

Australian Human Rights Commission  
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28 June 2023  
By email

## Youth Justice and Child Wellbeing Reform across Australia Submission from The Shopfront Youth Legal Centre

### About The Shopfront Youth Legal Centre

The Shopfront Youth Legal Centre is a free legal service for homeless and disadvantaged young people aged 25 and under. The Shopfront is based in Sydney and is a joint project of Mission Australia, the Salvation Army and the law firm Herbert Smith Freehills.

Our service was established in 1993 in response to the AHRC (or HREOC, as it was then known) report, *Our Homeless Children*, known as the Burdekin Report.

Our clients are among the most disadvantaged in our community. Many are, or have been, in out-of-home care. Most are affected by a combination of issues including homelessness, unresolved trauma, serious mental illness and cognitive impairment.

Our four solicitors appear in court for vulnerable children and young people almost daily, mostly in criminal matters. We also provide other forms of legal assistance, education and social support.

The Shopfront's Principal Solicitor is an Accredited Specialist in criminal law and in children's law, and has been practising in the field for almost 30 years. She has also been actively involved in education and policy work.

We would also like to acknowledge the contribution of our students, Téa Delle Vergin and Ashley Lieu, in the preparation of this submission.

### General comments

As the AHRC has noted in its call for submissions, there is already a significant body of research on these issues.

The empirical evidence referenced in this submission is largely consistent with the experience of The Shopfront's staff and our clients.

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

For many young people, involvement in the youth justice system may simply be due to the immaturity characteristic of adolescence, and they later "grow out of crime".

However, for a core group of young people, the factors contributing to their involvement with the criminal justice system are far more complex. Some of these factors are considered below.

#### **Childhood maltreatment**

An important indicator of young people's contact with the youth justice system is childhood maltreatment.

The *Royal Commission into Violence, Abuse, Neglect and Exploitation of People with*

*Disability* ('Disability Royal Commission') notes that 'while most children experiencing child maltreatment do not offend, a large proportion of children who do offend also have a history of abuse or neglect'.<sup>1</sup> For example, between 2020-2021, the proportion of young people in youth justice supervision and detention who had an interaction with the child protection system in the last 5 years was 53%.<sup>2</sup>

The Australian Institute of Health and Welfare ('AIHW') also notes that 'the younger a person was when they first entered youth justice supervision, the more likely they were to have had an interaction with the child protection system'.<sup>3</sup> This reflects the alarming pathway between childhood maltreatment and youth offending which has been well recognised and studied in literature.<sup>4</sup>

### **Out-of-Home Care (OOHC)**

Another predictor of young people's involvement with the youth justice system is placement in out-of-home care ('OOHC').

It is worth distinguishing between childhood maltreatment and placement in OOHC, as children who have experiences of both are twice as likely to offend compared to children who had been abused and neglected but never removed from home.<sup>5</sup>

This link was recognised by the Australian Parliament as early as 2004:

It was stated in evidence that one in five adult prisoners and one in three juvenile prisoners have been in care. ... A study of risk factors for the juvenile justice system found that '91 per cent of the juveniles who had been subject to a care and protection order, as well as a supervised justice order, had progressed to the adult corrections system with 67 per cent having served at least one term of imprisonment'.<sup>6</sup>

The Australian Law Reform Commission (ALRC) *Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander Peoples* noted 'the links between these systems is so strong that child removal into out-of-home care and juvenile detention could be considered as key drivers of adult incarceration'.<sup>7</sup> This cycle of care criminalisation means that children in OOHC are 'more likely to be involved in the juvenile justice system by virtue of their OOHC status'.<sup>8</sup>

One of the explanations for the criminalisation of children in care is that inadequate support and care for young people in OOHC leads to an over-reliance on the police to deal with young people.<sup>9</sup> For example, the *Independent Review of Aboriginal Children and Young People in OOHC* found that 'children and young people in OOHC are arrested for behaviour that would usually result in a disciplinary response from parents and not a criminal justice related response from police officers'.<sup>10</sup> Examples include children being

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<sup>1</sup> Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability, *People with Disability Transitioning from Prison and Their Pathways into Homelessness* (Research Report, 2023) 34 <<https://disability.royalcommission.gov.au/system/files/2023-05/Research%20Report%20-%20People%20with%20disability%20transitioning%20from%20prison%20and%20their%20pathways%20into%20homelessness.pdf>> ('Disability Royal Commission').

<sup>2</sup> Australian Institute of Health and Welfare (AIHW), *Young people under youth justice supervision and their interaction with the child protection system 2020-21* (Report, 2 December 2022) 7 <<https://www.aihw.gov.au/getmedia/e4f440c3-abb0-4547-a12b-081a5a77908b/aihw-csi-29-Young-people-under-youth-justice-supervision2020-21.pdf.aspx?inline=true>>.

<sup>3</sup> Ibid vi.

<sup>4</sup> See e.g., Judy Cashmore, 'The link between child maltreatment and adolescent offending' [2011] (89) *Family Matters* 31.

<sup>5</sup> Disability Royal Commission (n 1) 35 <[https://aifs.gov.au/sites/default/files/fm89d\\_0.pdf](https://aifs.gov.au/sites/default/files/fm89d_0.pdf)>.

<sup>6</sup> Senate Community Affairs References Committee, Parliament of Australia, *Forgotten Australians: A Report on Australians Who Experienced Institutional or out-of-home Care as Children* (Parliamentary Paper, August 2004) 168 [6.61] <[https://www.aph.gov.au/parliamentary\\_business/committees/senate/community\\_affairs/completed\\_inquiries/2004-07/inst\\_care/report/c06](https://www.aph.gov.au/parliamentary_business/committees/senate/community_affairs/completed_inquiries/2004-07/inst_care/report/c06)>.

<sup>7</sup> Australian Law Reform Commission (ALRC), *Pathways to Justice – An Inquiry into the Incarceration Rate of Aboriginal and Torres Strait Islander People* (Final Report No 133, December 2017) 485 [15.1] <[https://www.alrc.gov.au/wp-content/uploads/2019/08/final\\_report\\_133\\_amended1.pdf](https://www.alrc.gov.au/wp-content/uploads/2019/08/final_report_133_amended1.pdf)> ('Pathways to Justice').

<sup>8</sup> Megan Davis, *Family is Culture: Independent Review of Aboriginal Children and Young People in OOHC* (Review Report, November 2019) 230.

<sup>9</sup> Disability Royal Commission (n 1) 35.

<sup>10</sup> Davis (n 8) 236.

arrested for damaging property or assaulting staff or kinship carers, and for breaching bail conditions arising from over-scrutiny and policing of residential care homes.<sup>11</sup>

Another consideration is that placement in residential care units and youth justice custodial environments exposes young people to violent or offending behaviour.<sup>12</sup> This can occur through 'cross-pollination' where 'similarly vulnerable young people expose one another to new offending behaviours'.<sup>13</sup>

The young people in contact with the OOHc and youth justice system are known as 'dual-system involved children'.<sup>14</sup> These children are more likely to have a cognitive impairment and are also more likely to experience homelessness, which in and of itself is another factor contributing to involvement with the youth justice system.

### **Mental health and cognitive impairment**

Young people who suffer from poor mental health and cognitive impairment are substantially more likely to come into contact with the youth justice system.

For example, the 2015 NSW Young People in Custody Health Survey showed alarmingly high rates of mental illness/disorder and cognitive impairment among young people in custody. It found that young people in custody are nearly 6 times as likely to experience psychological disorders, when compared to non-incarcerated young people.<sup>15</sup>

The NSW Young People on Community Orders Health Survey 2003-2006 also showed relatively high rates of mental health disorders and intellectual disabilities, albeit not as high as for young people in custody.<sup>16</sup>

### **Child poverty and homelessness**

Child poverty, lack of affordable housing, and homelessness are a significant contributors of youth offending and the placement of children in OOHc.<sup>17</sup>

As of 2022, 1 in 6 children in Australia live in poverty.<sup>18</sup> Young people from lower-socio economic areas are more likely to be under youth justice supervision which includes community-based supervision and detention.<sup>19</sup> Relatedly, child protection claims of abuse or neglect are also more likely to be substantiated in low socio-economic areas.<sup>20</sup>

While there is no single trigger for homelessness,<sup>21</sup> for young people, 'maltreatment is often the impetus...to leave home'.<sup>22</sup>

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<sup>11</sup> Ibid 237.

<sup>12</sup> Disability Royal Commission (n 1) 35.

<sup>13</sup> Susan Baidawi, 'The transition from out-of-home care and offending behaviours', *Australian Institute of Family Studies* (Web Page, September 2017) <<https://aifs.gov.au/resources/short-articles/transition-out-home-care-and-offending-behaviours>>.

<sup>14</sup> Disability Royal Commission (n 1) 35.

<sup>15</sup> Justice Health and Forensic Mental Health Network and Juvenile Justice NSW, *Young People in Custody Health Survey* (Report, 2015) 65 [6.1] <<https://www.justicehealth.nsw.gov.au/publications/2015YPICHSReportwebreadyversion.PDF>>.

<sup>16</sup> NSW Young People on Community Orders Health Survey 2003-2006 <https://www.nsw.gov.au/legal-and-justice/youth-justice/about/research/custody-health-survey/ypocohs-2003-2006>

<sup>17</sup> The Public Defenders, 'Homelessness', *The Bugmy Bar Book* (Web Page, January 2020) 4 <[https://www.publicdefenders.nsw.gov.au/Pages/public\\_defenders\\_research/bar-book/pdf/BBP\\_Homelessness\\_chapter-Jan2020.pdf](https://www.publicdefenders.nsw.gov.au/Pages/public_defenders_research/bar-book/pdf/BBP_Homelessness_chapter-Jan2020.pdf)> ('*The Bugmy Bar Book*').

<sup>18</sup> UNSW Sydney and ACOSS, *Poverty in Australia 2022 A Snapshot* (Report, October 2022) 9 <[https://povertyandinequality.acoss.org.au/wp-content/uploads/2022/10/Poverty-in-Australia-2020\\_A-snapshot\\_print.pdf](https://povertyandinequality.acoss.org.au/wp-content/uploads/2022/10/Poverty-in-Australia-2020_A-snapshot_print.pdf)>.

<sup>19</sup> Australian Institute of Health and Welfare (AIHW), 'Youth justice in Australia 2021-22' (Media Release, 31 March 2023) <<https://www.aihw.gov.au/reports/youth-justice/youth-justice-in-australia-2021-22/contents/summary>>.

<sup>20</sup> Australian Institute of Health and Welfare (AIHW), 'Characteristics of children with substantiated abuse or neglect', *Child Protection Australia 2020-21* (Web Page, 15 June 2022) <<https://www.aihw.gov.au/reports/child-protection/child-protection-australia-2020-21/contents/notifications-investigations-and-substantiations/characteristics-of-children-with-substantiated-abuse-or-neglect>>.

<sup>21</sup> *The Bugmy Bar Book* (n 17) 3.

<sup>22</sup> Anne Stewart and Emily Hurren, 'Child maltreatment, homelessness and youth offending', *Australian Institute of Family Studies* (Web Page, October 2017) <<https://aifs.gov.au/resources/short-articles/child-maltreatment-homelessness-and-youth-offending>>.

### **Early contact with criminal justice system, incarceration and remand**

In a study into young people's contact with the criminal justice system over the life course, the NSW Bureau of Crime Statistics and Research ('BOCSAR') found that contact with the criminal justice system at a young age was an indicator of more frequent contact with the criminal justice system later in life.<sup>23</sup>

While only 18% of young people in the youth justice system were in detention in 2021-2022,<sup>24</sup> incarceration nevertheless has a severely detrimental effect on young people. The Sentencing Project found that incarceration disrupts young people's lives and impedes their success in education and employment.<sup>25</sup> Incarceration also inflicts lasting damage to young people's health and wellbeing and exposes young people to maltreatment and abuse which is prevalent in juvenile facilities.<sup>26</sup>

Further, an overwhelming 76% of young people in detention were unsentenced – meaning they were being deprived of liberty and exposed to the harmful effects of incarceration before being given a custodial sentence by a court, and often in circumstances where a custodial sentence will never be imposed.<sup>27</sup>

### **Over-policing and use of STMPs**

For some populations, involvement with the youth justice system can also be explained by over-policing. Over-policing refers to how 'Indigenous individuals in particular, and Indigenous communities more generally, are policed in a way that is different from, and more intensive than the policing of non-Indigenous communities'.<sup>28</sup>

An example of this in NSW is the fact that the majority of people under Suspect Target Management Plans ('STMPs') are Indigenous Australians. In 2015, Indigenous people represented 44.1% of all persons under an STMP.<sup>29</sup> Additionally, STMPs disproportionately target young people with 48.8% of all people under a STMP in 2015 being younger than 25 years of age.<sup>30</sup>

The NSW Law Enforcement Conduct Commission (LECC) expressed concerns about the use of the STMP on children and young people in its interim 'Operation Tepito' report in 2020.<sup>31</sup>

## **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?**

Many things need to change, including better access to housing, income support, and access to education, health and social support services.

The barriers to change are, in our opinion, largely a matter of political will.

<sup>23</sup> Don Weatherburn and Stephanie Ramsey, 'Offending over the life course: Contact with the NSW criminal justice system between age 10 and age 33' (Bureau Brief No 132, NSW Bureau of Crime Statistics and Research, April 2018) 1 <<https://www.bocsar.nsw.gov.au/Publications/BB/2018-Report-Offending-over-the-life-course-BB132.pdf>>.

<sup>24</sup> 'Youth Justice', *Australian Institute of Health and Welfare* (Web Page, 31 March 2023) <<https://www.aihw.gov.au/reports/australias-welfare/youth-justice>> ('Youth Justice').

<sup>25</sup> Richard Mendel, *Why Youth Incarceration Fails: An Updated Review of the Evidence* (Report, The Sentencing Project, December 2022) 5 <<https://www.sentencingproject.org/app/uploads/2023/03/Why-Youth-Incarceration-Fails.pdf>>.

<sup>26</sup> *Ibid* 5.

<sup>27</sup> 'Youth Justice' (n 24).

<sup>28</sup> Anna Corbo Crehan, "'Appropriate' police discretion and Indigenous over-representation in the Criminal Justice System', (2010) 11(1-2) *Australian Journal of Professional and Applied Ethics* 1 <<https://researchoutput.csu.edu.au/ws/portalfiles/portal/8753216/PrePubPID13963.pdf>>.

<sup>29</sup> Vicki Sentas and Camilla Pandolfini, *Policing Young People in NSW: A study of the Suspect Targeting Management Plan* (Report, Youth Justice Coalition, 25 October 2017) 11 <<https://www.piac.asn.au/wp-content/uploads/2017/10/17.10.25-YJC-STMP-Report.pdf>>.

<sup>30</sup> *Ibid* 11.

<sup>31</sup> <<https://www.lecc.nsw.gov.au/news-and-publications/news/media-release-operation-tepito>>

The following are just a few areas in which change is needed.

### **Early intervention and joined-up service delivery**

There is a need for a stronger focus on early and co-ordinated support. By the time children interact with the youth justice system, their unmet needs have often multiplied and become more complex. The literature recognises that the complexity and clustering of risks and unmet needs increase the probability of children interacting with the criminal justice system.<sup>32</sup> As such, the *Disability Royal Commission* suggests that ‘family interventions ought to be offered as the first response in lieu of relying on the youth justice system to regulate the behaviour of young people’.<sup>33</sup>

Tackling these issues also requires coordinated or multiservice interventions. The *Disability Royal Commission* notes the need for ‘mutual responsibility in recognition and support across sectors’ and suggests this could be addressed through ‘improved information-sharing practices and cross-sectoral case-coordination models’.<sup>34</sup>

### **Age of criminal responsibility**

We believe the minimum age of criminal responsibility should be increased to 14 years. The current age of 10 years is too low and has been subject to criticism by the United Nations Committee on the Rights of the Child.

The draft report to the Council of Attorneys-General (2020) draws on an extensive body of evidence in support of raising the age.<sup>35</sup>

The AHRC noted in its 2019 report *In Their Own Right: Children’s Rights in Australia*<sup>36</sup> that there is limited evidence that the *doli incapax* principle is properly applied in practice. We agree that it does not offer effective protection for a variety of reasons, including the long waiting times for hearing and the fact that children aged 10-13 may be detained on remand, or subject to very onerous bail conditions, in the meantime.

See also our 2020 submission to the Review of Age of Criminal Responsibility (*attached*), particularly pages 2- 4, Question 1.

### **Bail reforms**

Although section 8 of the *Children (Criminal Proceedings) Act 1987* (NSW) creates a presumption that bail should be dispensed with for children, the overwhelming proportion of children in detention who are being held on remand demonstrates that reform is needed to ensure this safeguard is more effective.<sup>37</sup> Without legislative change, young people will continue to be “churned through” custody which causes major disruption to their wellbeing and development.

Please see our 2011 submission on Bail (*attached*), particularly pages 6-9 and 13-19. We note that while this submission is 12 years old, and NSW enacted a new *Bail Act* in 2013, the concerns raised are still relevant.

Further, bail support and supervision programs need to be strengthened so the number of young people remanded in custody is reduced. The Australian Institute of Criminology (AIC) recommends that bail support programs need to be more accessible to young

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<sup>32</sup> James Wood, *Report of the Special Commission of Inquiry into Child Protection Services in NSW* (November 2008) 613 <[https://apo.org.au/sites/default/files/resource-files/2008-11/apo-nid2851\\_2.pdf](https://apo.org.au/sites/default/files/resource-files/2008-11/apo-nid2851_2.pdf)>; Dean Kimberlie, Tyson Whitten and Stacy Tzoumakis, ‘Incidence of Early Police Contact Among Children With Emerging Mental Health Problems in Australia’ (2021) 4(6) *Jama*; Yolisha Singh, ‘Old Enough to Offend but not to Buy a Hamster: The Argument for Raising the Minimum Age of Criminal Responsibility’ (2023) 30(1) *Psychiatry and Law* 5.

<sup>33</sup> Disability Royal Commission (n 1) 37.

<sup>34</sup> *Ibid* 37.

<sup>35</sup> [https://www.ag.gov.au/sites/default/files/2022-12/draft-report-2020-age-of-criminal-responsibility\\_DOCX](https://www.ag.gov.au/sites/default/files/2022-12/draft-report-2020-age-of-criminal-responsibility_DOCX)

<sup>36</sup> Australian Human Rights Commission, *In Their Own Right: Children’s Rights in Australia* (2019), p.244 [https://humanrights.gov.au/sites/default/files/document/publication/childrensrightsreport\\_2019\\_ahrc.pdf](https://humanrights.gov.au/sites/default/files/document/publication/childrensrightsreport_2019_ahrc.pdf)

<sup>37</sup> ‘Youth Justice’ (n 24).

people, especially those with complex needs and those living in rural and remote areas as currently only a small number of young people participate in these programs.<sup>38</sup>

### ***Diversion and restorative justice***

We believe that diversion and restorative justice needs to be better resourced and more widely available, particularly for First Nations young people and those from other disadvantaged groups.

Please see our comments on restorative justice under Question 3 below.

See also our 2020 submission to the Review of the *Young Offenders Act 1997* (*attached*).

### ***Voice to Parliament***

Given the gross overrepresentation of First Nations children in OOHC and youth justice systems, the importance of a constitutionally enshrined First Nations Voice to Parliament cannot be overstated.

As put by the *Uluru Statement from the Heart*,

'Proportionally, we are the most incarcerated people on the planet. We are not an innately criminal people. Our children are alienated from their families at unprecedented rates. This cannot be because we have no love for them. And our youth languish in detention in obscene numbers. They should be our hope for the future'.<sup>39</sup>

## **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 following are just a few examples.

### ***Justice Reinvestment***

Justice Reinvestment is an approach to criminal justice reform which involves redirecting money from prisons to fund and rebuild communities most affected by high levels of incarceration.<sup>40</sup> In particular, for First Nations communities, it is about returning power to self-determine the best way to improve justice outcomes in the community.<sup>41</sup>

The Maranguka Justice Reinvestment Project in Bourke, NSW, is an example of how justice reinvestment can create tangible impacts. The intention of the initiative is to redirect resources that would be spent on prison, back into the community, to address the underlying causes of imprisonment, and provide support to vulnerable children and families.<sup>42</sup> An evaluation of the Maranguka Project conducted by KPMG in 2018 reveals a 23% reduction in police recorded incidence of domestic violence, 31% increase in year 12 student retention rates, 38% reduction in charges across the top five juvenile offence categories, 14% reduction in bail breaches and 42% reduction in days spent in custody.<sup>43</sup> KPMG estimates the changes in Bourke during 2017, corresponding to the operation of the Maranguka justice reinvestment project, resulted in a gross impact of \$3.1 million.<sup>44</sup>

### ***Multisystemic Therapy***

<sup>38</sup> Kelly Richards and Lauren Renshaw, *Bail and remand for young people in Australia: A national research project* (Report No 125, Australian Institute of Criminology 2013) 93-4 <<https://www.aic.gov.au/sites/default/files/2020-05/rpp125.pdf>>.

<sup>39</sup> Uluru Statement from the Heart (National Constitutional Convention, 26 May 2017) <<https://ulurustatemdev.wpengine.com/wp-content/uploads/2022/01/UluruStatementfromtheHeartPLAINTEXT.pdf>>

<sup>40</sup> *Pathways to Justice* (n 7) 485 [15.1].

<sup>41</sup> 'What is Justice Reinvestment', *Justice Reinvestment Network Australia* (Web Page) <<https://justicereinvestment.net.au/>>.

<sup>42</sup> *Ibid.*

<sup>43</sup> KPMG, *Maranguka Justice Reinvestment Project Impact Assessment* (Report, 27 November 2018)

<<https://www.indigenousjustice.gov.au/wp-content/uploads/mp/files/resources/files/maranguka-justice-reinvestment-project-kpmg-impact-assessment-final-report.pdf>>.

<sup>44</sup> *Ibid.*

Multisystemic Therapy is a family and community-based model of treatment for young people experiencing a range of problems including behavioural issues, substance abuse, being at risk of removal from care, and involvement with the youth justice system. A team of therapists work with the child and the networks around them such as their family, school, and neighbours to support the young person towards positive outcomes.

There is ample research demonstrating that instituting Multisystemic Therapy for serious juvenile offenders and keeping them in the community with intensive intervention, can significantly reduce recidivism.<sup>45</sup> Multidimensional treatment programs address more dysfunctional aspects of the young person's life, increase prosocial behaviour and offer a longer treatment program when compared with one-dimensional programs such as restorative justice.<sup>46</sup> These factors are proven to more successfully produce change in the young offender.<sup>47</sup>

### **Culturally informed sentencing**

There is a clear association between the use of Aboriginal sentencing courts and the diversion of young Aboriginal people from custody. In particular, research published by BOCSAR has found that young Aboriginal people who went through the NSW Youth Koori Court ('YKC') process were substantially less likely to end up in a youth detention centre.<sup>48</sup> This translated to a 40% reduction rate in the likelihood of ending up with a custodial sentence.<sup>49</sup> The overall results of the evaluation demonstrate that Youth Koori Court 'is a promising model', that if adopted more widely has the potential to significantly lower the incarceration rates of First Nations young people.<sup>50</sup>

More importantly, the findings support the position that culturally sensitive case management approaches could result in the reduction of the stark overrepresentation of Aboriginal young people in detention centres.<sup>51</sup> The rehabilitation aspects of the YKC model are associated with significant reductions in the frequency and likelihood of re-offending when compared to the standard court process.<sup>52</sup> Culturally informed sentencing courts are better positioned to more accurately assess the needs of the young person and identify suitable interventions when compared with traditional Children's Courts.<sup>53</sup>

### **Restorative Justice**

There is a body of research which suggests that restorative justice has positive impacts for both victim and offenders.<sup>54</sup> One of these is the RISE project in the ACT which evaluates the effectiveness of diversionary conferencing for victims and offenders. The project found that both victims and offenders reported that 'conferences were fairer than court proceedings and that there were greater benefits for victims who attended conferences'.<sup>55</sup> The RISE project, along with other studies such as one conducted by the Centre for Forensic Behavioural Science, also found that youth justice conferences were

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<sup>45</sup> Jessica May, Kristina Osmond and Stephen Billick, 'Juvenile Delinquency Treatment And Prevention: A Literature Review' (2014) 85(3) *Psychiatric Quarterly* 295.

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Evan J Ooi and Sara Rahman, 'The Impact of the NSW Youth Koori Court on Sentencing and Re-offending Outcomes' [2022] (248) *Crime and Justice Bulletin* 1.

<sup>49</sup> *Ibid* 17.

<sup>50</sup> *Ibid* 18.

<sup>51</sup> *Ibid* 18.

<sup>52</sup> Michael D Trood, Benjamin L Spivak and James R P Ogloff, 'The Effects of Judicial Supervision on Recidivism of Offenders in Australia and New Zealand: A Systematic Review and Meta-Analysis' (2022) 29(5) *Psychiatry, Psychology and the Law* 651.

<sup>53</sup> *Ibid* 17.

<sup>54</sup> Jacqueline Joudo Larsen, *Restorative justice in the Australian criminal justice system* (Report No 127, Australian Institute of Criminology, 2014) 23 <<https://www.aic.gov.au/sites/default/files/2020-05/rpp127.pdf>>.

<sup>55</sup> *Ibid* 24.

effective at reducing recidivism in both person-based as well as property-based offences.<sup>56</sup>

However, there are other studies which suggest that conferences have no discernible effect on reducing recidivism compared to traditional children's court processes. This is particularly true for young offenders with complex needs or those who lack a support network and strong community ties – given that 'reducing recidivism is anticipated as an outcome of youth justice conferencing due to the engagement of informal social controls through the inclusion of family, supporters and community representatives'.<sup>57</sup>

Therefore, in the absence of these protective factors, NSW BOCSAR suggests that youth justice conferences alone may not be able to significantly reduce recidivism compared to traditional court processes for young people as it does not address the underlying causes of offending.<sup>58</sup> For young offenders with complex needs, what is needed is a multidisciplinary approach to ensure that the young person is connected with support services who will be able to truly target the risk factors for offending.

#### **Question 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?**

We believe that a national approach is ideal, but may be difficult to achieve in practice.

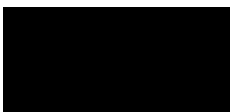
Noting the difficulty reaching a national consensus about raising the age of criminal responsibility, we suggest that states and territories wishing to achieve meaningful change will need to take their own initiative.

If a national approach were to be adopted (or aspired to), we suggest the establishment of an advisory council made up of people with relevant expertise from all Australian jurisdictions.

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Thank you for the opportunity to comment. We are happy to be contacted for further comment. Our preferred means of contact is via email at [REDACTED].

Yours sincerely



**Jane Sanders**  
Principal Solicitor

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<sup>56</sup> Centre for Forensic Behavioural Science, *Group Conferencing Effects on Youth Recidivism and Elements of Effective Conferences: Prepared for The Children's Court of Victoria* (Brief Report, May 2022) <<https://www.aarj.org.au/wp-content/uploads/2022/05/Brief-Report-Group-Conferencing-and-Recidivism-May-2022.pdf>>.

<sup>57</sup> Larsen (n 54) 23.

<sup>58</sup> NSW Bureau of Crime Statics and Research, 'The Effect of Youth Justice Conferencing on Re-offending' (Media Release, 15 March 2012) <[https://www.bocsar.nsw.gov.au/Pages/bocsar\\_media\\_releases/2012/bocsar\\_mr\\_cjb160.aspx](https://www.bocsar.nsw.gov.au/Pages/bocsar_media_releases/2012/bocsar_mr_cjb160.aspx)>.