoing contacts with justice and child protection systems. National Women's Safety, Health, Homelessness, Legal Assistance funding and partnership agreements between the Commonwealth, States and Territories have a direct impact on service provision to vulnerable families and young people. Adequate funding and clear targets would drive accountability for change and could be a lever to implement consistent outcome standards across jurisdictions.
- The complex factors that contribute to the vulnerability of young people and their families to domestic violence and other forms of abuse and increase their likelihood of justice system involvement, and their wide range of resulting needs, also means that coordination of responses

to vulnerable families across agencies and all levels of government is essential, in strategy and planning as well as place-based implementation.

- Lastly, national standards or principles for policing in relation to young people would be helpful in standardising approaches to law enforcement and diversion. In relation to family violence offences, diversion away from judicial pathways and into therapeutic programs would be more beneficial in many cases. A focus on the diversion of Aboriginal children and young people is imperative.

Endnotes:

¹ Haslam D, Mathews B, Pacella R, Scott JG, Finkelhor D, Higgins DJ, Meinck F, Erskine HE, Thomas HJ, Lawrence D, Malacova E. (2023). *The prevalence and impact of child maltreatment in Australia: Findings from the Australian Child Maltreatment Study: Brief Report*. Australian Child Maltreatment Study, Queensland University of Technology. http://www.acms.au/wp-content/uploads/2023/04/ACMS_BriefReport.pdf

² Urquhart R. and Doyle J. *Truth is, the abuse never stopped - Adult insights on the support they received when impacted by childhood domestic and family violence*. Barnardos Australia 2022. https://www.barnardos.org.au/wp-content/uploads/2022/09/HO_BD_22_259638-Research-Report-DV_web_FA_Sept22.pdf

³ NSW Bureau of Crime Statistics and Research, *Age and gender of alleged offenders proceeded against by the NSW Police Force for domestic violence related offences*. Reference DomesticViolenceStatistics22Q4

⁴ NSW Bureau of Crime Statistics and Research, *Youth offending. Most common offences for young people proceeded against by Police, Aboriginality*. https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Young-people.aspx

⁵ NSW Bureau of Crime Statistics and Research, *Youth offending. Most common offences for young people proceeded against by Police, Aboriginality*. Total diversions as a proportion of all legal proceedings. https://www.bocsar.nsw.gov.au/Pages/bocsar_pages/Young-people.aspx

⁶ Fitz-Gibbon, K., Meyer, S., Boxall, H., Maher, J., & Roberts, S. (2022). *Adolescent family violence in Australia: A national study of service and support needs for young people who use family violence* (Research report, 18/2022). ANROWS <https://anrowsdev.wpenginpowered.com/wp-content/uploads/2022/10/RP.20.03-FitzGibbon-RR2-AFV.pdf>

⁷ NSW Government 2019. *Joint Protocol to reduce the contact of young people in residential care with the criminal justice system*. <https://www.facs.nsw.gov.au/download?file=585726>