

The National Children's Commissioner of the Australian Human Rights Commission  
**Youth Justice and Child Wellbeing Reform across Australia**

June 2023

# Advocacy and collaboration to improve access and equity

# Royal Australian and New Zealand College of Psychiatrists submission

## Youth Justice and Child Wellbeing Reform across Australia

### About the Royal Australian and New Zealand College of Psychiatrists

The Royal Australian and New Zealand College of Psychiatrists (RANZCP) is responsible for training, educating and representing psychiatrists in Australia and New Zealand. The RANZCP has more than 7900 members, including around 5600 fully qualified psychiatrists.

### Introduction

The RANZCP welcomes the opportunity to contribute to the National Children's Commissioner of the Australian Human Rights Commission's Youth Justice and Child Wellbeing Reform across Australia project (Youth Justice and Child Wellbeing project). The recommendations contained within this submission are based on extensive consultation with the RANZCP's Committees, including the Faculty of Child and Adolescent Psychiatry Committee, the Faculty of Forensic Psychiatry Committee, the Section of Child and Adolescent Forensic Psychiatry Committee and the Section of Youth Mental Health Committee, which are made up of community members and psychiatrists with direct experience. As such, the RANZCP is well positioned to provide assistance and advice about this issue due to the breadth of academic, clinical and service delivery expertise it represents.

People with mental health conditions are more likely to experience interactions with the justice system.[1] As the peak body representing psychiatrists in Australia and New Zealand, the RANZCP is in a unique position to comment on youth justice and child wellbeing.

### Key findings

- Untreated mental health disorders are a key contributor to interactions with the criminal justice system
- Young people interacting with the criminal justice system show much higher rates of mental health disorders than the general population
- Adequately treating mental health disorders is a proven way to reduce young people's interactions with criminal justice systems
- Health workforce shortages and lack of funding severely impacts the availability and equity of services
- Health-led diversion programs have proven efficacy in improving positive outcomes for young people and reducing re-offending
- Reforms to the way in which the criminal justice system addresses mental health before, during and after offending, conviction and incarceration will increase positive outcomes for young people, families and broader communities.

### Questions

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

Young people in contact with the justice system represent one of the most vulnerable populations in the community. One of the primary contributors to young people encountering the justice system is issues with mental health. It has been noted that nearly a third of young offenders require mental health support.[2] The RANZCP highlights that mental health issues are overrepresented in offender populations. Many of these conditions are either treatable or manageable, especially in young people.[3]

### **Notable conditions affecting young people and the justice system**

Many of these treatable and manageable conditions have been highlighted by the RANZCP as being amongst the most prevalent in young people and responsible for increased interaction with the justice system.

#### *Serious mental illness including psychosis*

It is established that the prevalence of serious mental illness including psychotic disorders in youth custody are significantly higher (at least ten times higher) than in young people in the general community.[3] Psychiatric treatment of psychosis in young offenders has been proven to improve community integration and prolong time to any future re-offending.[24] The evidence base highlights the need for optimal psychiatric treatment and post-release care for young offenders with mental illness.

#### *ADHD*

It is well recognised that the prevalence of ADHD in custodial settings is substantially higher than in the community, with estimates ranging between 20-45% in youth justice populations.[1,4] Young people are also more than twice as likely to be convicted of a crime and three times more likely to be incarcerated if they have ADHD.[5] Furthermore, recidivism is substantially increased amongst young people with untreated ADHD.[6]

#### *Autism spectrum disorder*

People with autism spectrum disorder are more likely to be involved with the justice system, both as perpetrators and victims.[7] Although there is little evidence to show that people with autism offend at higher rates than the general population, autism-related characteristics, such as difficult with social interactions, are suggested as being a contributing factor to those that do.[8] It has also been shown that police involvement in interactions with people with autism due to aggressive or unpredictable responses to unfamiliar or overwhelming situations.[9]

#### *Intellectual disabilities*

Like people with autism, people with Intellectual disabilities (ID) are overrepresented in the justice system.[10] It is estimated that people with ID are overrepresented in prison populations by between 3 and 4 times the likelihood of the general population.[11]

#### *Conduct disorder*

It is estimated that 80% of all criminal activity is attributable to people who had Conduct Disorder (CD) as a child.[12] CD is, by its very nature, is highly predictive of interactions with the justice system in some manner – it is the repetitive and persistent pattern of behaviour which violates the basic rights of others, social norms or societal rules.[13] This leads to higher rates of police involvement and justice system intervention.[14]

For more information, please see the RANZCP resources; [PS55 ADHD across the lifespan](#), [PS109 Intellectual disabilities \(ID\): Addressing the mental health needs of people with ID](#), [PS110 Autism: Addressing the mental health needs of Autistic people](#) and [PS111 Children with Conduct Disorder](#).

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### **Covariables that affect young people**

The RANZCP highlights that young people's interaction with the justice system is exacerbated by many covariant factors and their effects on young people's mental health. Many young offenders with mental health conditions experienced no form of intervention for their problems. This is not just health interventions but also in the realms of education, social, economic and community needs.[2] Poverty, removal from family such as via [out-of-home care](#), substance use, and [cultural or racial background](#) all play a part in driving young people with mental health conditions to interact with the justice system.

Nowhere is this shown more distinctly than with young Aboriginal and Torres Strait Islander people. In Australia Indigenous youth are overrepresented in justice settings up to a factor of 20.[15] Racism, racial profiling, intergenerational trauma (such as the removal of children) and the ongoing impacts of colonisation all factor into this overrepresentation. The lasting effects of the impact of the loss of land, culture and identity perpetuates discrimination and erodes mental, physical, emotional and social health and wellbeing. A lack of culturally safe and competent services exacerbates the effects on young people.[15] Intergenerational incarceration primes Aboriginal and Torres Strait Island young people to enter the justice system as parental incarceration removes income providers and role models that increases poverty and reduces overall mental health.[15]

### **Psychiatry workforce issues**

As noted in the [RANZCP's 2023-2024 Federal Pre-budget submission](#) there is a national shortage of psychiatrists across Australia, which is even more acute for child and adolescent psychiatrists. Child and adolescent psychiatrists represent only 10% of the psychiatry workforce.[16] Of the approximately 80,000 children who have a severe disorder only 22,000 (27%) have seen a psychiatrist over a twelve-month period.[17] It is imperative that there be support structures in place within the mental health system to ensure better and more equitable access to necessary services.

This has a flow on effect to affordability and access to services which would improve mental health and lessen chances of justice system interaction. Workforce shortages, among other factors, cause many people with mental health conditions to abandon the public health system and seek assistance from the private sector. However, this is not an option for the most vulnerable demographics. Currently the median out-of-pocket cost for a psychiatrist is one of the highest to see a specialist in Australia. This is beyond the reach of many Australians. The issue of affordability of private psychiatry services was noted in the [National Children's Mental Health and Wellbeing Strategy](#). Research shows that both parents and children will not seek help, or forgo care due, to the high cost.

Increased mental health funding, especially for child and adolescent psychiatrist positions and training, would help to alleviate affordability and workforce issues which would in turn prevent young people from missing vital treatment and support that may prevent offending.

### **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?**

Key to improving young people's experiences in, of, and around the justice systems is dealing with offending as a manageable symptom of a larger issue. The RANZCP believes that the development and implementation of early intervention and prevention strategies are key to addressing adverse outcomes.

The RANZCP highlights the evidence of two key changes that will decrease the number of young people who interact with youth justice systems and increase child welfare in and around custodial settings:

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diversion programs designed to prevent and remove young people from the justice system and a health led and funded multidisciplinary approach to child justice.

### **Health not justice**

Justice led programs are designed around security, protection and punishment, and preference these goals above dealing with and healing trauma, accommodating cultural sensitivities and offender rehabilitation.[15] Given the prevalence of mental health issues in youth offenders, treating the underlying health conditions that contribute to offending improves the prognosis of these individuals.[3] A more therapeutic model for youth justice, including the involvement of mental health professionals before, during, and after proceedings has been shown to increase outcomes for youth justice and child wellbeing.[18]

The RANZCP regards a health led approach to be the best way forward. Prior to offending the access to crucial support services for mental health, socio-economic, culturally sensitive, and developmental needs is paramount. Early intervention with targeted mental health and social support is key in the prevention of offending long-term.[19]

Where custodial settings are unavoidable, then greater emphasis should be placed on the provision of safe and effective health services. The health services must be health led and funded to deliver multidisciplinary forensic health services. These services must be appropriately resourced and funded and include Indigenous staff and members of all genders. These services cannot be funded through corrections departments, as the opposing priorities of health and corrections make the effective delivery of services difficult. Safe and effective clinical care cannot be operated by or under non-health departments. Complexity, clinical and socio-economic comorbidity and risk in these settings require expert forensic health teams, unbound by competing priorities. The RANZCP advocates for these multidisciplinary services to be led by psychiatrists trained in forensic and child and adolescent care requirements.

### **Diversionsary programs**

Diversion programs attempt to prevent young people from being involved with the justice system or avoid detention. Diverting young people away from, or out of, the justice system is crucial. The RANZCP highlights that current research shows that diversion programs have the potential not only to address young people's treatments needs for both mental health and substance use issues but also to reduce reoffending.[20]

Diversion programs are designed to prevent young people from being caught up in the justice, and especially custodial, systems and provide an alternative way to deal with young offenders. Incarceration, however brief, is deeply traumatising for young people with mental health conditions.[15] Furthermore the cost of youth custodial care for young people with mental health conditions is financially burdensome for society and communities. In New South Wales it has been shown that the cost of keeping a young person with mental health conditions in a custodial setting is three times greater than a commensurate community supervision order.[15]

It should be noted that diversionary programs are not simply about taking young people who have offended and providing outcomes to avoid the court systems. These are also social programs that aim at reducing the burdens on young people's mental, physical and social health. The aim is to engage young people before offences occur and may include sporting teams, art and creative engagement services, community outreach groups or culturally suitable mentorship programs, or educational facilities and supports. The RANZCP acknowledges that these programs have been highlighted as having enormous potential and are

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already showing results in the Australian Capital Territory.[21] Data from New South Wales demonstrates that community mental health interventions reduce youth offending, and so too is the establishment of safe and secure housing options.[15]

One barrier to the effectiveness of diversionary methods is the inequitable application of such programs for Aboriginal and Torres Strait Islander young people. Young Indigenous offenders are less likely to receive diversion and are much more likely than non-Indigenous young people to be issued a court summons.[20] Training and processes that enhance cultural safety and competency and promote trauma-informed approaches are a necessity.

The RANZCP believes that Indigenous led diversion programs for young Aboriginal and Torres Strait Islander people are one of the best ways to help reduce the overrepresentation in justice systems. Cultural safety must also be at the forefront of all risk assessments. Any culturally focussed efforts must also be co-designed, if not led, by Indigenous people to avoid tokenism or half-measures. These programs, and the work of Indigenous people and communities, must ensure Indigenous information sovereignty so as not to further disenfranchise and traumatise Aboriginal and Torres Strait Islander people and communities.

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?

There is a wealth of research and extant evidence-based programs that shows that diversionary methods work. The RANZCP regards the importance and effectiveness of these methods as being supported by the current body of evidence.

Legislative changes and efforts to reform the processes and functions of youth courts has also been noted as having marked positive outcomes.[22] Procedures that diminish the adversarial process generally promote better child welfare, as shown in the RANZCP [Professional Practice Guideline 3: Australian Family Court proceedings](#). The availability and power of lawyers and magistrates and the NSW Children's and Koori Courts to refer young offenders with identified mental health conditions to court clinicians have had similarly positive results.[15]

### **Raising the age**

The RANZCP is an active participant in the Raise the Age campaign and continues to advocate for raising the age of criminal responsibility to 14 without exception. Child detention is shown to have a severe impact on both mental and physical health, as noted in the [Draft Final Report 2020 – Age of Criminal Responsibility by the Standing Council of Attorneys-General](#). Given the known impact of mental health issues on initial offending and recidivism, detaining children will have a follow-on effect for justice system interactions.

A higher minimum age of criminal responsibility (MACR) is shown to have positive outcomes for young people's health and wellbeing, as well as economic and financial advantages. The European Union has an average higher MACR than Australia, and offending rates are significantly lower - thanks in part to greater resourcing and funding for community therapeutic programs.[15] In Denmark, a lower MACR was shown to increase rates of recidivism, and possibly an increase in youth offences.[23] The same study showed that that there was a noticeable detrimental effect on educational outcomes, which was likely to impact future individual and social economic output.[23]



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Raising the MACR in Australia could potentially help to lower recidivism, original offending and help to alleviate the ongoing poverty cycle that drives young people and adults to the justice system. It will increase welfare in the justice system and custodial settings by lessening the harms to young people and emphasising their human rights. The RANZCP advocates for raising the MACR in Australia.

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?

National schemes have the benefit of providing clarity of information and experience. In the current system communication between psychiatrists and other health providers and elements is stymied by the various competing regulations and practices which differ between States and Territories. The RANZCP believes that a national approach would allow better knowledge sharing and advocacy efforts.

Data collection is also made easier by a national approach. A centralised data repository allows greater wealth of information with which to inform evidence-based reforms. Currently isolated data collection and retention means that competing regulatory bodies and procedural processes prevent concerted and coordinated effort to identify and alleviate key issues.

### Summary

The RANZCP would welcome the opportunity to provide further comment on this important area. Many of our members are heavily involved in forensic health systems and have a wealth of practical knowledge. If you have any queries regarding this submission, please contact [REDACTED], Executive Manager, Policy, Practice and Research Department via [REDACTED].

### References

1. Funk M DN, Knapp M. Mental health, poverty and development. *Journal of Public Mental Health*. 2012; 11(4): 166-85
2. Chitabesan P, Kroll L, Bailey S, Kenning C, Sneider S, MacDonald W, and Theodosiou L. Mental health needs of young offenders in custody and in the community *British Journal of Psychiatry* 2006 188: 534-540
3. Beaudry G, Yu R, Långström N, and Fazel S. An Updated Systematic Review and Meta-regression Analysis: Mental Disorders Among Adolescents in Juvenile Detention and Correctional Facilities *Journal of the American Academy of Child & Adolescent Psychiatry* 2021 60(1): 46-60
4. Harpin V & Young S J The Challenge of ADHD and Youth Offending *Cutting Edge Psychiatry in Practice* 2012 January: 138-143.
5. Baggio et al. Attention deficit hyperactivity disorder as a neglected psychiatric disease in prison: call for identification and treatment. *Forensic Science International: Mind and Law*. 2022 3;100071.
6. Philipp-Wiegmann F et al. ADHD modulates the course of delinquency: a 15-year follow-up study of young incarcerated man. *European Archives of Psychiatry and Clinical Neuroscience* 2018; 268: 391-399.

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7. Shea LL, Cooper D, Wilson AB. Preventing and improving interactions between autistic individuals and the criminal justice system: A roadmap for research. *Autism Research*. 2021;14(10): 2053-60.
8. Autism Spectrum Australia Submission to the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with a Disability Criminal Justice System Issues Paper. February 2020 available at <https://disability.royalcommission.gov.au/system/files/submission/ISS.001.00040.PDF>
9. Gardner, L., Campbell, J., & Westdal, J. Brief Report: Descriptive Analysis of Law Enforcement Officers' Experiences with and Knowledge of Autism. *Journal of Autism and Developmental Disorders*, 2019; 49(3): 1278-1283.
10. Trollor J. Making mental health services accessible to people with an intellectual disability. *Australian & New Zealand Journal of Psychiatry*. 2014;48(5):395-8.
11. Villamanta Disability Rights Legal Service Inc. People who have an Intellectual Disability and the Criminal Justice System 2012
12. Health SCfM. *The Chance of a Lifetime*. London: Sainsbury Centre for Mental Health; 2009
13. *Diagnostic and statistical manual of mental disorders DSM-5-TR*. Fifth edition, text revision. ed. Washington, DC: American Psychiatric Association Publishing; 2022.
14. Matthys W, Lochman JE. *Oppositional defiant disorder and conduct disorder in childhood*. Second edition. ed. West Sussex, England: Wiley Blackwell; 2017.
15. Haysom L, Kasinathan J, and Singh Y. Youth custody is no place for mentally ill children and young people *Australasian Psychiatry* 2023 31(3): 263-266
16. *The Mental Health of Children and Adolescents*. Report on the second Australian child and adolescent survey of mental health and wellbeing. Commonwealth of Australia; 2015
17. New South Wales Health Centre for Mental Health. *Mental Health Clinical Care and Prevention: A population health model*; 2001
18. Ng C, *It's Time to Treat Sick Kids, Not Punish Them* Winston Churchill Trust via University of Queensland 2022 available at <https://stories.uq.edu.au/policy-futures/2022/its-time-to-treat-sick-kids-not-punish-them/index.html>
19. Loeber, R., & Farrington, D. P (200) Young children who commit crime: Epidemiology, developmental origins, risk factors, early interventions, and policy implications. *Development and Psychopathology* 12(4) 737-762
20. Gaskin C et al. *Youth Mental Health Diversion: Barriers to Diversion and Impact on Reoffending Crime and Delinquency* 2022: 1-33
21. McArthur M, Suomi A, Kendall B. *Review of the service system and implementation requirements for raising the minimum age of criminal responsibility in the Australian Capital Territory: Final Report* 2021
22. United Nations Human Rights Committee on the Rights of the Child, *Global study on children deprived of liberty* July 2019 A/74/136
23. Damm, A P, Larsen, B Ø, Nielsen H S & Simonsen M. *Lowering the minimum age of criminal responsibility: Consequences for juvenile crime and education* Economics Working Papers 2017
24. Kasinathan J. Predictors of rapid reincarceration in mentally ill young offenders. *Australasian Psychiatry*. 2015 23(5):550-555.